



# **Practice Guidelines for Attorneys Representing Parents in Abuse, Neglect, and Termination of Parental Rights Cases**

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**Children's Justice Project**  
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**Practice Guidelines for Attorneys Representing Parents in Abuse, Neglect, and Termination of Parental Rights Cases**

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# Practice Guidelines for Attorneys Representing Parents in Abuse, Neglect, and Termination of Parental Rights Cases

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These Guidelines are intended to promote quality representation for parents’ attorneys in child abuse and neglect cases, and termination of parental rights proceedings. These Guidelines contain a set of considerations and recommendations to assist attorneys in their representation of parents.<sup>1</sup>

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<sup>1</sup> These Guidelines are a compilation of practice Guidelines taken from the American Bar Association’s “Guidelines of Practice for Attorneys Representing Parents in Abuse and Neglect Cases,” and the states of Arkansas, Connecticut, Georgia, Iowa, North Carolina, North Dakota, Washington, and the District of Columbia.

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## SUMMARY OF GUIDELINES

### GENERAL PROVISIONS

The paramount obligation of a parent's attorney is to provide competent representation to a parent client at all stages of the proceedings, and to preserve, protect, and promote the client's rights throughout the proceedings. Attorney should candidly advise client regarding the probable success and consequences of adopting any posture in the proceedings, and provide client with all information necessary to make informed decisions.

**Education, Knowledge, Training and Experience** 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. Attorneys must be familiar with applicable Federal, Wyoming and local rules, codes, statutes, agency policies and case law interpreting them.

**General Duties** Attorney should take reasonable steps to maintain adequate and appropriate contact with client throughout the proceedings and 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 and avoid unreasonable continuances by any party. Attorney should attend the multidisciplinary team (MDT) and other important meetings.

### CASE REVIEW, INVESTIGATION, AND PREPARATION

**General Obligations of Attorney** Attorney shall obtain and review copies of the petition and other documents in the court file and determine the grounds for alleging abuse or neglect or for seeking termination of parental rights.

**The Initial Interview** Attorney shall attempt to arrange for an initial interview with the parent as soon as practicable after agreeing to represent client.

**Responsibilities after the Initial Interview** Attorney shall conduct an independent case review and investigation of the allegations in the petition. Attorney shall timely file petitions, motions, discovery requests, and responses and answers to pleadings filed by other parties that are appropriate for the case and identify all potential witnesses.

**Evaluation of the Pleadings and Written Answer** 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.

**Case Plans** 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.

**Experts and Support Services** Attorney should consider whether the assistance of an investigator, licensed clinical social worker, mental health expert, or other expert is necessary and appropriate and obtain reports from experts and prepare them to testify.

**Jury Trial Adjudication and Termination of Parental Rights** Attorney should be familiar with the law on the client's right to a jury trial and proper procedures to be followed. Demand for a jury trial in the adjudicatory phase of an abuse/neglect action must be made within ten days after the parent is advised of this right at the initial hearing. Demand for a jury trial in a termination of parental rights proceeding must be made in accordance with the Wyoming Rules of Civil Procedure.

## **SHELTER CARE AND INITIAL HEARING**

**Preserving the Record on Appeal and Appeal Process** Attorney should establish a proper record for appellate review throughout the shelter care and initial hearing.

**Shelter Care and Initial Hearing Phase Generally** Attorney should be aware of the Rules of Evidence and law relating to these hearings. Attorney should determine if reasonable efforts have been made to keep the child at home. If child is in foster care, attorney should consult with client about alternative safe placements for the child. Attorney should request regular and appropriate visits with the family and child.

## **NEGOTIATING**

**Settlement Negotiations and Consent Decrees** Attorney should explore the possibility and desirability of reaching a negotiated consent decree and be familiar with the conditions under which consent decrees are permissible. Attorney shall keep the client fully informed of all offers made with respect to a consent decree or other type of stipulated decree, and should discuss with the client the advantages, disadvantages, and consequences of accepting any offers.

## **ADJUDICATION AND DISPOSITION**

**Preserving the Record on Appeal and Appeal Process** Attorney should establish a proper record for appellate review throughout adjudication and disposition. Attorney should inform client of the appeal process if the court's decision is contrary to client's interests.

