Standard 2.

**H. The parent’s trial lawyer should take diligent steps to locate and communicate with a missing parent client and decide representation strategies based on that communication.**

Action:

The parent’s trial lawyer should attempt to locate and communicate with a missing parent client.

Action:

If communication is established with the parent client, the parent’s trial lawyer should formulate positions the parent’s trial lawyer should take at hearings, and to understand what information the parent client wishes the parent’s trial lawyer to share with the child welfare agency and the court.

The parent’s trial lawyer should inform the parent that if the parent does not appear at a hearing to which he or she has not been summonsed or ordered to appear, the lawyer will exercise her best judgment about whether to advocate for the client’s last known position, remain silent and/or request a continuance.

The parent’s trial lawyer should inform the parent client that if the parent client fails to appear for any hearing on a petition to establish jurisdiction or terminate parental rights to which the parent client has been summoned or ordered to appear, the parent’s trial lawyer may not appear on the parent client’s behalf and that the court may allow the other parties to proceed in the parent client’s absence.

Action:

If a parent fails to attend a hearing, the parent’s attorney may appear to explain the parent client’s failure to appear and move to continue the hearing.

Action:

If the parent client fails to attend a hearing to which the parent has not been summonsed or ordered to appear, the parent’s trial lawyer should assess whether the parent client’s interests are better served by advocating for the parent client’s last clearly articulated position, or declining to state a position in further court proceedings, and act accordingly.

Action:

~~But~~ If the parent client fails to appear after being summoned or ordered to appear for any hearing on a petition to establish jurisdiction or terminate parental rights, the parent’s trial lawyer may not appear on behalf of the parent client to advocate for the parent client’s last clearly articulated position on the merits of the petition.

Action:

After a prolonged period without contact with the parent client, the parent’s trial lawyer should consider withdrawing from representation.

Commentary:

To represent a parent client adequately, the parent’s trial lawyer must know what the parent client wishes. If the parent client is out of contact with the lawyer, it is important that the attorney take diligent steps to locate the client in order to determine the client’s wishes.

In attempting to locate the parent client, the attorney should recall that 1) the attorney-client relationship continues and 2) the attorney’s ethical obligation to maintain the client’s confidences and secrets continues. The parent’s attorney should be mindful that their inquiries may reveal confidential or secret information to others, including other parties and the court and could be detrimental to the parent client. If the parent’s attorney has gotten prior permission to speak with others about the parent’s contact, the attorney may choose to attempt contact via those avenues.

If the attorney has prior permission from the parent client, diligent steps to locate a parent-client include speaking with the parent client’s family, the caseworker, the foster care provider and other service providers and checking court records and jail rosters. It may include sending mail to the parent client’s last known address.

If the parent’s trial lawyer is unable to find and communicate with the parent client after initial consultation, the parent’s trial lawyer should assess what action would best serve the parent client’s stated interest in the litigation. This decision must be made on a case-by-case basis. Absent extraordinary circumstances, the parent’s trial lawyer should take a position consistent with the parent client’s last clearly articulated position. However, if a parent client fails to appear after being summoned or ordered to appear for any hearing on a petition to establish jurisdiction or terminate parental rights, the parent’s trial lawyer may not appear and defend the merits of the petition on the parent client’s behalf.

The parent’s trial lawyer should be familiar with the grounds and procedures for motions to set aside juvenile court orders and judgments under [ORS 419B.923](http://www.oregonlaws.org/ors/419b.923) as well as the time requirements.

Standard 7

**F. The parent’s lawyer should ensure that findings of fact, conclusions of law and orders that benefit the parent client are included in the court’s decision.**

Action:

The parent’s lawyer should advocate for appropriate services and request that the court state its expectations of all parties on the record.

Action:

The parent’s lawyer must be familiar with the standard forms and ensure that they are completed correctly and findings beneficial to the parent client are included.

Action:

The parent’s lawyer should consider preparing proposed findings of fact and conclusions of law to frame the case and ruling for the judge.

Action:

If a parent fails to attend a hearing, the parent’s attorney may appear to explain the parent client’s failure to appear and move to continue the hearing.

Action:

If the parent client fails to attend a hearing to which the parent has not been summonsed or ordered to appear, the parent’s trial lawyer should assess whether the parent client’s interests are better served by advocating for the parent client’s last clearly articulated position, or declining to state a position in further court proceedings, and act accordingly.

Action:

~~But~~ If the parent client fails to appear after being summoned or ordered to appear for any hearing on a petition to establish jurisdiction or terminate parental rights, the parent’s trial lawyer may not appear on behalf of the parent client to advocate for the parent client’s last clearly articulated position on the merits of the petition.

Commentary:

Framing the case for the judge may result in orders that are more favorable to the parent client, preserve appellate issues and help the parent’s lawyer clarify desired outcomes before a hearing begins. The parent’s lawyer should offer to provide the judge with proposed findings and orders in electronic format. When an opposing party prepares the order, the parent’s lawyer should review it for accuracy prior to it being submitted to the judge for signature.

If the parent-client does not appear at the hearing to which he or she has not been summonsed or ordered to appear, the parent’s a lawyer should determine whether to advocate for the client’s last stated position, to stand silent and/or to ask for a continuance. The attorney should be careful not to reveal the details of the attorney-client relationship or otherwise disclose client confidences.

If the parent client does not appear at a hearing to which he or she has been summonsed, the parent’s attorney may make an argument to the court that the court should permit the parent lawyer’s participation, but has a duty of candor to the court with respect to any case law adverse to this position. ORPC 3.3 (a) 2). If the court denies the request for continuance and disallows the parent’s attorney’s participation, the parent’s attorney should nonetheless consider observing the proceedings as the substance of the hearing may be critical to subsequent efforts to vacate any judgments or orders resulting from the trial. When, prior to the parent’s failure to appear, the parent-client has expressly directed the attorney not to oppose the agency’s petitions or motions the attorney should stand silent at the hearing, and in the case of court-appointed counsel, consider asking the court for permission to withdraw.