

**Parent and Child Performance Standards Work Group
Oregon State Bar
Monday, December 5, 2016 (10:00AM-12:00AM)
Meeting Notes**

Attendees: Amy Benedum, Linn Davis, Angela Sherbo, Shannon Storey, Amy Miller, Joe Hagadorn, Leslie Harris, Inge Wells, Amy Zubko (Staff), Lea Ann Easton (Chair)

Did not attend: Megan Jaquot, Liz Wakefield

Minutes: There were no changes to the meeting notes from the November 7, 2016 meeting.

Discussion of updated Standard 7.

After review of the Standard 7 language, two areas were identified that needed additional language.

The group raised concerns that the language in the Standard 7D (Child) should be mirrored in the Parent Standard as well. The concern was that a lawyer for a parent should consider the best way to direct questions to one's own client taking into consideration cultural differences and language barriers. In addition, there should be some thought on the parent's lawyer about the level of questioning and how to phrase questions to ensure and enhance the parent client's understanding.

In addition, the group identified Standard 7F (Parent) as needing language to address what happens if a parent does not attend a hearing.

Discussion of updated Standard 8 (formerly Standards 8-10).

The group determined that once the footnotes were removed and the hotlinks were created, Standard 8 would be complete.

Description/Clarification of role of appellate counsel for children in child attorney standards.

The group began with a discussion of how to identify the responsibilities of trial and appellate counsel. At the request of the group, Standard 2 was updated to include "trial" and "appellate" in the description of the parent and child lawyers as a model. Trial would be used in Standards 1-8 and Appellate in Standard 9. In addition, the distinction would be made in the Introduction. A small group consisting of Lea Ann Easton, Angela Sherbo, Leslie Harris, and Addie Smith met in late December to review Standard 2 and further discuss the use of "trial" and "appellate" in the Standards.

The group discussed Balfour briefs and whether they should be addressed in the Performance Standards. Megan Jaquot agreed to look into the issue and possibly draft language.

The group also discussed the transfer from trial lawyer to appellate lawyer and ensuring that the trial lawyer has appealed judgements correctly. The group brainstormed language which was added to Standard 9.

Linn Davis raised the issue of ineffective assistance of counsel and alerting people of a possible problem with the ethical rules. The group discussed whether it was appropriate for a trial lawyer to also represent his or her client through the appellate process. One concern was that a trial lawyer who continued on and represented the client during the appellate process may lose the independent audit function. That being said, the group also discussed that a conflict was not inevitable. Further, different practice models might allow for a client to receive trial and appellate representation from the same practice.

On a general note, the group decided to remove footnotes and case notes to ensure that lawyers keep up to date on changes to statutes and case law. Footnotes will generally be removed from the Standards. However, in some cases, a case citation will allow for stronger language.

Appellate Representation, ineffective assistance of counsel.

Discussed as part of the Trial/Appellate representation discussion above.

Pre-Petition Standards for the Parent's Lawyer.

Leslie Harris and Amy Miller drafted language for a pre-petition standard to share with the group. They based their draft on the ABA Standards. The proposed Standard does not address or deal with who is paying for the representation, some clients retain lawyers on their own and some retain lawyers through OPDS.

The group reviewed the language and thought the third action looked too broad. Other issues raised included voluntary removal of child from the home, older child, and if the child is a status offender. Once the Standard has been substantively updated, the style and formatting will be updated to be consistent with the other Standards.

Amy Miller suggested that the Pre-Petition Standard should be an independent Standard rather than wrapped into another Standard and placed between Standards 4 and 5.

Another draft will be written for the January meeting.

Appendix D

Amy Miller suggested that additional language should be added to Appendix D. She will draft language for consideration at the next meeting.