

**Parent and Child Performance Standards Work Group**  
**Oregon State Bar**  
**Monday Sept. 10, 2016 (10:00AM-12:00AM)**

**Meeting Notes**

- **Introductions**
  - Lea Ann Easton, Dorsay & Easton (Chair)
  - Susan Grabe, OSB
  - Linn Davis, OSB
  - Liz Wakefield, MPD
  - Angela Sherbo, YRJ
  - Amy Miller, OPDS
  - Amy Zubko, OSB
  - Addie Smith, Office of Governor's Office
  - Professor Leslie Harris, U of O, Law School
  - Shannon Storey, OPDS Juvenile Appellate Section
  - Amy Benedum, JCIP
  - Megan Jacquot, Atty (soon to be judge)
  - Shannon Dennison, DOJ
- **OSB and Performance Standards Review**
  - Staffing
    - Matt – Working with the Agency Attorney Standards Workgroup
    - Amy Zubko- Working with the Parent and Child Standards Workgroup
    - Linn Davis- available to help on issues of ethics and rules of professional conduct
    - Staffing will be more like committee staff or a standing board committee and less like a section liaison (this will be a higher level of staffing helping to craft agendas, draft work product, and ensure a good process)
  - Process/Role of the Board of Governors
    - In the past these have been simply accepted, this time we may talk to the board about both accepting and approving these standards
  - Use of Performance Standards after Passage
    - Discussion of “standards of care” v. “rules of conduct”
    - Used by OPDS as a contract requirement (it can be grounds for termination of the contract)-the word used is “fulfill” not adhere or observe
    - See language crafted below in scope statement
- **Logistics for the Workgroup**
  - Scope of Workgroup
  - Timeline
    - 1<sup>st</sup> Mondays at 10 am
      - Oct. 3
      - Nov 7
      - Dec 5
      - [Jan 9-tentative]
    - Should be before the BOG by February
  - Member Responsibilities

- Review *in advance* of meetings the issues that are scheduled to be reviewed/discussed at the meeting
    - Communicate new ideas/issues via e-mail in advance of these meetings
  - Expectation that you will review the previous standards and come forward with changes by at the latest the next meeting
  - Expectation that you will review any relevant materials/research on a given topic provided before a meeting where that topic will be discussed
  - Expectation that you will draft any standards you volunteer for or are asked to draft and get it to group prior to meeting so members have time to review it and be ready to discuss at meetings.
  - Expectation that members will share drafts and documents with stakeholders and other interested parties well in advance of February
- **Discuss specific Task Force standard recommendations**
  - Clarify the attorneys and proceedings to which they apply;
  - Ensure consistency across standards;
  - Conform the standards, as appropriate, to OPDS internal policies;
    - OPDS currently revisiting qualification standards for appointed counsel (in Oct) those may need to be referenced/cross referenced
  - [Address clerical errors--to be handled by OSB and the review process]
  - Pre-petition representation standards
  - Crossover case representation standards
- **BREAK**
- **Identify areas where parent and child performance standards are inconsistent and where revision/adjustment by this workgroup is necessary**
  - Note: All resources mentioned below will be provided on an OSB Webpage. Address to be sent out as soon as the page is live.
  - **Crossover case standards for both parent and child's attorneys**
    - Resources: Georgetown Protocol
    - Competence to provide parents with necessary information in addition to children
    - One lawyer-one child model; what to do when one lawyer-one child can't be achieved
    - Note: perhaps this warrants the Criminal and Delinquency standards also be adjusted after the dependency standards are revised
      - **Initial Draft by Liz Wakefield and Amy Miller**
      - November Meeting
  - **Pre-petition standards for parent's attorneys**
    - Resources: ABA Parents Standards General Standard 4 (page 10); OPDS Pre-petition packet
    - OPDS contract permits a lawyer to request assistance pre-petition, this is also a part of the direction of the Commission to provide "public defense in line with state and national standards" as this is becoming a national standard
      - Included in ABA standards, and included in National Juvenile Defender Standards
      - 2016 OPDS contract term about pre-appointment:

- 7.1.2.1 Pre-appointment representation Subject to the express prior approval of PDSC, where an individual would be eligible for appointed counsel at state expense if charged with a crime or served with a petition in juvenile court but exigent circumstances preclude an appointment order, contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of a client.
- These Standards are for all parents and children's attorneys (not just those under contract with OPDS), so whether or not paid for by OPDS pre-petition representation may be an issue
- **Initial draft by Prof. Leslie Harris**
- December Meeting
- Other issues to be considered for inclusion:
  - **Addition of standards for parent and child trial counsel that track the changes to the ORAP**
    - This may affect both trial and appellate counsel standards
    - Resource: Draft ORAP rule
    - Initial Draft by Angela Sherbo, Inge Wells, & Shannon Storey
    - November Meeting
  - **Addition of a section on modifying or vacating an order in child attorney standards**
    - This section needs to be added to the child standards
    - Resource: OSB Dependency Standards for Parent's Attorney Standard 9
    - **Initial Draft by Angela Sherbo**
    - October Meeting
  - **Additional description/clarification of the role of *appellate* counsel for children in child's attorney standards-**
    - The general role section may need revisions to better apply to appellate counsel for children. May need to be some clarification and modification to the current standards to account for the different role of an appellate attorney
    - Resource: OSB Dependency Standards Sections 1 and 2 for children
    - **Initial Draft Lea Ann Easton**
    - November Meeting
  - **Additional communication guidance on the use of social media to communicate with clients, the use of social media and appropriate boundaries and/or providing guidance to clients on social media in parent and child attorney standards**
    - Should we include social media guidance (Facebook communication; Facebook friendships; twitter feeds etc.)
    - The law commission is about to be looking at e-hearsay, so this is timely
    - Resources: OSB Dependency Standard 2B for Child's Attorney and corresponding Parent's Attorney provision
    - Research: Do any states already include this standard?
    - **Initial Draft Addie Smith and Amy Miller**

