

In the Iowa Supreme Court

CLERK SUPREME COURT

In the Matter of Approving Iowa)	
Standards of Practice for Lawyers)	
Representing Children in Custody)	Amended Order
Cases and Iowa Standards of Practice))	
for Child and Family Reporters in)	
Child Custody Cases)	

On August 17, 2018, The Iowa Supreme Court approved two sets of standards of practice for lawyers in child custody cases: The Iowa Standards of Practice for Lawyers Representing Children in Custody Cases and the Iowa Standards of Practice for Child and Family Reporters in Child Custody Cases. The court also placed the Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court, which the court adopted in October 2013, into the Iowa Court Rules. Since the order of August 17, 2018, a number of nonsubstantive changes have been made to the format and numbering of each set of standards. The standards provided with this order are incorporated into the Iowa Court Rules as chapters 61, 61, and 63, replacing the chapters adopted in the order of August 17, 2018.

The **Iowa Standards of Practice for Lawyers Representing Children in Custody Cases** distinguish two types of lawyers representing children: the Child’s Attorney, who provides independent legal representation for the child; and the Guardian ad Litem, who advocates for the child’s best interests. The Iowa Supreme Court Family Law Care Processing Reform Task Force recommended adoption of the standards in its May 2016 Report, and the standards are consistent with 2017 legislative changes to Iowa Code section 598.12. The court submitted the standards for public comment and did not receive any comments critical of the standards.

The **Iowa Standards of Practice for Child and Family Reporters in**

Child Custody Cases provide guidance for Child and Family Reporters (CFRs) “to promote uniformity, consistency, and accountability in CFR reports, to promote respect for the rights of parties and their children, and to improve custody, visitation, and other outcomes for children.” Courts appoint CFRs to gather information about the care and custody of children and on other matters bearing on the child’s best interests under Iowa Code chapters 598 and 600B to assist the court in making custody, visitation, or other decisions regarding the child’s welfare. The Iowa Supreme Court Family Law Care Processing Reform Task Force recommended adoption of the standards in its May 2016 Report. Adoption of the standards is consistent with Iowa Code section 598.12B(1). The court submitted the standards for public comment and received only comments in support of the standards.

Adoption of both sets of standards is part of the court’s effort to elevate the importance of children’s justice issues. In addition, it is important to note that neither the Iowa Standards of Practice for Lawyers Representing Children in Custody Cases nor the Iowa Standards of Practice for Child and Family Reporters in Child Custody Cases add obligations to the Iowa Rules of Professional Conduct. Rather, the standards provide guidance to attorneys working in child custody proceedings for practicing in compliance with the rules. In the event of conflict between these standards and a rule of professional conduct, the rule of conduct takes precedence.

The Iowa Standards of Practice for Lawyers Representing Children in Custody Cases and the Iowa Standards of Practice for Child and Family Reporters in Child Custody Cases will appear in new chapters 62 and 63 of the Iowa Court Rules respectively.

In addition, the Iowa Standards of Practice for Attorneys Representing

Parents in Juvenile Court, which the court adopted in October 2013, are hereby incorporated into the Iowa Court Rules as new chapter 61.

Each set of standards are provided with this order:

- The Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court, incorporated into new chapter 61 of the Iowa Court Rules.
- The Iowa Standards of Practice for Lawyers Representing Children in Custody Cases, incorporated into the Iowa Court Rules as new chapter 62.
- The Iowa Standards of Practice for Child and Family Reporters in Child Custody Cases, incorporated into the Iowa Court Rules as new chapter 63.

Dated this 28th day of August, 2018.

The Iowa Supreme Court

By Mark S. Cady
Mark S. Cady, Chief Justice

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CHAPTER 61
IOWA STANDARDS OF PRACTICE FOR
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CHAPTER 61
IOWA STANDARDS OF PRACTICE FOR
ATTORNEYS REPRESENTING PARENTS IN JUVENILE COURT

These standards do not add obligations to the Iowa Rules of Professional Conduct, but like the comments to those rules, they provide guidance to attorneys representing parents in juvenile proceedings for practicing in compliance with the rules. In the event of any conflict between these standards and a rule of professional conduct, the requirements of the rule take precedence.

