**STANDARD 8 – POST HEARINGS**

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| CHILD | PARENT |
| **A. The child’s lawyer should review court orders to ensure accuracy and clarity and review with the child client.** | **A. The parent’s lawyer should review court orders to ensure accuracy and clarity and review with the parent client.** |
| Action: At the conclusion of the hearing, the child’s lawyer should request and obtain a copy of the written order or judgment to ensure it reflects the court’s verbal order. If the order or judgment is incorrect, i.e., it does not reflect the court’s verbal rulings, the child’s lawyer should take whatever steps are necessary to correct it to the extent that the corrections are beneficial to the child client.  | Action: At the conclusion of the hearing, the parent’s lawyer should request and obtain a copy of the written order or judgment to ensure it reflects the court’s verbal order. If the order or judgment is incorrect, i.e., it does not reflect the court’s verbal rulings, the parent’s lawyer should take whatever steps are necessary to correct it to the extent that the corrections are beneficial to the parent client.  |
| Action: Once the order or judgment is final, the child’s lawyer should provide the child client with a copy of the order or judgment, if age appropriate, and should review the order or judgment with the child client to ensure the child client understands it and his or her obligations under the order or judgment. If the child client is unhappy with the order or judgment, the child’s lawyer should counsel the child client about any options to appeal, or request a rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured.  | Action: Once the order or judgment is final, the parent’s lawyer should provide the parent client with a copy of the order or judgment and should review the order or judgment with the parent client to ensure that parent client understands it and his or her obligations under the order. If the parent client is unhappy with the order or judgment, the parent’s lawyer should counsel the parent client about any options to appeal, or request a rehearing on the order, but should explain that the order is in effect unless a stay or other relief is secured.  |
| Commentary:The child client may be angry about being involved in the child welfare system and a court order that is adverse to the child client could add stress and frustration. It is essential that the child’s lawyer take the time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the child client. The child’s lawyer should counsel the child client about all options, including appeal.  | Commentary:The parent client may be angry about being involved in the child welfare system and a court order that is adverse to the parent client could add stress and frustration. It is essential that the parent’s lawyer take the time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the parent client. The parent’s lawyer should counsel the parent client about all options, including appeal.  |
| **B. The child’s lawyer should take reasonable steps to ensure the child client complies with court orders and to determine whether the case needs to be brought back to court.** | **B. The parent’s lawyer should take reasonable steps to ensure the parent client complies with court orders and to determine whether the case needs to be brought back to court.** |
| Action: If the child client is attempting to comply with the order but another party, such as the Department of Human Services (DHS), is not meeting its responsibilities, the child’s lawyer should approach the other party and seek assistance on behalf of the child client. If necessary, the child’s lawyer should request a hearing to review the order and the other party’s noncompliance or take other steps to ensure that appropriate social services are available to the child client. | Action: If the parent client is attempting to comply with the order but another party, such as the Department of Human Services (DHS), is not meeting its responsibilities, the parent’s lawyer should approach the other party and seek assistance on behalf of the parent client. If necessary, the parent’s lawyer should request a hearing to review the order and the other party’s noncompliance or take other steps to ensure that appropriate social services are available to the parent client. |
| Commentary:The child’s lawyer should play an active role in assisting the child client in complying with court orders and obtaining visitation and any other social services. The child’s lawyer should speak with the child client regularly about progress and any difficulties the child client is encountering with the implementation of the court order or service plan. If DHS neglects or refuses to offer appropriate services, especially those ordered by the court, the child’s lawyer should file motions to compel or motions for contempt. When DHS does not offer appropriate services, the child’s lawyer should be familiar with independent providers that could render services to the child and provide the information to the court to be included in the service plan. | Commentary: The parent’s lawyer should play an active role in assisting the parent client in complying with court orders and obtaining visitation and any other social services. The parent’s lawyer should speak with the parent client regularly about progress and any difficulties the parent client is encountering with the implementation of the court order or service plan. If DHS neglects or refuses to offer appropriate services, especially those ordered by the court, the parent’s lawyer should file motions to compel or motions for contempt. When DHS does not offer appropriate services, the parent’s lawyer should consider making referrals to independent social service providers.  |
