

**Child Welfare Agency Attorney Performance Standards Work Group**  
**Oregon State Bar**  
**Thursday Sept. 8, 2016 (11:00AM-1:00PM)**  
**(Please bring your own lunch)**

**Agenda**

- **Introductions (10 Minutes)**
- **OSB and Performance Standards (15 Minutes)**
  - Staffing
  - Process/Role of the Board of Governors
  - Use of Performance Standards after Passage
- **Logistics Workgroup (15 Minutes)**
  - Scope of Workgroup
  - Timelines
  - Member Responsibilities
- **Discuss Organization (10 Minutes)**
- **BREAK (10 Minutes)**
- **Review ABA “General” and “Advise and Counsel” Sections (60 Minutes)**
  - What needs to be modified?
  - Compare/Contrast with Parent “General Principals” and “Role” and “Relationship”
  - What needs to be added?

**Scope Statement**

This workgroup will craft a set of performance standards designed to guide the practice of child welfare agency attorneys. These Standards should not be written as rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. These Standards should instead serve as a valuable tool both to the new lawyer or the lawyer who does not have significant experience in dependency cases, and to the experienced lawyer who may look to them in each new case as a reminder of the components of competent, diligent, high quality legal representation that the children and families in Oregon deserve. In the process of crafting these standards the work group will review national model standards and consult the Oregon State Bar Standards of Representation for Parent’s and Children’s Attorneys. Where appropriate, and to the extent practicable, Child Welfare Agency Attorney Performance Standards should incorporate a similar or complementary structure and content.

**Summary of Task Force Recommendation**

**Recommendation #1: Oregon should have relevant performance standards for juvenile dependency attorneys who represent parents, children, and the government.** These standards should be realistically attainable by practitioners but also be designed to promote best practice...The performance standards generated for government attorneys should, like the standards for parent and child attorneys, use the ABA Center on Children and the Law standards, in this instance Standards of Practice for Lawyers Representing Child Welfare Agencies, as a starting point, and should follow a similar or complementary structure to the performance standards for parent and child attorneys.

**Basic Timeline**  
(Assumes monthly meetings)

**August –**

- Contact the Bar/Formulate the Workgroup

**September –**

- Workgroup: establish scope and work plan
- Workgroup: Determine content of Role and Relationship
- Staff: Draft (or edit ABA/OSB content) of Role and Relationships and distribute

**October-**

- Workgroup: Review Role and Relationship
- Workgroup: Determine content of Training and Principals
- Staff: Draft (or edit ABA/OSB content) of Training and Principals

**November-**

- Workgroup: Review Training and Principals
- Workgroup: Determine content of Investigation and Court Preparation
- Staff: Draft (or edit ABA/OSB content) of Investigation and Court Preparation and distribute

**December-**

- Workgroup: Review Investigation and Court Preparation sections
- Workgroup: Determine content of Hearings and Post-Hearings
- Staff: Draft (or edit ABA/OSB content) of Hearings and Post-Hearings and distribute

**January-**

- Workgroup: Review Hearings and Post-Hearings Sections
- Workgroup: Determine content of Modifying/Vacating an Order, Appellate Issues for Trial and Appellate Attorneys
- Staff: Draft (or edit ABA/OSB content) of Modifying/Vacating an Order, Appellate Issues for Trial and Appellate Attorneys and distribute entire draft

**February-**

- Workgroup: Review Modifying/Vacating an Order, Appellate Issues for Trial and Appellate Attorneys
- Workgroup: Revisit areas that were tabled, discuss newly arisen concerns, create additional sections not included in the OSB/ABA standards
- Staff: Draft or modify per discussion
- Workgroup: Reach out to relevant partners/stakeholders for comments on full draft (judges, DHS directors, DOJ office of the AG, ODAA etc.)

**March-**

- Workgroup: Discuss input received and make any suggested modifications/additions etc.
- Staff: Incorporate necessary changes and edits; proof read document; and circulate

**April-**

- Workgroup: Make final changes via e-mail
- Staff: Send on final document to BOG with letter from the Chair

**May 12- Present to Oregon State Bar Board of Governor’s**

**General Outlines to Guide the Process**

**Oregon State Bar Standards for Parents/children**

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Standard 1 - Role of the Lawyer for Parents ..... 44

Standard 2 - Relationship with the Parent Client ..... 47

Standard 3 - Training Requirements for Competent Representation of Parent Clients ..... 58

Standard 4 - General Principles Governing Conduct of a Case ..... 60

Standard 5 - Investigation ..... 65

Standard 6 - Court Preparation ..... 69

Standard 7 - Hearings ..... 75

Standard 8 - Post Hearing ..... 77

Standard 9 - Modifying or Vacating an Order ..... 78

Standard 10 - Appeals Issues for Trial Lawyer ..... 79

Standard 11 - Appeals Issues for Appellate Lawyer ..... 81

**ABA Standards**

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**General**

1. Fully understand and comply with all relevant federal and state laws, regulations, policies, and rules;
2. Promote timely hearings and reduce case continuances;
3. Protect and promote the agency’s credibility;
4. Cooperate and communicate on a regular basis with other professionals and parties in a case, including the client/agency;

**Advise and Counsel**

5. Counsel the client/agency about all legal matters related to individual cases as well as policy issues and periodically monitor cases;

**Court Preparation**

6. Develop a case theory and strategy to follow at hearings and negotiations;
7. Prepare or help prepare the initial petition and all subsequent pleadings;
8. Timely file all pleadings, motions, and briefs
9. Obtain all documents and information needed, including copies of all pleadings and relevant notices filed by other parties;
10. Participate in all depositions, negotiations, discovery, pretrial conferences, mediation sessions (when appropriate), and hearings;
11. Participate in settlement negotiations and attempt speedy resolution of the case, when appropriate;

12. Develop a case timeline and tickler system;
13. Subpoena and prepare all witnesses, including the client;
14. Ensure proper notice is provided to all parties and necessary caretakers;

### **Hearings**

15. Attend and prepare for all hearings;
16. Prepare and make all appropriate motions and evidentiary objections;
17. Present case in chief, present and cross-examine witnesses, prepare and present exhibits;
18. In jurisdictions in which a jury trial is possible, participate in jury selection and drafting jury instructions;
19. Request the opportunity to make brief opening and closing arguments when appropriate;
20. Prepare or help prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision;

### **Post Hearings/Appeals**

21. Follow all court orders pertaining to the attorney for the client/agency;
22. Review court orders to ensure accuracy and clarity and review with agency when necessary;
23. Take reasonable steps to ensure the agency complies with court orders;
24. Consider and discuss with the agency the possibility of appeal;
25. If a decision is made to appeal, timely file the necessary post-hearing motions and the notice to appeal paperwork;
26. Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending;
27. Communicate the results of the appeal and its implications to the agency/client.