The parent's attorney shall:

I. General

1. Adhere to all educational requirements before accepting a court appointment to represent a client in a child welfare case. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.
2. Avoid continuances and work to reduce delays in court proceedings unless warranted by the interests of the client.
3. Communicate as needed with other professionals in the case to protect or advance the client's interests.

II. Relationship with the Client

4. Establish and maintain a working relationship with the client. Communicate with the client prior to the day of hearing and when apprised of emergencies or significant events.
5. Advocate for the client's goals. Empower the client to direct the representation and make informed decisions.
6. Understand and protect the client's rights to information and decision-making while the child is placed out of the home.
7. Act in accordance with the duty of loyalty owed to the client while adhering to all laws and ethical obligations concerning confidentiality. Avoid potential conflicts of interest that would interfere with the competent representation of the client. Comply with all other Iowa Rules of Professional Conduct.
8. Provide the client with all relevant contact information. Establish a system that promotes regular client-attorney contact.

9. Communicate with the client in a manner that promotes advocacy and adequate preparation to support the client's position.
10. Take reasonable steps to communicate with incarcerated clients and to locate clients who become absent. Develop representation strategies. Establish a plan for the client's participation in case-related events.
11. Communicate with and counsel the client about financial implications of the juvenile matter to promote and protect the client's interest.
12. Investigate and consider the client's background and its impact on the case. Act in a culturally-competent manner and with due regard to disabilities or unique circumstances of the client. Advocate for appropriate supportive services with the child welfare agency and court.

III. Investigation and Court Preparation

13. Conduct an independent investigation at every stage of the proceeding as reasonable and necessary.
14. Use effective discovery methods according to the Iowa Rules of Juvenile Procedure.
15. Consult with the client to develop a case theory and strategy. Explain the statutory timeline for the case.
16. Timely file appropriate pleadings, motions, and briefs.
17. Engage in multidisciplinary case planning and advocate for appropriate services and high quality family interaction.
18. Effectively participate with the client in family team meetings, mediation, and other negotiations.
19. Thoroughly prepare the client in advance for all hearings, meetings, and other case events.
20. Identify, locate, and prepare necessary lay and expert witnesses. Prepare for cross-examination and, when permissible, interview those witnesses.
21. Review court orders to ensure accuracy and clarity. Review orders

with the client. Take reasonable steps to ensure the client complies with court orders.

22. Continually evaluate whether the case should be reviewed by the court prior to the next scheduled hearing date to ensure case progress.

23. Timely file reasonable and necessary post-hearing motions.

IV. Appeal

24. Consider and discuss appeal options and deadlines with the client.

25. Timely file appeal documents if the client decides to appeal. Adhere to the Iowa Rules of Appellate Procedure.

26. Timely review the ruling and discuss its implications with the client.

27. Consider and discuss further review options.

Commentary to the Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

The parent's attorney shall:

I. General

- 1. Adhere to all educational requirements before accepting a court appointment to represent a client in a child welfare case. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules.**

Commentary

[1] As in all areas of law, it is essential that attorneys learn the substantive law as well as local practice. A client's fundamental liberty interest in the care and custody of the client's child is at stake, and the attorney must be adequately trained to protect this interest. The attorney must know enough about all relevant laws to vigorously advocate for the client's interests. Additionally, the attorney must be able to use procedural, evidentiary, and confidentiality laws and rules to protect the client's rights throughout court proceedings.

[2] It is essential for the attorney to read and understand all state laws, policies, and procedures regarding child abuse and neglect. In addition, the attorney must be familiar with other applicable laws to recognize when they are relevant to a case and to conduct research if necessary. Examples of potentially relevant laws include but are not limited to:

- Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act (AFSA), 42 U.S.C. §§620-679 and the ASFA Regulations, 45 C.F.R. Parts 1355, 1356, 1357
- Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36
- Indian Child Welfare Act (ICWA) 25 U.S.C. §§190-963; ICWA Regulations, 25 C.F.R. Part 23; Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979)
- State Indian Child Welfare Act laws
- Multi-Ethnic Placement Act (MEPA), as amended by the Inter-Ethnic Adoption Provisions of 1996 (MEPA-IEP), 42 U.S.C. §622 (b)(9) (1998), 42 U.S.C. § 671(a)(18) (1998), 42 U.S.C. §1996b (1998)
- Interstate Compact on Placement of Children (ICPC)