- October meeting
- **New guidance on handling SIJS cases and/or appropriately handing cases with immigrant families in child attorney standards**
  - On the criminal side there is the “Padilla Project”
  - Resources: Kids in Need of Defense, Chapter 2 on SIJS; ABA Best Practices for Representing Unaccompanied Minors
  - Research: Do any states already include this standard?
  - **Initial Draft Megan Jacquot**
  - October Meeting
- **New guidance that responds to, and incorporates, the recent *TL* decision:**
  - The duty of attorneys to raise ineffective assistance of counsel in dependency cases/TPRs (include this in both appeal sections?)
  - Different attorneys for the trial and appellate phases of a case?
    - Waiver?
  - Is this imputed throughout an organization?
  - Resource: *In re TL*
  - **Initial Angela Sherbo, Megan Jacquot, and Shannon Storey**
  - December Meeting
- **Note: All changes to the actual standards should also be reflected in various relevant appendices**
- **Begin to Discuss 2-3 of the identified issues**
  - **Tabled for next meeting (see work plan)**

### **Scope**

This workgroup will revise the Oregon State Bar Standards of Representation in Juvenile Dependency Cases for parent and child attorneys. These *guidelines* are not rules or requirements of practice and are not intended nor do they establish a legal standards of care. These *guidelines*, as revised, should continue to 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 revising these guidelines the work group will clarify the attorneys and proceedings to which they apply; ensure consistency across standards; conform the standards, as appropriate, to OPDS internal policies; address clerical errors; and consider including standards for pre-petition practice and crossover case practice.

### **Relevant Task Force on Legal Representation Recommendations**

**Performance Standards 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. As the entity that regulates the practice of law in Oregon, OSB in coordination with the relevant attorney organizations (e.g., DOJ, OPDS, DAs, and Members of the Oregon Criminal Defense Lawyers Association (OCDLA) juvenile law committee), should generate and revise performance standards. The standards ultimately should be adopted by the OSB Board of Governors. Input from the DHS and

representatives from counsel for the other parties should be included in the development or amendment of each of set of standards....

The performance standards for parent and child attorneys should be revised to clarify the attorneys and proceedings to which they apply, to appropriately ensure consistency across all sets of juvenile dependency performance standards, to conform to OPDS internal policies, to address clerical errors, and to consider including standards for pre-petition practice and crossover case practice.

**Crossover Cases Recommendation #4: Performance standards for all delinquency, dependency, and criminal practitioners should be updated (or crafted) to reflect the unique nature of representation in crossover cases.** The OSB Performance Standards for Representation in Criminal and Juvenile Delinquency and the OSB Performance Standards for Representation in Juvenile Dependency cases should include a requirement that all practitioners, regardless of their primary area of practice, have a basic understanding of the delinquency, dependency, and criminal justice systems, as well as child (including child brain) development; should necessitate a close collaboration between dependency and delinquency or criminal defense attorneys in crossover cases; and the Criminal and Juvenile Delinquency Standards should delineate the specific training needed by attorneys who represent juveniles charged with Measure 11 offenses. If or when corresponding standards are crafted for government counsel, they should include a requirement that all practitioners -- regardless of their primary area of practice -- have a basic understanding of the delinquency, dependency, and criminal justice systems, as well as brain and child development, and should prescribe the specific training needed by attorneys who represent juveniles charged with Measure 11 offenses.

## **Work Plan**

### **August –**

- Contact the Bar/Formulate the Workgroup

### **September –**

- Workgroup: Establish scope and work plan
- Workgroup: Determine Issues to be addressed
- Staff: Compose list of issues to be addressed
- Staff: Review previous Dependency Standards for clerical errors; Review previous Dependency Standards for consistent verbiage between and within parent and child standards

### **October-**

- Workgroup: Finalize list of issues to be addressed
- Workgroup: Consider inclusion of, and draft language for:
  - Modifying/Vacating Orders addition to child standards
  - Communication Social Media Guidelines
  - Immigration Status/SIJS
- Staff: Revise draft language per workgroup discussion; circulate revised language; integrate revised language into the full standards document per workgroup discussion

### **November-**

- Workgroup: Consider inclusion of, and draft language for:
  - Crossover Case Standards
  - Revising to be consistent with ORAP
  - General Role of Appellate Counsel for Children

- Staff: Revise draft language per workgroup discussion; circulate revised language; integrate revised language into the full standards document per workgroup discussion

**December-**

- Workgroup: Consider inclusion of, and draft language for:
  - Response to TL
  - Pre-petition representation
  - Review OPDS Revised Qualification Standards
  - [Additional topics added at Oct meeting]
- Staff: Revise draft language per workgroup discussion; circulate revised language; integrate revised language into the full standards document per workgroup discussion; proof new sections
- Workgroup: Share draft with constituents and other stakeholders (Judges, Delinquency Practitioners, DHS, ODAA, etc.)

**January-**

- Workgroup: Bring comments concerns and issues from constituents and stakeholders to the meeting for discussion, determine
- Workgroup: Revise introduction/forward as necessary
- Staff: Incorporate changes and issues per workgroup discussion; final proofing of document; circulate document
- Workgroup: Receive final approval of document and draft/edit cover letter for BOG via e-mail

**February- Present to Board of Governors**