**Adjudicatory Phase Generally** 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. Attorney should remind the client of 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.

**Dispositional Phase Generally** Attorney should be aware that the Rules of Evidence do not apply at the disposition hearing, and all material and relevant evidence helpful in determining questions may be received by the court and relied upon for probative value.

**Adjudicatory and Dispositional Hearing** Attorney should develop, in consultation with the client, an overall case strategy. Attorney should discuss with the client all of the considerations relevant to the client's decision to testify.

**Post-Disposition** Attorney should discuss with client the result of the dispositional hearing, all responsibilities of the client pursuant to the court's ruling, and any available post-disposition actions to set aside an adverse decision.

## **REVIEW AND PERMANENCY PLANNING**

**Preserving the Record on Appeal and the Appeal Process** Attorney should advise client regarding an appeal when a court's ruling is contrary to client's interests. Attorney should explain the appeals process, including applicable time frames and necessity for re-applying for a court appointed attorney. Attorney should establish a proper record for appellate review throughout all review and permanency planning hearings.

**Review and Permanency Planning Generally** In accordance with all applicable local rules and ethical standards 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, and review the applicable reports and attachments. Attorney should assess the Department of Family Service (DFS) reunification efforts and consider whether the services meet the client's needs or are of appropriate intensity.

**Review Hearings** Attorney should request a review hearing if the need for additional services arises, if any event occurs that may significantly affect the need for continued placement or if it otherwise becomes necessary to protect client's interests.

**Permanency Planning Hearings** Attorney should explain to client the purpose of the hearing. Attorney should be prepared at the permanency planning hearing to present an alternative long-term plan if client agrees that it would be in the best interest of the child. If the court enters a permanency planning order that changes the permanent plan, attorney should advocate for an appropriate concurrent plan.

## **TERMINATION OF PARENTAL RIGHTS**

**Preserving the Record on Appeal during Termination and Appeal Process** Attorney should establish a proper record for appellate review throughout the termination proceedings and inform client of appeal process if the decision is contrary to the client's interest.



**Termination of Parental Rights Generally** Attorney should confer with client as soon as possible after a petition to terminate is filed about the defense of the petition. The decision to file pre-trial motions should be made after thorough investigation and after considering the applicable law in light of the circumstances of the case. Attorney should consider utilizing all available informal and formal discovery methods and should seek discovery to the broadest extent permitted by law.

**Relinquishment and Other Alternatives to Termination** Attorney should be familiar with the statutory and case law governing voluntary relinquishment of parental rights, as well as any local DFS or court policies concerning relinquishments. Attorney should fully explain to client the advantages, disadvantages, and consequences of voluntary relinquishment. Attorney should be familiar with and fully explain to client all other termination alternatives.

## **APPEAL AND POST-REPRESENTATION**

Attorney should inform client of the right to appeal, the right to an attorney for the appeal, the action that must be taken to perfect that appeal and obtain an attorney. 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.

# Practice Guidelines for Attorneys Representing Parents in Abuse, Neglect, and Termination of Parental Rights Cases

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## **SECTION 1: GENERAL PROVISIONS**

### **Guideline 1.1 Functions of the Guidelines of Practice**

- (a) 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. Attorney has an obligation to conduct himself/herself professionally, act in accordance with court rules, and abide by the Wyoming Rules of Professional Conduct and other ethical norms. Attorney should act in accordance with the duty of loyalty owed to client. Unless inconsistent with client's interests, attorney should cooperate with and promote a productive relationship between all parties and attorneys in the case.
- (b) An attorney is the professional representative of his or her client, and should exercise professional judgment in representing his or her client. Attorney should candidly advise client regarding the probable success and consequences of adopting any posture in the proceedings, and provide client with all information necessary to make informed decisions. Attorney should advocate for client's expressed goals and empower client to direct the representation. Attorney does not have the obligation to execute any directive of client that does not comport with law or Guidelines of ethics or professional conduct.

### **Guideline 1.2 Education, Knowledge, Training and Experience of the Parent Attorney**

- (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.