- 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
- Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191 §264, 42 U.S.C. §1320d-2 (in relevant part)
- Public Health Act, 42 U.S.C. §290dd-2 and 42 C.F.R. Part 2
- Immigration laws relating to child welfare and child custody
- State laws and rules of juvenile procedure
- State laws and rules of evidence
- State laws and rules of civil procedure
- State laws and rules of criminal procedure
- State laws concerning privilege and confidentiality, public benefits, education, and disabilities
- State laws and rules of professional responsibility or other relevant ethics standards
- State laws regarding domestic violence
- State domestic relations laws

2. Avoid continuances and work to reduce delays in court proceedings unless warranted by the interests of the client.

Commentary

[1] The Iowa Supreme Court has established that juvenile court cases take priority over all other cases with the exception of civil commitments and domestic abuse cases. See Iowa Supreme Court Supervisory Orders, dated December 1, 2009, and February 4, 2010.

[2] The attorney should not request a continuance unless there is an emergency or a continuance otherwise furthers the interests of the client. If a continuance is necessary, the attorney should request the continuance in writing as far as possible in advance of the hearing and for the shortest period possible, consistent with the client's interests. The attorney should object to repeated or prolonged continuance requests by other parties if the resulting continuance would harm the client.

[3] Delaying a case often increases the time a family is separated and can reduce the likelihood of reunification. Appearing in court often motivates parties to comply with orders and cooperate with services.

When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased, and other requests by the client may be granted. If a hearing is continued and the case is delayed, the client may lose momentum in addressing the issues that led to the child's removal, or the client may lose the opportunity to prove compliance with case plan goals. Additionally, the Adoption and Safe Families Act timelines continue to run despite continuances.

3. Communicate as needed with other professionals in the case to protect or advance the client's interests.

Commentary

[1] Communication with others is necessary to ensure the client is involved with key aspects of the child's life. This requires open and ongoing communication with attorneys of record, pro se litigants, and any guardian ad litem (GAL). Similarly, the attorney should communicate with the relatives, caseworker, foster parents, court appointed special advocate (CASA), and service providers to learn about the client's progress and their views of the case, as appropriate. Rules of professional ethics govern contact with represented and unrepresented parties.

[2] The attorney should have open lines of communication with any attorneys representing the client in related matters, such as criminal, protection from abuse, private custody, or administrative proceedings, to ensure that probation orders, protection from abuse orders, private custody orders, and administrative determinations do not conflict with the client's goals in the abuse and neglect case.

II. Relationship with the Client

4. Establish and maintain a working relationship with the client. Communicate with the client prior to the day of hearing and when apprised of emergencies or significant events.

Commentary

[1] Gaining the client's trust and establishing ongoing communication are two essential aspects of representing the client. The client may feel angry and believe that all of the attorneys in the system work with the child welfare agency and against that client. The attorney must take care to distinguish the attorney from others in

the system so the client can see that the attorney serves the client's interests. The attorney should be mindful that parents often feel disempowered in child welfare proceedings and should take steps to make the client feel comfortable expressing goals and wishes without fear of judgment.

[2] The attorney should meet with the client regularly throughout the case. The meetings should occur well before the hearing, not at the courthouse just minutes before the case is called before the judge. The attorney should ask the client questions to obtain information to prepare the case, and should strive to create a comfortable environment so the client can ask the attorney questions. The attorney should use these meetings to prepare for court as well as to counsel the client concerning issues that arise during the course of the case. Information obtained from the client should be used to propel the investigation.

5. Advocate for the client's goals. Empower the client to direct the representation and make informed decisions.

Commentary

[1] Attorneys representing parents must understand the client's goals and pursue them vigorously. The attorney should explain that the attorney's job is to represent the client's interests and regularly inquire as to the client's goals, including ultimate case goals and interim goals. The attorney should explain all legal aspects of the case and provide comprehensive advice on the advantages and disadvantages of different options. At the same time, the attorney should be careful not to usurp the client's authority to decide the case goals.

6. Understand and protect the client's rights to information and decision-making while the child is placed out of the home.

