

**APPENDIX 10 – Contracting Considerations**

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1. Government payers (i.e. court administrator, county agencies, etc.) must be responsible for the quality of the services they are purchasing. Institutional offices and some individual contract-attorney models providing representation in Pennsylvania typically demonstrate a practice model with explicit tasks and duties to be performed, and a supervisory structure that works to ensure fidelity to their agency standards and any contractual requirements. Yet much of court-appointed representation is provided by private practitioners. One need not infer inadequate practice to recognize the disparity under the current approach in many Pennsylvania counties where, one parent or child client might receive 10 hours of lawyer service and another client with a similar fact situation will receive 100 hours of service. Standardization of service delivery is imperative and the use of contracts/agreements with appointed attorneys is recommended.
2. The appointment mechanism sets the stage for ensuring that attorneys representing children and parents in child welfare cases are adequately trained and thoroughly aware of the law, regulations, rules of procedure and the *Standards of Practice for Parents’ Lawyers, Guardians Ad Litem & Legal Counsel for Children* (“Standards of Practice”) that they are expected to comply with. To ensure consistent and quality representation, each county/court should establish a process by which attorneys will qualify to receive appointments and enter into contracts or other agreements to represent children and parents. Each county/court should have an individual designated to oversee the process. This person could be a judge, a clerk of court or other government employee.
3. Each county/court should design a system of selection and appointment that suits their individual needs, but should include consideration of:
  - Participation in Core Training, as well as a minimum number of hours of related CLE prior to appointment/contract.
  - Engagement with a mentor (i.e. another attorney who has been practicing in the jurisdiction’s child welfare court for at least 3 years) and “second chair” a minimum number of cases.
  - Court observation of a minimum number cases, including at least one of each type of hearing.
  - Submission of a proposal/application setting out the attorney’s qualifications and questions to elicit information about the attorney’s commitment to quality representation (including spending time with the client out of court).
  - An interview with the presiding judge including a review of the attorney’s resume/related experience.
4. The Legal Representation Workgroup (LRWG) recommends that the contracts for court-appointed counsel for parents and children be administered in a manner that insulates representation from undue influence and avoids both actual and perceived conflicts of interest. One concern noted by the LRWG is the potential conflict of interest or other inappropriate pressures that may be placed on a lawyer, when funding for the attorney’s service is provided by a party-opponent or by an entity that is closely connected to that party. For example, court-appointed counsel for parents and children generally receive some form of county funding, and even the appointment process is sometimes influenced by county commissioners or other similar mechanisms. In some counties, the parent and

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or child attorney's compensation is managed or dispensed by the county children and youth agency, which is also the opposing party in the dependency case at bar. An attorney who presses the court to order the expenditure of county funds may experience undue pressures through such appointment or compensation processes. Similarly, an attorney who appeals a judge's decisions should not worry that she will not be appointed to future cases by the court.

5. Well-designed contracts can include performance requirements, address the responsibility to comply with the Standards of Practice or other benchmarks related to in-court appearances and out-of-court work, as well as require lawyers to obtain malpractice coverage, submit detailed and accurate invoices and information, and other features.
6. Models that have attorneys with high turnover and lack of continuity for individual clients and/or use parent or child representation as a training ground for new attorneys should be reconsidered. The nature of this work strongly suggests that both parent and child attorneys should have adequate training and experience and that continuity of the attorney on the case is important given the dynamic nature of the case and the importance of the relationship between the attorney and the client.
7. The following are key elements to a contract for engagement of attorneys for children and parents, and may serve as a "checklist" in contract development and drafting:
  - a. Contracts should have an explicit "scope of services" section that clearly articulate the work required, including work required under the standards of practice.