### **Guideline 1.3 General Duties of the Parent Attorney**

- (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.
- (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.
- (c) Attorney shall be aware of the time requirements imposed by relevant statutes.
- (d) 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.
- (e) Attorney should make diligent efforts to review the court file before each court date, and attempt to seek enforcement of any local rules requiring that court reports and attachments be distributed to parties in advance of the court date.
- (f) If client cannot be located during the pendency of the proceedings and attorney is unaware of client's objectives, attorney should act in accordance with any applicable ethics opinions, including filing a motion to withdraw if appropriate.

### **Guideline 1.4 Conflicts of Interests and Withdrawal as Attorney**

- (a) 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.

- (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.

#### **Guideline 1.5 Client with Diminished Capacity and Guardian *Ad Litem***

- (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.

#### **Guideline 1.6 Incarcerated Client**

- (a) 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.

## Guideline 1.7 Billing

### (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.

### (b) Termination of Parental Rights 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.
- (2) Attorney shall file a motion with an itemized and detailed bill to the Court with notice to the Petitioner's attorney at the close of the case. The bill should reveal all the hours for which compensation is sought and how the hours were allocated to specific tasks. If a billing entry discloses privileged

information Attorney shall provide redacted copies to everyone but the Court. After the Court issues an order, the order shall be submitted to the Department of Family Services for payment.

- (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, also 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 department of family services.

## **SECTION 2: CASE REVIEW, INVESTIGATION, AND PREPARATION**

### **Guideline 2.1 General Obligations of Attorney or Provisional Attorney upon Appointment**

Attorney shall obtain and review copies of the petition and other documents in the court file and determine the grounds for alleging abuse or neglect, a child's need for supervision, or for seeking termination of parental rights.

### **Guideline 2.2 Initial Hearing**

Attorney should advise client of rights including the right to demand a jury trial. This demand must be made within ten days after client is advised of this right.

### **Guideline 2.3 Shelter Care and Initial Hearing**

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 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.

### **Guideline 2.4 Initial Interview**

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.

### **Guideline 2.5 Attorney's Responsibilities after the Initial Interview**

- (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.

### **Guideline 2.6 Evaluation of the Pleadings and Written Answers**

- (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.
- (b) In any petition to terminate parental rights, 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 for termination of the parent-child legal relationship does not state:
- (1) The legal name, sex, date and place of birth of the child, if known, and the jurisdictional facts;
  - (2) The name and residence of the petitioner and his or her relationship to the child;
  - (3) The name, address and place and date of birth of the parent, if known, and of the name of the person having the legal custody or guardianship of the child;
  - (4) The grounds for termination of the parent-child legal relationship; and
  - (5) The name and address of the person(s) or authorized agency requesting appointment as the guardian of the child.

#### **Guideline 2.7 Case Plans**

- (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.

## **Guideline 2.8 Discovery**

Attorney for client shall be aware of the discovery rules and tools, and shall consider utilizing reasonable informal and formal discovery methods, including written requests, depositions, interrogatories, requests for admissions, subpoenas for persons, subpoenas *duces tecum* for the production of documents, and other methods. Attorney should not engage in excessive or abusive discovery practices.

## **Guideline 2.9 Experts and Support Services**

- (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.

## **Guideline 2.10 Jury Trial - Adjudication and Termination of Parental Rights**

- (a) Attorney should be familiar with the law relating to the client's right to demand a jury trial at the adjudication stage and at any termination of parental rights proceeding. Attorney should advise client of the right to a jury trial and determine the best course of action after consultation with the client.

