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| **Standard 9 - Child** | **Standard 9 - Parent** |
| 1. **The child’s appellate lawyer should communicate with the child client.** | 1. **The parent’s appellate lawyer should communicate with the parent client.** |
| Action:  , The child’s appellate lawyer should consult with the child client in an age appropriate fashion as soon as possible to confirm that the child client wishes to pursue the appeal and to advise the child client about the appellate process, including relevant timelines.  If the child client is of diminished capacity, and it is not reasonably possible to obtain direction from the child client, the child’s appellate lawyer should determine what the child client would decide if he or she were capable of making an adequately considered decision. Among the ways to determine this is to consult with the child’s trial lawyer.  The child’s appellate lawyer should not be bound by the determinations of the child client’s position and goals made by the child’s trial lawyer and should independently determine the child client’s position and goals on appeal. | Action:  The parent’s appellate lawyer should consult with the parent client as soon as possible to confirm that he or she wishes to pursue a direct appeal and advise the parent client of the appellate process including relevant timelines.  The parent’s appellate lawyer should not be bound by the determinations of the parent’s trial lawyer and instead should take direction from parent client. |
| Commentary:  Commentary has not been written.  same | Commentary:  Trial counsel should consider whether undertaking representation of the same client on direct appeal protects the client’s interests. To do so potentially deprives the client of an independent audit of the quality of trial attorney’s representation and, concomitantly, of any meaningful opportunity to advance a claim of ineffective assistance of counsel on direct appeal. |
| Action:  The child’s appellate lawyer should explain to the child client the difference between representation for appeal and ongoing representation in the dependency case. Because the dependency case will almost always be ongoing during the appeal, the child’s appellate lawyer and the child’s trial lawyer should consult and collaborate as necessary to advance the child client’s interests in both cases. | Action:  The parent’s appellate lawyer should explain to the parent client the difference between representation for appeal and ongoing representation in the dependency case. Because the dependency case will almost always be ongoing during the appeal, the parent’s appellate lawyer and the parent’s trial lawyer should consult and collaborate as necessary to advance the parent client’s interests in both cases. |
| Action:  The child’s appellate lawyer and the trial lawyer should be thoughtful about their respective roles and relationship with the child client. For example, the child’s trial lawyer should be careful to safeguard the appeal by consulting with the child’s appellate lawyer prior to upcoming hearings and immediately notifying the child’s appellate lawyer should the court enter any new order or judgment to determine whether the new judgment should be referred for appeal. The child’s appellate lawyer should consult with the child’s trial lawyer about the issues raised in the opening brief and offer to consult about properly raising issues at upcoming hearings. | Action:  The parent’s appellate lawyer and the trial lawyer should be thoughtful about their respective roles and relationship with the parent client. For example, the parent’s trial lawyer should be careful to safeguard the appeal by consulting with the parent’s appellate lawyer prior to upcoming hearings and immediately notifying the parent’s appellate lawyer should the court enter any new order or judgment to determine whether the new judgment should be referred for appeal. The parent’s appellate lawyer should consult with the parent’s trial lawyer about the issues raised in the opening brief and offer to consult about properly raising issues at upcoming hearings. |
| Action:  The child’s appellate lawyer should advise the child client about the limited scope of his or her representation and, should the child client have concerns about his or her ongoing case, the child’s appellate lawyer should refer the child client to his or her trial lawyer. Ideally, the child’s trial lawyer and appellate lawyer will work collaboratively and strategically to obtain the best result for the child client. For example, the child’s appellate lawyer may assist the child’s trial lawyer in identifying issues to litigate at upcoming hearings and in properly preserving issues for a subsequent appeal in the event that the child client does not prevail at trial. | Action:  The parent’s appellate lawyer should advise the parent client about the limited scope of his or her representation and, should the parent client have concerns about his or her ongoing case, the parent’s appellate lawyer should refer the parent client to his or her trial lawyer. Ideally, the parent’s trial lawyer and appellate lawyer will work collaboratively and strategically to obtain the best result for the parent client. For example, the parent’s appellate lawyer may assist the parent’s trial lawyer in identifying issues to litigate at upcoming hearings and in properly preserving issues for a subsequent appeal in the event that the parent client does not prevail at trial. |
| Commentary:  No Commentary drafted for Standard 9(A) in the current version of the Performance Standards. | Commentary:  No Commentary drafted for Standard 9(A) in the current version of the Performance Standards. |