As an example, a "scope of services" might include text that is similar to the following:

- *Represent the [parent/child] in accordance with the Standards of Practice, adopted by the Pennsylvania State Roundtable, which includes, but is not limited to:*

*1) When appointed, represent individual [parents/children] at all of their dependency court hearings for the life of the current dependency case.*

*2) Represent the [parent/child] in appeals to the PA Superior Court arising from the instant dependency case that are as of right and/or upon professional judgment and responsibility are meritorious and not frivolous*

*3) Represent [parent/child] at all court conferences scheduled in the matter including any pre-hearing and pre-trial conferences.*

*4) Represent [parent/child] and participate in CYs case planning meetings, such as Family Service Plan (FSP) meetings/ individual case plan meetings.*

*5) Maintain a modern and efficient case management system, (including a system to check conflicts).*

*6) Communicate with clients who have limited English proficiency (LEP) or are deaf or hard of hearing using qualified interpreters and advocate for accessible services for these clients.*

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7) Representation includes significant regular communication with client before court hearings and between hearings, including interviewing clients before each hearing in time to use client information for case investigation and preparation, providing information, court orders, reports to client, providing advice to the client, preparing the client for hearings.

8) Representation includes advocacy between hearings, including communication with client and parties as needed to ensure implementation of court orders and ensure client is receiving the assistance needed as well as advocating at meetings held out of court which are important and relevant to the client's dependency case, such as case planning meetings/conferences.

9) Representation includes being available and responsive to meet their professional obligations to their clients and to the courts. This includes establishing a system that promotes regular lawyer-client two-way communication, including provide clients and parties with phone numbers, emails and contact information and maintaining voicemail and email accounts.

- b. Definition of case: clear statement of how a case is defined (i.e., child or sibling group) and how service is commenced (i.e., by appointment, docketing of Order, etc.).
- c. Termination of Parental Rights/Appeals: clear indication of whether termination of parental rights hearings and appeals are included in the scope of services.
- d. Caseload: clarity about how many cases the attorney/agency/firm will handle, either within a certain time, or at any given point in time. This includes clarification that the attorney should know how many cases are assigned to the attorney, and how the attorney/agency/firm should notify the court if they are at their limit and may not accept new appointments or will require another solution.
- e. Standards of Practice: clear statement that the attorney will comply with the Juvenile Act, Juvenile Court Rules of Procedure, Standards of Practice and the Rules of Professional Conduct of the Supreme Court of Pennsylvania.
- f. Training/CLE requirements: a statement regarding required training, and any ongoing training and CLE requirements in order to maintain current working knowledge of the various issues involved in dependency practice.
- g. Continuity of representation: a statement clarifying if and when it is appropriate for court-appointed counsel to have another attorney represent a client when the assigned attorney is on vacation or otherwise unavailable. Similarly, for law firms with more than one attorney providing legal representation under the terms of the contract, the law firm should agree to designate an attorney assigned to a client and to continue the assignment absent good cause.
- h. Social worker and expert services: clarification that attorneys are expected to seek and utilize the services of investigators, social workers, experts as needed and agreed to by the court/county and the attorney. The attorney should clarify the mechanism to be used to seek additional funds for such services as needed.
- i. Accountability and reviews: the attorney will participate in evaluation, contract review and case review processes as required by the county agency. The attorney will also cooperate

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with the county agency and the court in efforts to improve representation and monitor compliance with the Standards of Practice within the limits of confidentiality.

- j. Resolution of complaints: the attorney will establish a procedure for responding to complaints regarding the performance of any attorney(s) under the contract. If after utilizing the attorney’s complaint procedure, the client states he or she continues to have a complaint, then the attorney will provide the client with appropriate contact information so the client may pursue the complaint.
- k. Bar Complaints: the attorney will immediately notify the county agency/court in writing when it becomes aware that a bar complaint has been lodged with the \_\_\_\_\_ against the attorney or any member of the attorney’s firm.
- l. Time Records: the attorney will accurately maintain and document individual case time records using an application or software designated by the county/court or that enables reports required by the county/court, and submit monthly case reports when invoicing for monthly payment to the attorney by county/court.