Commentary

[1] Unless and until parental rights are terminated, the client has parental obligations and rights while a child is in foster care. Advocacy may be necessary to ensure the client is allowed to remain involved with key aspects of the child's life. Not only should the client's rights be protected, but continuing to exercise as much parental responsibility as possible is often an effective strategy to speed family reunification. Often a client does not understand that

the client has the right to help make decisions for, or obtain information about, the child. Therefore, it is the attorney's responsibility to counsel the client and help the client understand and carry out the client's rights and responsibilities.

[2] The attorney must explain to the client the decision-making authority that remains with the client and the authority that lies with the child welfare agency while the child is in foster care. The attorney should seek updates and reports from any service provider working with the child or the family and help the client obtain information about the child's safety, health, education, and well-being when the client desires. Where decision-making rights remain, the attorney should assist the client in exercising the client's rights to continue to make decisions regarding the child's medical, mental health, and educational services. If necessary, the attorney should intervene with the child welfare agency, provider agencies, medical providers, and the child's school to ensure the client has decision-making opportunities. This may include seeking court orders when the client has been left out of important decisions about the child's life.

7. Act in accordance with the duty of loyalty owed to the client while adhering to all laws and ethical obligations concerning confidentiality. Avoid potential conflicts of interest that would interfere with the competent representation of the client. Comply with all other Iowa Rules of Professional Conduct.

Commentary

[1] Attorneys must understand and adhere to ethical obligations and all confidentiality laws, including Iowa Code chapter 232. The attorney must fully explain to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. Consistent with the client's interests and goals, the attorney must seek to protect from disclosure confidential information concerning the client.

[2] Confidential information contained in a client's substance-related disorder treatment records, domestic violence treatment records, mental health records, or medical records is often at issue in abuse and neglect cases. Improper disclosure of confidential information early in the proceeding may have a negative impact on the manner in which the client is perceived by the other parties and the court. For this reason, it is crucial for the attorney to advise the client promptly as to the advantages and disadvantages of

releasing confidential information, and for the attorney to take whatever steps necessary to protect the client's privileges or rights to confidentiality.

[3] The attorney must not represent multiple parties if their interests differ. In most instances, attorneys should avoid representing both parents in an abuse or neglect case. In situations involving allegations of domestic violence, the attorney should never represent both parents. In the rare case in which an attorney, after careful consideration of potential conflicts, may represent both parents, it should only be with their informed consent. Even in cases in which there is no apparent conflict at the beginning of the case, conflicts may arise as the case proceeds. If this occurs, the attorney might be required to withdraw from representing one or both parents. This could be difficult for the clients and delay the case. Other examples of potential conflicts of interest that the attorney should avoid include representing multiple fathers in the same case or representing parties in a separate case who have interests adverse to the client in the current case.

8. Provide the client with all relevant contact information. Establish a system that promotes regular client-attorney contact.

Commentary

[1] The attorney should ensure the client understands how to contact the attorney and that the attorney wants to hear from the client on an ongoing basis. The attorney should explain that even when the attorney is unavailable, the client should leave a message. The attorney must respond to client messages in a reasonable time period. The attorney and client should establish a reliable communication system that meets the client's needs. The attorney should be aware of the client's circumstances, such as whether the client has access to a telephone, and tailor the communication system to the individual client. For example, a communication system may involve telephone contact, email, or communication through a third party when the client agrees to it. Interpreters should be used when the attorney and client are not fluent in the same language.

[2] Upon accepting an appointment, the attorney should communicate to the client the importance of staying in contact with the attorney. While the attorney must communicate as necessary with the client, and be informed of the client's wishes before a hearing, the client also must keep in contact with the attorney. At the beginning of the representation, the attorney should tell the client how to contact

the attorney and discuss the importance of the client keeping the attorney informed of changes in address, phone numbers, and the client's whereabouts.

9. Communicate with the client in a manner that promotes advocacy and adequate preparation to support the client's position.

Commentary

[1] The attorney's job extends beyond the courtroom. The attorney should be a counselor as well as litigator. The attorney should be available to talk with the client to prepare for hearings and to provide advice and information about ongoing concerns. Open lines of communication between attorneys and clients help ensure clients get answers to questions and attorneys get the information and documents they need.