| **B. Unless the child’s trial lawyer has filed the notice of appeal, the child’s appellate lawyer must do so within the prescribed time limits.** | 1. **Unless the parent’s trial lawyer has filed the notice of appeal, the parent’s appellate lawyer must do so within the prescribed time limits.** |
| Action:  The child’s appellate lawyer must comply with statutory and rule requirements in filing the notice of appeal.  When the trial attorney has filed the notice of appeal before the appellate attorney has assumed the representation, the appellate attorney should promptly obtain and thoroughly review the notice of appeal for any jurisdictional or other defects. | Action:  The parent’s appellate lawyer must comply with statutory and rule requirements in filing the notice of appeal. When the trial attorney has filed the notice of appeal before the appellate attorney has assumed the representation, the appellate attorney should promptly obtain and thoroughly review the notice of appeal for any jurisdictional or other defects. |
| Commentary:  Under [ORS 19.270](http://www.oregonlaws.org/ors/19.270), a proper notice of appeal is a jurisdictional requirement. Consequently, the notice must satisfy statutory requirements in order to prosecute the appeal.[[1]](#footnote-1)  [ORS 419A.200](http://www.oregonlaws.org/ors/419a.200)(5) permits the child’s appellate lawyer to move the court for leave to file a late notice of appeal after the statutory 30-day time limit (up to 90 days after entry of judgment). A motion to file a notice of appeal after the 30-day period, to be successful, must demonstrate (1) that the failure to file a timely notice of appeal was not personally attributable to the child, *and* (2) “a colorable claim of error” exists in the proceeding from which the appeal is taken.[[2]](#footnote-2) | Commentary:  Under ORS 19.270, proper notice of appeal is a jurisdictional requirement. Consequently, the notice must satisfy statutory requirements in order to prosecute the appeal.[[3]](#footnote-3)  [ORS 419A.200(5)](http://www.oregonlaws.org/ors/419a.200) permits an appellate lawyer to move the court for leave to file a late notice of appeal after the statutory 30-day time limit (up to 90 days after entry of judgment). A motion to file a notice of appeal after the 30-day period, to be successful, must demonstrate that (1) the failure to file a timely notice of appeal was not personally attributable to the parent, *and* (2) “a colorable claim of error” exists in the proceeding from which the appeal is taken.[[4]](#footnote-4) |
| **C. Prosecuting or defending the appeal – Issue selection and briefing.** | 1. **Prosecuting or defending the appeal- Issue selection and briefing** |
| Action:  The child’s appellate lawyer should thoroughly review the judgment to ensure that it comports with the requirements of the juvenile code*.[[5]](#footnote-5)*  The child’s appellate lawyer should review the trial court record and any opposing briefs, identify and research issues, and prepare and timely file and serve the brief on behalf of the child client. The brief should reflect relevant case law and present the best legal arguments available under Oregon and federal law to advance the child client’s position. Novel legal arguments that might develop favorable law in support of the child client’s position should also be advanced if available.  The child’s appellate lawyer should, where appropriate, send a copy of the filed brief to the child client who is able to read, and to the child’s trial lawyer. | Action:  The parent’s appellate lawyer should thoroughly review the judgment to ensure that it comports with the requirements of the juvenile code*.[[6]](#footnote-6)*  The parent’s appellate lawyer should review the trial court record and any opposing briefs, identify and research issues, and prepare and timely file and serve the brief on behalf of the parent client. The brief should reflect relevant case law and present the best legal arguments available under Oregon and federal law to advance the parent client’s position. Novel legal arguments that might develop favorable law in support of the parent client’s position should also be advanced if available.  The parent’s appellate lawyer should send a copy of the filed brief to the parent client and to the parent’s trial lawyer. |
| Commentary:  The child’s appellate lawyer has considerable authority over the manner in which an appeal is presented. It is that lawyer’s responsibility to exercise his or her professional judgment to raise issues that, in his or her judgment, will provide the best chance of success on appeal—even when the child client disagrees with his or her appellate lawyer’s judgment.[[7]](#footnote-7) | Commentary:  The parent’s appellate lawyer has considerable authority over the manner in which an appeal is presented. It is that lawyer’s responsibility to exercise his or her professional judgment to raise issues that, in his or her judgment, will provide the best chance of success on appeal—even when the parent client disagrees with his or her appellate lawyer’s judgment.[[8]](#footnote-8) |
| **D. Prosecuting or defending the appeal – Oral Argument.** | **D. Prosecuting or defending the appeal – Oral Argument.** |
| Action:  The child’s appellate lawyer should determine whether to request an oral argument. The child client should be informed of the lawyer’s decision, and if an oral argument has been requested, the child’s appellate lawyer should inform the child client when the oral argument will occur. If appropriate, the child’s appellate lawyer should make arrangements for the child client to attend the oral argument. | Action:  The parent’s appellate lawyer should determine whether to request an oral argument. The parent’s appellate lawyer should inform the parent client of whether he or she intends to present oral argument or submit the case on the briefs. If the parent’s appellate lawyer intends to present an oral argument, he or she should inform the parent client of date, time and place scheduled for oral argument. |
