

*Standards of Practice for Parents' Attorneys, Guardians Ad Litem & Legal Counsel for Children in Child Welfare Dependency Cases in Pennsylvania*

Office of Children & Families in the Courts  
Advanced Legal Training  
Mechanicsburg --- Greensburg  
June 19, 2015

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**Welcome**

**Honorable Eleanor Bush**  
Court of Common Pleas of Allegheny County

**Honorable Christylee L. Peck**  
Court of Common Pleas of Cumberland County

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**Advocacy Matters?**

- Can you think of a time when YOUR advocacy made a positive difference for: child? parent? family?
- What made the difference?

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**Standards of Practice for Parents' Attorneys,  
Guardians Ad Litem & Legal Counsel for Children in  
Child Welfare Dependency Cases in Pennsylvania**

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**Agenda**

- History of the Standards
- Standards
- Local Application
- Time-Task Charts and Caseload Calculations

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**History of the Standards of Practice**

Why do we need standards?

- Dependency as special practice:
  - Gravity of consequences
  - Vulnerability of clients
  - Dynamic, progressive nature of cases
  - Inconsistency in role and practice across state

Models: Standards at national level and other states

Creation of PA Standards:

- AOPC Work Group
- Local Focus Groups

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**Standards of Practice for Parents’  
Attorneys, Guardians Ad Litem & Legal  
Counsel for Children in Child Welfare  
Dependency Cases in Pennsylvania**

- Combined: Lawyers for Parent and Child & GAL
- “Black letter” & commentary
- Seven Domains of Practice

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**Seven Domains**

1. Client Contact
2. Expertise and Knowledge
3. Case Preparation
4. Collateral Contacts and Collaboration
5. Advocacy
6. Appellate Advocacy
7. Ethical Considerations

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**Client Contact: Prior to Initial Contact**

**1a. Understand your role: representing children**

- *Determine role as GAL or legal counsel for child*
  - GAL will communicate client’s wishes in all forums but may recommend something other than what the client desires
- *When representing multiple children in a family, meet with each client individually and establish a separate relationship with each child appropriate to age and developmental stage*

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### Client Contact: Prior to Initial Contact

**1b. Understand your role: representing parents**

- *fundamental liberty interests*
- *protect due process rights*
- *ensure that any disruption to family subject to critical review*
- *meaningful reasonable efforts to enable them to prevent removal or meet their reunification goals in a timely manner*

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### Client Contact: Initial Contact

**1c. Establish and maintain a working relationship**

- *duty of loyalty and confidentiality is indispensable*
- *regular communication will help Attorney gather updated information and learn of any client difficulties*

**1d. Explain your role as the client's legal representative. Gals should explain the limitations on confidentiality that are inherent in their role**

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### Client Contact: Initial Contact

*Being sensitive about who you are communicating with and how you communicate with them—*

- 1e.** Explain in a developmentally and language appropriate manner the initial allegations and what will happen in court.
- 1f.** GALs and legal counsel for children must assess the child's changing stages of cognition, development and language.
- 1g.** Consider the client's background and its impact on case.

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**Client Contact: Ongoing Communication**

**ih. Contact your client regularly and establish a system that promotes regular Attorney-Client two-way communication**

- *Timely & with frequency to support adequate preparation for court and meetings, trouble shooting*
- *You are responsible for contacting child clients*

**[Related: iL. Take reasonable and necessary steps to communicate with institutionalized, incarcerated or absent clients and arrange for such clients to meaningfully participate in court proceedings and other important case events.]**

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**Client Contact: Ongoing Communication**

**ii. GALs and legal counsel for a child must have regular contact and develop a relationship with the primary caregiver, and communicate and visit accordingly**

**ij. Meet with your client regularly. GALs and legal counsel for children must meet the child where the child resides.**

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**Client Contact: Ongoing Communication**

*Differing Roles of parent lawyer, legal counsel for child and GAL regarding ascertaining client wishes and factoring that into case strategy*

**ik. Attorneys for parents and legal counsel for children must support and empower clients in directing the course of legal representation and in making informed decisions.**

**il. GALs must regularly ascertain the child's wishes and factor that into the case strategy and the GAL's best interest recommendation.**

**im. Discuss any recommendations or proposals from the county agency or others with your client. The GAL must discuss any proposals or recommendations with the client in terms of both how it relates to the child's wishes and to the GAL's best interests recommendations.**