| **C. The child’s lawyer should move the court to modify or set aside an order or judgment when appropriate.**  | **C. The parent’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 child’s lawyer should advise his or her client of the remedies, which include moving to modify or set aside the order or judgment. [ORS 419B.923](http://www.oregonlaws.org/ors/419b.923) permits a motion to modify or set aside an order or judgment in instances of clerical error, excusable neglect and newly discovered evidence. Although other reasons may be permitted under the “include, but are not limited to” language of the statute, the extent of the trial court’s discretion is not yet completely determined. The motion must be filed within a “reasonable time” and may be filed while an appeal is pending. The child’s lawyer should consider filing both the motion and referring the case for appeal when 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.  | Action: If an order or judgment adversely affects the parent client, the parent’s lawyer should advise his or her client of the remedies, which include moving to modify or set aside the order or judgment. [ORS 419B.923](http://www.oregonlaws.org/ors/419b.923) permits a motion to modify or set aside an order or judgment in instances of clerical error, excusable neglect and newly discovered evidence. Although other reasons may be permitted under the “include, but are not limited to” language of the statute, the extent of the trial court’s discretion is not yet completely determined. The motion must be filed within a “reasonable time” and may be filed while an appeal is pending. The parent’s lawyer should consider filing both the motion and referring the case for appeal when 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:TBD | Commentary:TBD |
| 1. **The child’s lawyer should consider and discuss the possibility of appeal or rehearing with the child client.**
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| Action: The child’s lawyer should immediately consider and discuss with the child client, preferably in person, the possibility of appeal when a court’s ruling is contrary to the child client’s position or interests. Regardless of whether the child’s lawyer believes an appeal is appropriate or that there are any viable issues for appeal, the child’s lawyer should advise the child client—at the conclusion of each hearing—that he or she has a right to appeal from any adverse order or judgment resulting from a jurisdictional hearing, review hearing, permanency hearing or termination of parental rights trial. Further, if the hearing was held before a juvenile court referee, the child’s lawyer should advise the child client that he or she is entitled to a rehearing before a juvenile court judge. Under ORS 419A.150(4), unless a rehearing is requested within 10 days following the entry of the referee’s order, the order will become a final and non-appealable order. Whether to seek a rehearing of a referee’s order or to pursue a direct appeal in the appellate courts is always the child client’s decision.  | Action: The parent’s lawyer should immediately consider and discuss with the parent client, preferably in person, the possibility of appeal when a court’s ruling is contrary to the parent client’s position or interests. Regardless of whether the parent’s lawyer believes an appeal is appropriate or if there are any viable issues for appeal, the parent’s lawyer should advise the parent client—at the conclusion of each hearing—that he or she has a right to appeal from any adverse order or judgment resulting from a jurisdictional hearing, review hearing, permanency hearing or termination of parental rights trial. Further, if the hearing was held before a juvenile court referee, the parent’s lawyer should advise the parent client that he or she is entitled to a rehearing before a juvenile court judge. Under ORS 419A.150(4), unless a rehearing is requested within 10 days following the entry of the referee’s order, the order will become a final and non-appealable order. Whether to seek a rehearing of a referee’s order or to pursue a direct appeal in the appellate courts is always the parent client’s decision.  |
| Commentary:When discussing the possibility of an appeal, the child’s lawyer should explain both the positive and negative effects of an appeal, including how the appeal could affect the child client’s goals. For instance, the appellate court could reverse the juvenile court and vindicate the child client’s position. Further, the filing of a notice of appeal vests the appellate court with jurisdiction to stay the juvenile court’s orders while the appeal is pending.[[1]](#footnote-1) Alternatively, an appeal could delay the case for a long time.  | Commentary:When discussing the possibility of an appeal, the parent’s lawyer should explain both the positive and negative effects of an appeal, including how the appeal could affect the parent client’s goals. For instance, the appellate court could reverse the juvenile court and vindicate the parent client’s position. Further, the filing of a notice of appeal vests the appellate court with jurisdiction to stay the juvenile court’s orders while the appeal is pending.[[2]](#footnote-2) Alternatively, an appeal could delay the case for a long time.  |
| 1. **If the child client decides to appeal, the child’s lawyer should timely and thoroughly facilitate the appointment of an appellate lawyer for the child client.**
 | **E. If the parent client decides to appeal, the parent’s lawyer should timely and thoroughly facilitate the appointment of an appellate lawyer for the parent client.**  |
| Action: The child’s lawyer should take all steps necessary to facilitate appointing an appellate lawyer e.g., the child’s court-appointed trail lawyer should refer the case for appeal to the Office of Public Defense Services (OPDS) and comply with that office’s referral procedures. The child’s court-appointed trial lawyer should work with the appellate lawyer and identify for the appellate lawyer: the parties to the case (for example whether there are any interveners), appropriate issues for appeal and promptly respond to all requests for additional information or documents necessary for the appellate lawyer to prosecute the appeal. The child’s court-appointed trail lawyer should promptly comply with the court’s order to return exhibits necessary for appeal. | Action: The parent’s lawyer should take all steps necessary to facilitate appointing appellate lawyer e.g., the parent’s court-appointed trial lawyer should refer the case for appeal to the Office of Public Defense Services(OPDS) and comply with that office’s referral procedures. The parent’s court-appointed trial lawyer should work with the appellate lawyer and identify for the appellate lawyer: the parties to the case (for example whether there are any interveners), appropriate issues for appeal and promptly respond to all requests for additional information or documents necessary for the appellate lawyer to prosecute the appeal. The parent’s court-appointed trial lawyer should promptly comply with the court’s order to return exhibits necessary for appeal. |
