**If engaged as an attorney for a child during the prepetition phase of a dependency case, actively represent the child to achieve the child’s goals.**

Action: The child’s attorney should counsel the child client about the child’s rights in the investigation stage as well as the realistic possibility of achieving the child’s goals.

Action: The attorney should discuss available services and help the child gain access to those in which he or she wishes to participate.

Action: If a child would likely be eligible for appointed counsel at state expense if the subject of a juvenile court dependency petition and pre-petition representation is necessary to preserve and protect the rights of the child client, the attorney should seek approval from OPDS for funding to commence representation prior to court appointment.[[1]](#footnote-1)

Commentary: In some situations, a child may seek the services of an attorney regarding a situation that could be the basis for a dependency case before a petition is filed, or the child may be referred for such services by a community agency or other source. If the attorney agrees to represent the child, the goal of representation should depend on the child’s wishes where the child is capable of instructing the attorney or expressing a preference. Sometimes this may mean avoiding having a petition filed, while other times it may mean filing a petition. For example, an adolescent in conflict with his or her parents might seek the help of an attorney to determine whether to file a petition under ORS 419B.100 in an attempt to resolve the problem, or an undocumented child might seek representation to obtain a dependency adjudication as a step toward getting a favorable immigration status.[[2]](#footnote-2) This section discusses the attorney’s obligations if the attorney agrees to represent the child. As indicated in the third action item, the attorney may or may not be eligible for payment from OPDS for this work.

During the prepetition phase of a dependency case, the child’s attorney has the opportunity to work with the child and help the child fully understand the issues and the child’s chances of securing desired outcomes. The child’s attorney also has the chance to encourage the agency to make reasonable efforts to work with the family, rather than filing a petition, where that is consistent with the child’s ultimate goals. During this phase, the attorney should work intensively to explore all appropriate services, including assistance with legal problems involving housing, public benefits, and domestic violence that might resolve the case.

If it becomes apparent that the child is likely to be removed from the parent’s home, the attorney can limit the trauma the child may experience upon separation from the parents by proposing early and frequent parent-child visits in normal settings, where that is appropriate.

If the child must be removed, the attorney can also speed up the case by proposing early evaluations of the parents and the family unit and by making a more complete record, during the hearing, of the facts leading up to the removal of the child.

The attorney can also ensure that the child receives services that are needed immediately, such as medical care, psychological evaluation, and trauma counseling.

The attorney should also work to prevent any unnecessary interruption in the child’s education and ensure that educational services for the child will be appropriate.

1. Section 7.1.2.1 of the Public Defense Legal Services Contract General Terms (January 1, 2016 to December 31, 2017) provides for pre-appointment representation in exigent circumstances with prior approval of PDSC. An attorney seeking compensation for pre-appointment representation of a parent should contact their contract administrator or OPDS contract analyst for the specific procedure to request compensation. [↑](#footnote-ref-1)
2. The attorney for a child in a dependency case may also learn of a law enforcement investigation regarding the child client. See \_\_\_\_ for a discussion of the attorney’s responsibilities in this situation. [↑](#footnote-ref-2)