- (b) Attorney should be familiar with the law governing trial by jury, including but not limited to W.S. §1-11-101, et seq., Wyoming Rules of Civil Procedure 38 and any time requirements and filing requirements for a jury trial.
- (1) Attorney's demand should comply with Wyoming Uniform Rules of District Courts 304.
  - (2) In the adjudicatory phase of an abuse/neglect action, the demand for a jury trial must be made within ten days after the client is advised of this right at the initial hearing (W.S. §14-3-425(b)).
  - (3) In a termination of parental rights action, the demand for a jury trial must be made in accordance with Wyoming Rules of Civil Procedure 38.
    - a. Attorney should confer with client as soon as possible after attorney has notice that a petition to terminate has been or will be filed about all issues related to the defense of the impending action.
    - b. Attorney should be familiar with W.S. §14-2-312, W.S. §1-11-119, the Wyoming Rules of Civil Procedure 38(b) and the Wyoming and Federal Constitutions (primarily with respect to Equal Rights and Due Process) and be able to advise the client appropriately in obtaining a jury trial if such is desired.
    - c. Attorney should be familiar with Wyoming Statute §14-2-318(d)(ii) and §14-2-319 to prepare appropriate filings with the Court regarding indigent clients and payment of mandatory fees.
- (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.
  - i. If a TPR case is not bifurcated then instructions should clearly inform the jury that they may only reach the best interest question if satisfied under clear and convincing evidence that the ground(s) has (have) been proved.
- 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.

## **SECTION 3: NEGOTIATING**

### **Guideline 3.1 Settlement 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.
- (h) Juvenile Proceedings may be held in abeyance under W.S. 14-3-428 so long as the parties agree and the Court permits it.

- (1) Consent Decrees will be interpreted and enforced by the court as a contract. Attorneys must pay careful attention to the specific language in a Consent Decree. See *MR v. State (In the Interest of CDR)*, 2015 WY 79. If there is more than one parent entering into a Consent Decree, the Attorney should either have separate Consent Decrees for each parent or else a statement in the Consent Decree that a breach of the decree by one parent will not be enforceable against the other parent or similar language.
- (2) The Consent Decree may be with or without admission.
- (3) If the child is placed outside the home, a Consent Decree shall be in force for no longer than six months unless sooner terminated by the court. For good cause the court may extend the Consent Decree for an additional six months. If the child remains within the home, the Consent Decree shall be in force for the period agreed by the parties unless sooner terminated by the court. W.S. 14-3-428(c) and (d).
- (4) If the client successfully completes the terms of the Consent Decree there is no adjudication of record against the client.
- (5) If the client fails to successfully complete the terms of the Consent Decree, the original petition and proceeding thereon may be reinstated upon order of the court after hearing. The Court may then proceed as though the consent Decree had never been entered. If the Consent Decree was made with an admission to any of the allegations in the original petition, the Court may reinstate the original petition with the admission.
- (6) This type of proceeding does not prevent new allegations of abuse or neglect from being filed against the client.
- (7) This type of proceeding does not prevent a “substantiation” being entered against the client with the Department of Family Services’ Central Registry that may affect client’s employment opportunities. Attorneys should advise their client on this and the possibility of an administrative hearing if this should occur. This is a separate proceeding and is not covered by the court appointment.

## **SECTION 4: ADJUDICATION AND DISPOSITION**

### **Guideline 4.1 Preserving the Record on Appeal and the Appeal Process**

- (a) Attorney should establish a proper record for appellate review throughout adjudication and disposition, including but not limited to:
  - (1) Making appropriate objections to testimony or information in any reports or prior orders that are sought to be admitted into evidence;
  - (2) Making appropriate offers of proof regarding excluded evidence; and
  - (3) Making appropriate motions to preserve issues for a possible appeal.
  
- (b) For more information on appeals, see Section 7 below.

### **Guideline 4.2 The Adjudicatory Phase Generally**

- (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.

#### **Guideline 4.3 Presenting Client's Case at the Adjudicatory Hearing**

- (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 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.

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.

- (g) Attorney should conduct redirect examination as appropriate.
- (h) 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.

#### **Guideline 4.4 The Dispositional Phase Generally**

Attorney should be aware that the Rules of Evidence do not apply at the disposition hearing, and all material and relevant evidence helpful in determining questions may be received by the court and relied upon for probative value. However, attorney should still be prepared to object on the record to information, testimony and written reports that attorney believes should not be admissible. Also review Guideline 4.8.

#### **Guideline 4.5 Confronting the Evidence at the Dispositional Hearing**

- (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.

#### **Guideline 4.6 Presenting Client's Case at the Dispositional Hearing**

- (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.