[2] The attorney should be available for in-person meetings or telephone calls to answer the client's questions and address the client's concerns. The attorney and client should work together to identify and review short- and long-term goals, particularly as circumstances change during the case.

10. Take reasonable steps to communicate with incarcerated clients and to locate clients who become absent. Develop representation strategies. Establish a plan for the client's participation in case-related events.

Commentary

[1] *Absent Parents*

The attorney should make reasonable attempts to locate and communicate with absent parents to formulate the positions the attorney should take at hearings and to understand what information the client wishes the attorney to share with the child welfare agency and the court. If the attorney is unable to find and communicate with the client, the attorney should consider filing a motion to withdraw.

[2] *Incarcerated Parents*

An attorney who is appointed to represent an incarcerated parent has an ethical obligation to zealously represent that parent, even if the

client is not an immediate placement option. Upon being appointed to represent an incarcerated parent, the attorney should immediately locate the parent. If the incarcerated client is serving a sentence in Iowa, the attorney can locate that parent using the Iowa Department of Corrections website for offender information. If the incarcerated parent is housed in a federal prison, the Federal Bureau of Prisons website can be used to locate the client.

The attorney must be particularly diligent when representing an incarcerated parent. The attorney must be aware of the reasons for the incarceration. If the parent is incarcerated as a result of an act against the child or another child of the parent, the court can order that reasonable efforts to reunite the family are not required. The attorney must be prepared to argue against the issuance of such an order if the client opposes it. Attorneys should counsel the client as to any effects of incarceration and know statutory and case law concerning incarceration. The attorney should help the client identify potential kinship placements and advocate for placement with parental relatives who can provide care for the child while the parent is incarcerated.

[3] *Services*

The attorney should assist an incarcerated client in obtaining services while incarcerated, such as substance-related disorder treatment, parenting skills, or job training. The attorney must advocate for reasonable efforts for the client and may have to assist the client and the agency caseworker in acquisition of those services. The attorney must learn about available resources and seek the support of the agency and child's attorney.

[4] *Communication*

The attorney should counsel an incarcerated client on the importance of maintaining regular contact with the client's child while incarcerated. The attorney should advocate for a plan that fosters communication and visitation by obtaining necessary court orders and working with the caseworker as well as the correctional facility's social worker.

The attorney must find alternative ways to communicate with the incarcerated client. This may include visiting the client in prison or engaging in more extensive phone or mail contact than with other clients. The attorney should also communicate with the client's criminal defense attorney. There may be issues related to self-incrimination and timing that require coordination between cases.

[5] *Appearance in Court*

An incarcerated client's participation in court frequently raises issues that require the attorney's attention in advance. The attorney should find out from the client if the client wishes to participate in the hearing. If so, the attorney should make arrangements with the incarcerated client's prison counselor to have the parent appear by telephone. The attorney should explain to any client hesitant to appear that the case will proceed without the client's presence and should explain the potential consequences of that choice.

11. Communicate with and counsel the client about financial implications of the juvenile matter to promote and protect the client's interest.

Commentary

[1] It is important to have a thorough discussion with the client of the financial aspects of the juvenile case. The client is entitled to know the costs associated with services and the funding mechanism for each. For example, if the child is placed in foster care, the Foster Care Recovery Unit will be establishing a support obligation to be paid by one or both of the parents. If the child is placed in foster group care, parents are expected to reimburse all or part of the cost. If the attorney is court appointed, the client should be made aware of the requirement to repay the state for the court appointed attorney fees and expenses under Iowa Code section 815.9. The attorney should explain the work that can be billed under the court appointment, the billing rate, and when the court may start requiring reimbursement of the fees and expenses. Copies of all claims submitted to the State Public Defender for payment must be provided to the parent.

12. Investigate and consider the client's background and its impact on the case. Act in a culturally competent manner and with due regard to disabilities or unique circumstances of the client. Advocate for appropriate supportive services with the child welfare agency and court.

Commentary

[1] The attorney should learn about and understand the client's

background, determine how it impacts the client's case, and always show the client respect. The attorney must understand how cultural and socioeconomic differences affect interaction with the client, and must interpret the client's words and actions accordingly.