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**Expertise and Knowledge: 2a-f**

- **Current working knowledge of relevant state laws and regulations, case law and local county policies**
  - Juvenile Act
  - Child Protective Services Law
  - Regulations for Protective Services -- 55 Pa. Code 3490
  - Rules of Juvenile Court Procedure
  - Adoption Act
  - Act 55
  - Regulations for the Administration of County Children and Youth Social Service Programs -- 55 Pa. Code 3130

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**Expertise and Knowledge**

- **Relevant federal laws and regulations**
  - ASFA
  - Multi-Ethnic Placement Act (MEPA)
  - Interstate Compact on Placement of Children (ICPC)
  - Fostering Connections to Success & Increasing Adoptions Act
  - McKinney-Vento Homeless Assistance Act
  - Foster Care Independence Act of 1999 (FCIA), P.L. 106-169
  - Individuals with Disabilities Education Act (IDEA), P.L. 91-230
  - Family Education Rights Privacy Act (FERPA), 20 U.S.C. § 1232g
  - HIPAA
  - Immigration laws relating to child welfare and child custody

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**Expertise and Knowledge**

- **Acquire and maintain working knowledge on common dependency issues, evaluations, services and resources**
  - Working knowledge of common issues, impairments and behaviors and the evaluation, diagnosis and treatment of them
  - Understand the evaluation, assessments, reports to effectively advocate ... direct, cross, rebuttal, etc.
  - Familiarity with available services & resources
  - Education issues if appointed Educational Decision Maker (EDM)

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**Case Preparation**

3a. Review all pleadings and file objections, answers, and motions as needed.

3b. Speak with the client before each hearing, in time to use client information for case investigation and preparation.

3c. Conduct a thorough and independent investigation at every stage of the proceeding.

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**Case Preparation**

3e. Develop a case theory and litigation strategy.

3f. Identify and prepare all witnesses, using subpoenas when necessary.

3h. Identify, secure and prepare expert witnesses when needed.

3i. Identify and prepare exhibits or other evidence.

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**Case Preparation**

*Clients need preparation to understand, participate and testify*

3d. The GAL must discuss with the child in advance of the hearing the position and best interests recommendation being made.

3g. Prepare client to testify. GALs and legal counsel for children should prepare the child to participate, and respond to the court's inquiries regarding permanency planning.

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## Collateral Contacts & Collaboration

What occurs between hearings will determine the outcome of a case.

Maintaining communication with counsel, child welfare agency, child welfare professionals, services providers on a clients case will enable the lawyer to get information, take needed action to advance the case, trouble shoot or advise their clients.

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## Collateral Contacts & Collaboration

*4a. Maintain regular communication with all counsel of record.*

*4b. Maintain regular communication with counsel representing clients on other matters.*

*4c. Maintain regular communication with the child welfare agency and other child welfare professionals in the case.*

*4d. Maintain regular contact with service providers and case participants.*

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## Advocacy

**5a.** Advocate for client's stated direction and goals of the case.

**5b.** The GAL must advocate in a manner consistent with presenting the child's wishes while also advocating for the GAL's position regarding best interests.

**5c.** Advocate in and out of court on issues of visitation, to ensure that visitation among children and parents is a right, not a privilege.

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**Advocacy: Out of court**

5d. Attend and advocate at meetings held out of court which are important and relevant to the client's case including, but not limited to meetings related to placement, treatment, visitation, family services, permanency, transition planning, and educational or school meetings.

5e. Work with other parties to reach stipulations and joint recommendations for placement, services, visitation, etc.

5f. Monitor and ensure the implementation of court orders consistent with the Attorney's role.

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**Advocacy: In Court**

5g. Identify legal or evidentiary issues which require advance ruling by the court.

5h. Advocate in court, present evidence, including witnesses and exhibits. If client wishes to testify, call client as witness.

5i. Cross-examine other parties' witnesses.

5j. Prepare and file appropriate motions regarding evaluations, services, placement, visitation, compelling compliance, etc. File objections and motions for reconsideration if appropriate.

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**Appellate Advocacy**

6a. Determine whether to appeal after explaining the court order and discussing with the client all available options, including appeals.

6b. When pursuing or responding to an appeal, timely file all necessary post-hearing motions and documents adhering to the Pennsylvania Rules of Appellate Procedure, and, as appropriate, participate in oral argument.