#### **Guideline 4.7 Post-Disposition**

- (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.

## **SECTION 5: REVIEW AND PERMANENCY PLANNING**

### **Guideline 5.1 Preserving the Record on Appeal during Review and Permanency Planning**

- (a) Attorney should advise client regarding an appeal when a court's ruling is contrary to client's position or interests. Attorney should explain the appeals process, including applicable time frames and necessity for re-applying for a court appointed attorney, to client and explain both the possible positive and negative effects of an appeal.
- (b) Attorney should establish a proper record for appellate review throughout all review and permanency planning hearings, including but not limited to:
  - (1) Making appropriate objections to testimony or information in any reports or prior orders that have been admitted into evidence; and
  - (2) Making appropriate offers of proof regarding excluded evidence; and
  - (3) Attorney should also take steps to ensure that the court's ruling on any objection is on the record and that any stricken information or evidence does not appear in the record.
- (c) For more information on appeals, see Section 7 below.

### **Guideline 5.2 Review and Permanency Planning Generally**

- (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, 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.

### **Guideline 5.3 Review Hearings**

Attorney should request a review hearing if the need for additional services arises, if any event occurs that may significantly affect the need for continued placement, or if it otherwise becomes necessary to protect client's interests.

### **Guideline 5.4 Permanency Planning Hearings**

- (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.
- (f) Attorney should request an evidentiary hearing in a written pleading filed with the court at any permanency hearing that is contested and where there may be a change in the permanency plan. Failure to request an evidentiary hearing at the permanency phase waives the right to an evidentiary hearing. The client is entitled to meaningful due process, and the parent requesting a hearing is entitled to put the State to its proof, be present, confront and cross-examine witnesses, call witnesses, and present a case in support of reunification or dismissal. Hearsay that is probative, trustworthy and credible may be admissible. The State must prove its case by a preponderance of the evidence. See *KC v. State (In the Interest of GC)*, 2015 WY 73.

## **SECTION 6: TERMINATION OF PARENTAL RIGHTS**

### **Guideline 6.1 Preserving the Record on Appeal during Termination Proceedings**

- (a) Attorney should establish a proper record for appellate review throughout the termination proceedings, including but not limited to:
  - (1) Making appropriate objections to testimony or information in any reports or prior orders that the petitioner or the GAL seeks to have admitted into evidence; and
  - (2) Making appropriate offers of proof regarding excluded evidence.
- (b) For more information on appeals, see Section 7 below.

### **Guideline 6.2 Termination of Parental Rights Generally**

- (a) If the petition or motion to terminate parental rights filed after a judicial determination that reasonable efforts to reunify are not required is not timely, attorney should move to dismiss the petition unless there are sound tactical reasons for not doing so. In all other petitions to terminate parental rights there is no timeline for filing.
- (b) Attorney should confer with client as soon as possible after a petition to terminate is filed about all issues related to the defense of the petition including but not limited to:
  - (1) Witnesses that should be interviewed and possibly subpoenaed;
  - (2) Documentary and photographic evidence that should be gathered or subpoenaed; and
  - (3) Any prior court files, both for the child and any other child of client, which may be relied upon or introduced into evidence by the petitioner or the GAL. If appropriate, attorney should also discuss with client whether there are tactical reasons to stipulate to any allegations in the petition or motion, other than ultimate facts that could themselves constitute a ground for termination, such as facts that are uncontroverted or readily capable of determination or proof. The decision to stipulate ultimately rests with client.
  - (4) Attorney shall discuss with client the right to demand a jury trial and if desired, do so in accordance with Wyoming Rules of Civil Procedure.
- (c) If client also faces criminal charges arising out of the allegations in the juvenile petition and attorney does not represent client in criminal court, attorney should consult with client's criminal defense attorney prior to filing any answer or response to the petition.



