**STANDARD 9 - MODIFYING OR SETTING ASIDE AN ORDER OR JUDGMENT**

1. **The child’s lawyer should move the court to modify or set aside an order or judgment when appropriate.**

Action:

If an order or judgment adversely affects the child client, the lawyer should advise the client of her remedies, which include moving to modify or set aside the order or judgment, asking for a rehearing in the event the order was entered by a referee and/or filing (or referring to OPDS for filing) an appeal to the Court of Appeals. [ORS 419B.923](http://www.oregonlaws.org/ors/419b.923) permits a motion to modify or set aside under certain non-exclusive enumerated circumstances. The motion must be filed within a “reasonable time” and may be filed while an appeal is pending. The lawyer should consider filing both the motion and an appeal where the time limitations make that necessary. In that instance, the motion must be served on the appellate court.

Additionally, a motion to modify or set aside an order or judgment may be made to assert a claim of inadequate assistance of counsel, which also may be made on direct appeal. Where this issue may be the basis for a motion to modify or set aside, a request for a rehearing or an appeal to the Court of Appeals, trial counsel should be cognizant of all of the possible deadlines and immediately move the court to substitute counsel.

Commentary:

Motions to modify permanency judgments have been successfully filed by children where implementation of the court’s plan will result in harm to the child’s attachment to long-time caregivers. For example, where the permanency plan is adoption, but DHS will not approve the child’s current relative or foster parent as an adoptive placement and instead selects a stranger to the child, the child might make a motion to modify the judgment to select a plan of guardianship. Thereafter, a party or the proposed guardian, if that person has been granted rights of limited participation for that purpose, may move the court to be appointed guardian under ORS 419B.366. A child might also choose to ask the court to modify a visitation provision in an order or judgment, or move to set aside a portion of a judgment placing the child in substitute care.