6c. Communicate the status and results of the appeal as appropriate.

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**Ethical Considerations**

7a. Rules of Professional Conduct apply to GALs and all other attorneys in dependency proceedings.

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**Ethical Considerations**

7b. GAL may not testify during any proceeding in which the GAL represents the child.

7c. GALs may not reveal information related to the representation unless:

- client gives informed consent
- disclosure necessary to report child abuse or necessary in course of advocating for placement and services to meet the child's best interests.

7d. GALs should preserve attorney-client privilege and work product privilege in interactions with clients.

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**Ethical Considerations**

7e. GALs must report suspected child abuse, in accordance with Pennsylvania's Child Protective Services Law

- *exception for communications protected by attorney-client privilege*
- *GAL should explain obligation to report at outset and periodically throughout course of representation*
- *contact clients in advance to inform them when reporting*
- *information or communication disclosed in report still confidential*

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## Ethical Considerations

7F . Attorneys must establish systems that allow them to identify and address conflicts of interest quickly and consistently.

- siblings
- child-on-child abuse
- parent/child relationship exists
- both parents
- two parties

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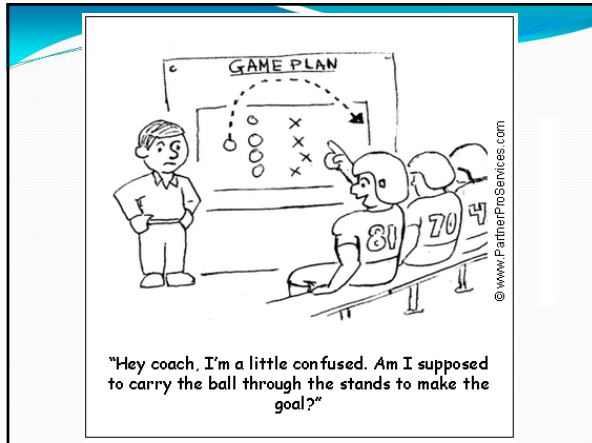
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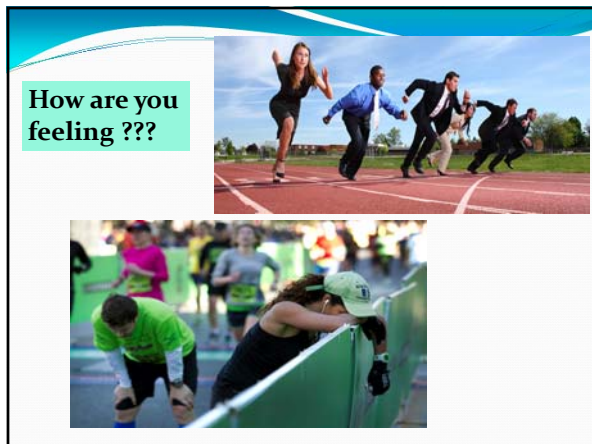
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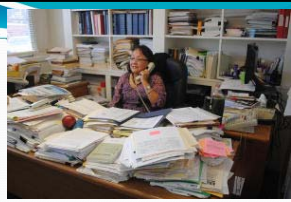
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### Time Charts & Caseload Calculation



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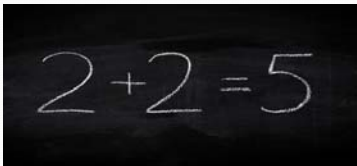
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### Improve data!!



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### Will following Standards on every case require more time on each case?

- Task-Time Charts break out the various tasks necessary to
- Different charts: Parent. One Child. Additional siblings. Appeals.
- How we came up with the suggested times per task
- You can deviate from those numbers, there is space for you to fill in your number. Factors to consider:
  - how often hearings are scheduled in your county
  - typical distance of client visits
  - does caseload include TPR hearings and appeals

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## How many cases could you realistically handle at a given time if you followed the Standards?

- Caseload calculation exercise
- Factors to consider: do you devote fulltime to this work? Mixed parent/child caseload? Do you have support staff that can help?

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## Accountability Mechanisms

- "... interconnected quilt that courts and the legal profession create together and share responsibility to advance."
- Training requirements & opportunities
- Setting clear expectations on Standards and caseload
- Process for selecting, retaining & evaluating attorneys
- Create complaint mechanism & consumer feedback
- Regular collection, analysis and use of data

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