- (d) The decision to file pre-trial motions should be made after thorough investigation and after considering the applicable law in light of the circumstances of each case, as well as the need to preserve issues for appellate review. Pre-trial motions that attorney should consider filing include, but are not limited to:
- (1) Discovery motions
  - (2) Motions for an in-camera inspection;
  - (3) Motions to dismiss the petition on the grounds of insufficiency of the pleadings under Rule 12(b) of the Wyoming Rules of Civil Procedure;
  - (4) Motions to divulge the identity and contact information for witnesses and others;
  - (5) Motions for medical, psychological, or psychiatric evaluations;
  - (6) Evidentiary motions and motions *in limine*; and
  - (7) Motions for appointment of a GAL for client, if appropriate.
- (e) Motions should be filed in a timely manner, comport with the formal requirements of statute and court rules, and succinctly inform the court of the authority relied upon.
- (f) Unless there are tactical reasons for not doing so, attorney should consider utilizing all available informal and formal discovery methods and should seek discovery to the broadest extent permitted by law, including but not limited to:
- (1) The identity of all lay witnesses who will be called to testify at the termination hearing and a summary of the testimony to be elicited;
  - (2) The identity of all expert witnesses who will be called to testify at the termination hearing and copies of the witnesses' curriculum vitae and any reports prepared by the witnesses; and
  - (3) A list of all reunification services that were provided to client prior to the filing of the petition to terminate. If discovery is not timely provided to attorney, attorney should consider filing a motion to compel production or to preclude introduction of evidence or seek a continuance of the termination hearing.
- (g) In advance of the termination hearing attorney should take all steps necessary to complete appropriate and thorough investigation, discovery, and research, including but not limited to:
- (1) Interviewing and subpoenaing all potentially helpful witnesses that have been identified by client and by attorney's review of the pleadings and evidence, including medical personnel or other professionals that are referenced in the DFS files, or DFS or GAL reports and attachments;
  - (2) Interviewing and subpoenaing any needed adverse witnesses, including the child if necessary and appropriate;
  - (3) When attorney seeks the testimony of a child, attorney should be sensitive to the nature of young children as witnesses. Where appropriate, attorney should ask the court for any accommodations and take steps to ensure that the substance of any testimony by child witnesses is placed on the record.

- (4) Examining and subpoenaing all potentially helpful physical or documentary evidence;
- (5) Obtaining copies of all DFS and GAL reports and attachments so that attorney can be prepared with rebuttal witnesses and evidence;
- (6) Making a timely motion in advance of the hearing for funds for investigators or other experts if warranted, and arranging for defense experts to consult and/or testify on issues that are potentially helpful;
- (7) Obtaining by court order and reading transcripts of any prior proceedings in the case or related cases, if applicable;
- (8) Obtaining any photographs or preparing charts, maps, diagrams, or other visual aids of all scenes, persons, objects, or information that may help the judge better understand the case; and
- (9) Meeting with client to review the DFS and GAL reports and attachments, discuss the defense, and prepare client's testimony.
  - a. Attorney should be familiar with the Rules of Evidence and the statutory and case law relating to all stages of a termination proceeding, as well as all legal and evidentiary issues that reasonably can be anticipated to arise at the termination hearing based on the pleadings, investigation, and discovery, and should be prepared to make appropriate objections. If, at the termination hearing, the petitioner makes material allegations about facts or circumstances that are not contained in the petition or motion, attorney should consider seeking a continuance or objecting to preserve the issue for appellate review.

(h) Attorney should have the following information and materials available at the time of the termination hearing:

- (1) Copies of all relevant documents filed in the case, including the petition or motion;
- (2) A copy of the Juvenile Code and other critical statutes and cases related to anticipated issues;
- (3) The DFS and GAL reports and attachments;
- (4) Any 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) Any reports from assessments that client has completed;
- (8) Documentation concerning client's employment and housing status;
- (9) Documentation regarding any special achievements of the child while in the custody of client;
- (10) Negative drug screen results, if any;
- (11) A plan, outline, or draft of opening statement;
- (12) Cross-examination plans for all possible adverse witnesses;
- (13) Direct-examination plans for all prospective defense witnesses;

- (14) A plan, outline, or draft of closing argument; and
- (15) Proposed findings of fact and conclusions of law to be offered to the judge at the end of the hearing.