[2] The child welfare system comprises a diverse group of people, including the clients and professionals involved. Each person comes to this system with the person's own set of values and expectations, but it is essential that each person try to learn about and understand the backgrounds of others. An individual's race, ethnicity, gender, sexual orientation, and socioeconomic position all have an impact on how the person acts and reacts in particular situations. The attorney must be vigilant against imposing the attorney's values onto the client, and should, instead, work with the client within the context of the client's culture and socioeconomic position. While the court and child welfare agency have expectations of parents in their treatment of children, the parent's advocate must strive to explain these expectations to the client in a sensitive way. The attorney should also try to explain how the client's background might affect the client's ability to comply with court orders and agency requests.

[3] The attorney should ensure a formal interpreter is involved when the attorney and client are not fluent in the same language. The attorney should also advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the client are interviewing the client.

[4] The attorney and the client should identify barriers to the client engaging in services, such as employment, transportation, and financial issues. The attorney should work with the client, caseworker, and service provider to overcome the barriers.

[5] The attorney should be aware of any special issues the client may have related to participating in the proposed case plan, such as difficulties in reading or language differences, and advocate with the child welfare agency and court for appropriate supportive services.

[6] Attorneys representing parents must be able to determine whether a client's mental status, including mental illness or mental retardation, interferes with the client's ability to make decisions about the case. The attorney should be familiar with any mental health diagnosis and treatment that a client has had in the past or is undergoing, including any medications for such conditions.

III. Investigation and Court Preparation

13. Conduct an independent investigation at every stage of the proceeding as reasonable and necessary.

Commentary

[1] The attorney should seek updates and reports from any service provider working with the child or the family and should help the client obtain information about the child's safety, health, education, and well-being when the client desires.

[2] Often, the client is the best source of information for the attorney, and the attorney should set aside time to obtain that information. Since the interview may involve disclosure of sensitive or painful information, the attorney should explain attorney-client confidentiality to the client. The attorney may need to work hard to gain the client's trust, but if a trusting relationship can be developed, the attorney will have an easier time representing the client. The investigation will be more effective if guided by the client, as the client generally knows firsthand what occurred in the case.

[3] The attorney must take all necessary steps to prepare each case. A thorough investigation is an essential element of preparation. The attorney cannot rely solely on what the agency caseworker reports about the client. Rather, the attorney should contact service providers who work with the client, relatives who can discuss the client's care of the child, the child's teacher, or other people who can clarify information relevant to the case. If necessary, the attorney should petition the court for funds to hire an investigator.

14. Use effective discovery methods according to the Iowa Rules of Juvenile Procedure.

Commentary

[1] The attorney should ask for and review the agency case file as early during the course of representation as possible. The file contains useful documents that the attorney may not yet have and will instruct the attorney on the agency's case theory. If the agency case file is inaccurate, the attorney should seek to correct it. The attorney must read the case file periodically because the agency is continually adding information.

[2] While an independent investigation is essential, it is also important that the attorney understands the information the agency is relying on to further its case. The case file should contain a history about the family that the client may not have shared and important reports and information about both the child and parent that the attorney must understand for hearings as well as settlement conferences. Unless the attorney also has the information the agency has, the attorney will walk into court at a disadvantage.

[3] As part of the discovery phase, the attorney should gather all relevant documentation regarding the case that might shed light on the allegations, the service plan, and the client's strengths as a parent. The attorney should not limit the scope of discovery prematurely because information about past or present criminal, protection from abuse, private custody, or administrative proceedings involving the client can have an impact on the abuse and neglect case. The attorney should also review the following kinds of documents:

- Social service records
- Court records
- Medical records
- School records
- Evaluations of all types

[4] The attorney should obtain reports and records from service providers.

[5] Discovery is not limited to information regarding the client, but may include records of others such as the other parent, stepparents, the child, relatives, and nonrelative caregivers. In preparing the client's case, the attorney must try to learn as much about the client and the family as possible. Various records may contradict or supplement the agency's account of events. Gathering documentation to verify the client's reports about what occurred before the child came into care and to show progress the client is making during the case is necessary to provide concrete evidence for the court. Documentation may also alert the attorney to issues the client is having that the client did not share with the attorney. The attorney may be able to intercede and assist the client with service providers, agency caseworkers, and others.