| Commentary:  As with the determination of which issues to raise on direct appeal, the child’s appellate lawyer must exercise his or her professional judgment in determining whether to present oral argument to the appellate court. | Commentary:  As with the determination of which issues to raise on direct appeal, the parent’s appellate lawyer must exercise his or her professional judgment in determining whether to present oral argument to the appellate court. |
| Action:  If oral arguments are scheduled, the child’s appellate lawyer should be thoroughly prepared to present the case to the court and to answer the court’s questions, | Action:  If oral arguments are scheduled, the parent’s appellate lawyer should be thoroughly prepared to present the case to the court and to answer the court’s questions, |
| **E. Communicating the result of the appeal.** | **E. Communicating the result of the appeal.** |
| Action:  The child’s appellate lawyer should communicate the result of the appeal and its implications in an age appropriate fashion to the child client. If he or she is able to read, a copy of the appellate decision should be provided to the child client. The child’s appellate lawyer should also communicate the result of the appeal to the child’s trial lawyer and provide a copy of the appellate decision as well as any needed consultation. | Action:  The parent’s appellate lawyer should communicate the result of the appeal and its implications, and provide the parent client with a copy of the appellate decision. The parent’s appellate lawyer should promptly communicate with the parent’s trial lawyer and assist him or her with interpreting the appellate court’s decision and preparing for the next trial level event. |
| **F. Petitioning for Review in the Oregon Supreme Court** | **F. Petitioning for Review in the Oregon Supreme Court** |
| Action:  The child’s appellate lawyer should consider whether to petition for review in the Oregon Supreme Court and advise the child client about such a petition. Whether to petition for review is ultimately the child client’s decision unless the child client is of diminished capacity. | Action:  In the event that the parent client does not prevail on direct appeal in the Oregon Court of Appeals, the parent’s appellate lawyer may petition for review in the Oregon Supreme Court. Whether to petition for review in the Oregon Supreme Court is ultimately the parent client’s decision. |
| Commentary:  When the child client is of diminished capacity, and it is not reasonably possible to obtain direction from the child client, the child’s appellate lawyer should determine what the child client would decide if he or she were capable of making an adequately considered decision and proceed according to that determination. | Commentary:  No Commentary has been written. |

1. *See* [ORS 19.250](http://www.oregonlaws.org/ors/19.250) (contents of notice of appeal), [ORS 19.255](http://www.oregonlaws.org/ors/19.255) (time for filing notice) and ORS [419A.200(3)](http://www.oregonlaws.org/ors/419a.200) (juvenile appeals); *see also* Oregon Rules of Appellate Procedure [(ORAP) 2.05](http://www.publications.ojd.state.or.us/docs/RULE208.pdf) (contents of notice of appeal), [ORAP 2.10](http://www.publications.ojd.state.or.us/docs/RULE208.pdf) (separate notices of appeal) and [ORAP 2.22](http://www.publications.ojd.state.or.us/docs/RULE208.pdf) (appeals in juvenile cases). [↑](#footnote-ref-1)
2. *See State ex rel Dept. of Human Services v. Rardin*, 338 Or. 399, 408, 110 P3d 580 (2005). (A “colorable claim of error” in this context means “a claim that a party reasonably may assert under current law and that is plausible given the facts and the current law (or a reasonable extension or modification of current law.”)). [↑](#footnote-ref-2)
3. *See* [ORS 19.250](http://www.oregonlaws.org/ors/19.250) (contents of notice of appeal), [ORS 19.255](http://www.oregonlaws.org/ors/19.255) (time for filing notice) and [ORS 419A.200 (3)](http://www.oregonlaws.org/ors/419a.200) (juvenile appeals); *see also* Oregon Rules of Appellate Procedure (ORAP) 2.05 (contents of notice of appeal), ORAP 2.10 (separate notices of appeal) and ORAP 2.22 (appeals in juvenile cases). [↑](#footnote-ref-3)
4. *See State ex rel Dept. of Human Services v. Rardin*, 338 Or. 399, 408, 110 P3d 580 (2005). (A “colorable claim of error” in this context means “a claim that a party reasonably may assert under current law and that is plausible given the facts and the current law (or a reasonable extension or modification of current law.”)). [↑](#footnote-ref-4)
5. *See for example* [ORS 419B.476(5)](http://www.oregonlaws.org/ors/419b.476) (setting out requirements of a valid permanency judgment). [↑](#footnote-ref-5)
6. *See for example* [ORS 419B.476(5)](http://www.oregonlaws.org/ors/419b.476) (setting out requirements of a valid permanency judgment). [↑](#footnote-ref-6)
7. *See Jones v. Barnes*, 463 U.S. 745, 103 S. Ct. 3308, 77 L. Ed.2d 987 (1983). *See also,* [*Smith v. Murray*, 477 U.S. 527, 536, 106 S. Ct. 2661, 91 L Ed.2d 434 (1986)](http://scholar.google.com/scholar_case?case=16624726988774361150&hl=en&as_sdt=6&as_vis=1&oi=scholarr) (“This process of “winnowing out weaker arguments on appeal and focusing on” those more likely to prevail, \*\*\* is the hallmark of effective appellate advocacy.”) [↑](#footnote-ref-7)
8. *See Jones v. Barnes*, 463 U.S. 745, 103 S. Ct. 3308, 77 L. Ed.2d 987 (1983). *See also,* [*Smith v. Murray*, 477 U.S. 527, 536, 106 S. Ct. 2661, 91 L Ed.2d 434 (1986)](http://scholar.google.com/scholar_case?case=16624726988774361150&hl=en&as_sdt=6&as_vis=1&oi=scholarr) (“This process of “winnowing out weaker arguments on appeal and focusing on” those more likely to prevail, \*\*\* is the hallmark of effective appellate advocacy.”) [↑](#footnote-ref-8)