### **Guideline 6.3 Confronting the Evidence during the Termination Hearing**

- (a) Attorney should anticipate the petitioner's theory of the case, all evidence the petitioner can reasonably be expected to introduce during the adjudication phase of the termination hearing, and any weaknesses in that evidence. Attorney should research and prepare to argue corresponding motions, including motions to dismiss.
- (b) Unless tactical reasons exist for not doing so, attorney should make timely and appropriate objections and motions to strike improper evidence offered by the petitioner or GAL, and should assert all possible grounds for exclusion of the evidence.
- (c) In preparing for cross-examination, attorney should:
  - (1) Consider the need to integrate cross-examination, the theory of the case, and closing argument;
  - (2) Be thoroughly familiar with the DFS file, as well as the previously submitted DFS and GAL reports and attachments;
  - (3) Consider whether cross-examination of each individual witness is likely to generate helpful information, and avoid asking questions that are unnecessary or might elicit responses harmful to client's case;
  - (4) Anticipate the adverse witnesses that might be called, including client, and consider a cross-examination plan for each anticipated witness;
  - (5) Be alert to inconsistencies, variations, and contradictions within each witness's testimony;
  - (6) Be alert to inconsistencies, variations, and contradictions between different witnesses' testimony; and
  - (7) Be alert to issues relating to bias and credibility of witnesses.
- (d) At the close of the petitioner's case, attorney should move to dismiss the petition for insufficient evidence. Where appropriate, attorney should be prepared to present argument in support of the motion, including supporting case law.

### **Guideline 6.4 Presenting Client's Case during the Termination Hearing**

- (a) Attorney should consider whether client's interests are best served by not presenting a case in chief on behalf of client, and instead relying on the evidence and inferences, or lack thereof, or cross examination from the petitioner's case.

- (b) Attorney should discuss with client all of the considerations relevant to client's decision 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 proceeding if client is also facing criminal prosecution. Attorney should prepare client to testify if called by the prosecution.
- (c) Attorney should comply with any local rules of court that may require attorney to divulge to the petitioner and other parties a witness list or other information prior to the termination hearing.
- (d) Attorney should address and defend all allegations in the petition that are capable of a defense. In preparing to present client's case, attorney should, where appropriate:
  - (1) Develop a plan for direct examination of each potential defense witness;
  - (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 photographs, 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.
- (e) In developing and presenting client's case, attorney should consider the implications it may have for rebuttal by Petitioner.
- (f) Attorney should prepare all defense witnesses, including client, for direct examination and possible cross-examination.
- (g) If Petitioner's objection is sustained or defense evidence is improperly excluded, attorney should make appropriate efforts to rephrase the question(s) and/or make an offer of proof.
- (h) 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
- (i) Attorney should conduct redirect examination as appropriate.

- (j) At the close of all of the evidence, attorney should, where appropriate, renew any previous motion to dismiss the termination petition or motion, or any part thereof, for insufficient evidence or move for summary judgment.

### **Guideline 6.5 Relinquishment and Other Alternatives to Termination**

- (a) Attorney should be familiar with the statutory and case law governing voluntary relinquishment of parental rights, as well as any local DFS or court policies concerning relinquishments. If appropriate, attorney should discuss with client his or her option of relinquishing parental rights to a specific person or persons rather than to DFS.
- (b) Attorney should fully explain to client the advantages, disadvantages, and consequences of voluntary relinquishment, including but not limited to:
  - (1) The fact that client's child support obligations will continue after relinquishment until a final decree of adoption for the child is entered; and
  - (2) The possibility that visitation could continue until a final decree of adoption is entered.
- (c) If client decides to voluntarily relinquish his or her parental rights, attorney should take steps to ensure that the relinquishment is executed during a court session. Attorney should consider tendering client to the court for the court to make inquiry as to the knowing and voluntary nature of the relinquishment.
- (d) Attorney should be familiar with and fully explain to client all other termination alternatives, including placement of the child in the custody or guardianship of a relative or other suitable person who is agreeable to the petitioner and client. Attorney should explain to client that a custodial arrangement would allow client later to seek a change in visitation or custodial status by filing a motion to modify the custody.

## **SECTION 7: APPEAL AND POST-REPRESENTATION**

- (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.
- (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

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JUSTICE PROJECT**

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