| Commentary:Pursuant to ORS [419A.200(4)](http://www.oregonlaws.org/ors/419a.200),[[3]](#footnote-3) the child’s trial lawyer must file the notice of appeal or if court-appointed, the child’s trial lawyer may discharge his or her duty to file the notice of appeal by referring the case to the Juvenile Appellate Section of the Office of Public Defense Services (OPDS) using the on-line referral form and complying with OPDS procedures. | Commentary:Pursuant to ORS [419A.200(4)](http://www.oregonlaws.org/ors/419a.200),[[4]](#footnote-4) the parent’s trial attorney must file the notice of appeal or, if court-appointed, the parent’s trial attorney may discharge his or her duty to file the notice of appeal by referring the case to the Juvenile Appellate Section of Office of Public Defense Services (OPDS) using the on-line referral form and complying with OPDS procedures.  |
| **F. The child’s lawyer should monitor the progress of an appeal taken by another party to the juvenile case and continuously evaluate whether the child should participate in the appeal.**  | **F. The parent’s lawyer should monitor the progress of an appeal taken by another party to the juvenile case and continuously evaluate whether the parent should participate in the appeal.**  |
| Action:As a party to the underlying juvenile case, the child’s lawyer should monitor the appeal by reviewing the log of filings and the filed documents through the electronic Appellate Case Management System. An amendment to ORAP 2.22, effective on January 1, 2017 requires that a party eFiling documents in a dependency case must use the “notification information” function of the appellate courts' eFiling system to notify the attorney for any person who was a party in the juvenile court pursuant to ORS 419B.875(1)(a)(A)-(C), (H), or ORS 419B.875(1)(b). Notification must be made to each attorney whose client has not been designated a party in the notice of appeal and to each attorney whose client has not filed a notice of intent to participate in the appeal under ORAP 2.25(3). The rule explains that the notification will notify the attorney that the document has been eFiled, but will not permit the attorney to view the document unless the attorney has juvenile case permissions in the Appellate Case Management System.In order to access the documents, the child’s lawyer should obtain, complete and submit a Request for Access form to the State Court Administrator.  | Action:As a party to the underlying juvenile case, the parent’s lawyer should monitor the appeal by reviewing the log of filings and the filed documents through the electronic Appellate Case Management System. An amendment to ORAP 2.22, effective on January 1, 2017 requires that a party eFiling documents in a dependency case must use the “notification information” function of the appellate courts' eFiling system to notify the attorney for any person who was a party in the juvenile court pursuant to ORS 419B.875(1)(a)(A)-(C), (H), or ORS 419B.875(1)(b). Notification must be made to each attorney whose client has not been designated a party in the notice of appeal and to each attorney whose client has not filed a notice of intent to participate in the appeal under ORAP 2.25(3). The rule explains that the notification will notify the attorney that the document has been eFiled, but will not permit the attorney to view the document unless the attorney has juvenile case permissions in the Appellate Case Management System.In order to access the documents, the parent’s lawyer should obtain, complete and submit a Request for Access form to the State Court Administrator.  |
| Action:The child’s lawyer should regularly monitor the electronic notifications and review the filed documents, where appropriate, and evaluate whether the child client should file a notice of intent to participate. Court-appointed counsel may do so by referring the case to Oregon Public Defense Services using the process explained at X.  | Action:The parent’s lawyer should regularly monitor the electronic notifications and review the filed documents, where appropriate, and evaluate whether the parent client should file a notice of intent to participate. Court-appointed counsel may do so by referring the case to Oregon Public Defense Services using the process explained at X.  |
| Commentary:No Commentary included. | Commentary:No Commentary included. |

1. *See* [ORS 19.360](http://www.oregonlaws.org/ors/19.360). [↑](#footnote-ref-1)
2. *See* [ORS 19.360](http://www.oregonlaws.org/ors/19.360). [↑](#footnote-ref-2)
3. ORS 419A.200(4) “The counsel in the proceeding from which the appeal is being taken shall file and serve those documents necessary to commence an appeal if the counsel is requested to do so by the party the counsel represents. If the party requesting an appeal is represented by court-appointed counsel, court-appointed counsel may discharge the duty to commence an appeal under this subsection by complying with policies and procedures established by the office of public defense services for appeals of juvenile court judgments.” [↑](#footnote-ref-3)
4. ORS 419A.200(4) “The counsel in the proceeding from which the appeal is being taken shall file and serve those documents necessary to commence an appeal if the counsel is requested to do so by the party the counsel represents. If the party requesting an appeal is represented by court-appointed counsel, court-appointed counsel may discharge the duty to commence an appeal under this subsection by complying with policies and procedures established by the office of public defense services for appeals of juvenile court judgments.” [↑](#footnote-ref-4)