[6] The attorney should know what information is needed to prepare the case and understand the best methods of obtaining that information. The attorney should become familiar with the pretrial

requests and actions used in the jurisdiction and use whatever tools are available to obtain necessary information. When informal discovery proves inadequate, the attorney should consider the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admissions, and motions for mental or physical examination of a party.

[7] The attorney, when appropriate and consistent with the client's interests and goals, should take all necessary steps to preserve and protect the client's rights by opposing discovery requests of other parties.

15. Consult with the client to develop a case theory and strategy. Explain the statutory timeline for the case.

Commentary

[1] The attorney should spend time with the client to prepare the case and address questions and concerns. The attorney should clearly explain the allegations made against the client, what is likely to happen before, during, and after each hearing, and what steps the client can take to increase the likelihood of reuniting with the child. The attorney should explain any settlement options and determine whether the client wants the attorney to pursue such options. The attorney should explain courtroom procedures. The attorney should write to the client to ensure the client understands what happened in court and what is expected of the client.

[2] Once the attorney has completed the initial investigation and discovery, including interviews with the client, the attorney should develop a strategy for representation. The strategy may change throughout the case, depending on the client's progress and other considerations, but the initial theory is important to assist the attorney in staying focused on the client's wishes and on what is achievable. The theory of the case should inform the attorney's preparation for hearings and arguments to the court throughout the case. It should also help the attorney decide which evidence to develop for hearings and the steps to take to move the case toward the client's ultimate goals (for example, requesting increased visitation when a client becomes engaged in services).

[3] At the beginning of a case, the attorney and the client should develop timelines that contain deadlines and important dates and develop a tickler or calendar system to track the deadlines and dates. The timeline should specify the actions the attorney and client will

need to take and the dates for completion. The attorney and the client should know when important dates will occur and should be focused on timely accomplishing the objectives in the case plan. The attorney should provide the client with a timeline or calendar outlining known and prospective court dates, service appointments, deadlines, and critical points of attorney-client contact. The attorney should record federal and state law deadlines in the system (for example, the presumptive date at which termination of parental rights can occur if the child is not in the custody of the parents).

[4] Having a consistent calendaring system can help an attorney manage a busy caseload. Clients should receive a hard copy calendar to keep track of appointments and important dates. This helps clients stay focused on accomplishing the service plan goals and meeting court-imposed deadlines.

16. Timely file appropriate pleadings, motions, and briefs.

Commentary

[1] The attorney should make appropriate motions and evidentiary objections to advance the client's position during the hearing. If necessary, the attorney should file briefs in support of the client's position on motions and evidentiary issues. The attorney should always be aware of preserving legal issues for appeal.

[2] It is essential the attorney understands the applicable rules of evidence and all court rules and procedures. The attorney must be willing and able to make appropriate motions, objections, and arguments (for example, objecting to the qualification of expert witnesses or raising the issue of the child welfare agency's lack of reasonable efforts). When a case presents a complicated or new legal issue, the attorney should conduct the appropriate research before appearing in court. The attorney must have a solid understanding of the relevant law and be able to present it to the judge in a compelling and convincing way. The attorney should be prepared to distinguish case law that appears to be unfavorable.

[3] Arguments in child welfare cases are often fact-based. Nonetheless, the attorney should ground his or her arguments in statutory, regulatory, and common law. These sources of law exist in each jurisdiction, as well as in federal law. Additionally, law from other jurisdictions can be used to sway a court in the client's favor. An attorney who has a firm grasp of the law, and who is willing to do legal research on an individual case, may have more credibility before the court. At times, competent representation requires

advancing legal arguments that are not yet accepted in the jurisdiction. The attorney should be mindful to preserve issues for appellate review by making a record even if the argument is unlikely to prevail at the trial level.

17. Engage in multidisciplinary case planning and advocate for appropriate services and high quality family interaction.

Commentary

[1] The attorney must advocate for the client both in and out of court. Consistent, high quality family interaction is one of the best predictors of successful reunification between a parent and child. Often visits are arranged in settings that are uncomfortable and inhibiting for families. It is important that the attorney seek the best possible family interaction. Effort should be made to have family interaction that is unsupervised or at the lowest possible level of supervision. Families are often more comfortable when relatives, family friends, clergy, or other community members, rather than caseworkers, are recruited to supervise family interaction. The attorney should advocate for family interaction to occur in the most family-friendly locations possible, such as in the family's home, parks, libraries, restaurants, places of worship, or other community venues.

[2] The attorney should know the social, mental health, substance-related disorder, and other treatment services that are available to parents and families in the jurisdiction in which the attorney practices so that the attorney can advocate effectively for the client to receive these services. The attorney should ask the client if the client wishes to engage in services. If so, the attorney must determine whether the client has access to the necessary services to overcome the issues that led to the case.

[3] The services in which the client is involved must be tailored to the client's needs, and not merely hurdles over which the client must jump (for example, if the client is taking parenting classes, the classes must be relevant to the underlying issues in the case).

[4] The attorney should advocate for an effective family interaction plan and counsel the client on the importance of regular contact with the child. Preservation of parent-child bonds through regular family interaction is essential to any reunification effort. Courts and child welfare agencies may need to be urged to develop family interaction plans that best fit the needs of the individual

family. Factors to consider in family interaction plans include:

- Frequency
- Length
- Location
- Supervision
- Types of activities
- Visit coaching—having someone at the visit who can model effective parenting skills

[5] For a client to succeed in a child welfare case, the client must receive and cooperate with social services. It is therefore necessary that the attorney do whatever possible to obtain appropriate services for the client and then counsel the client about participating in such services. Examples of services common to child welfare cases include:

- Evaluations
- Family preservation or reunification services
- Medical and mental health care
- Drug and alcohol treatment
- Domestic violence prevention, intervention, or treatment
- Parenting education
- Education and job training
- Housing
- Child care
- Funds for public transportation so the client can receive services

[6] When necessary, the attorney should seek court orders to require the child welfare agency to provide services or family interaction for the client. The attorney may need to ask the court to enforce previously entered orders if the agency did not comply with them in a reasonable period. The attorney should consider whether the child's representative (lawyer, GAL, or CASA) might be an ally on service and visitation issues. If so, the attorney should solicit the child's representative's assistance and work together in making requests to the agency and the court.

18. Effectively participate with the client in family team meetings, mediation, and other negotiations.

Commentary

[1] A family team meeting is a voluntary process for a family involved

with the Department of Human Services (department). It is designed to engage and support the family in the case planning, case management, and case closure process. A family team meeting is not an adversarial setting, and it may seem to the attorney that social work is occurring. Attorneys for parents may misunderstand the critical nature of family team meetings. The family team meeting forum is one of the most important stages of juvenile court because it is where the department develops or refines the case plan. The case plan is a key document the court will use to assess whether the client has made progress. The case plan also should be the framework for the attorney to develop the theory of the case.

[2] The attorney should attend family team meetings and actively engage in case planning to ensure the client asks the department for and receives the needed services. The attorney should be prepared to object to the department's inclusion of services in the case plan that are beyond the client's needs. If the department continues to require services that are not tailored to the client's specific needs, the attorney must bring the issue before the court on the grounds of a lack of reasonable efforts.

[3] The attorney should be available to accompany the client to other important meetings during a case if the client requests. Whenever possible, the attorney should engage in a dialogue with the social worker and service provider to monitor the department's perspective of the client's progress. The attorney should act as a liaison and advocate for the client with the social worker and service provider.

19. Thoroughly prepare the client in advance for all hearings, meetings, and other case events.

Commentary

[1] The attorney must prepare for and attend all hearings. Part of that preparation is to thoroughly prepare the client in advance of the hearing. This also includes thoroughly preparing an incarcerated client in advance of hearings and other case events.

[2] The attorney and the client must be prepared and present in court. The attorney's failure to participate in the proceedings in which all other parties are represented may disadvantage the client. Therefore, the attorney should be actively involved in this stage. Attorneys must appear for all court appearances on time. If the attorney has a conflict with another courtroom appearance, the attorney should notify the court and other parties and request a

short continuance. In a substantive hearing, the attorney should avoid having another attorney stand in to represent the client, especially if the other attorney is unfamiliar with the client or case.

20. Identify, locate, and prepare necessary lay and expert witnesses. Prepare for cross-examination and, when permissible, interview those witnesses.

Commentary

[1] The attorney must be able to present witnesses effectively to advance the client's position. Witnesses must be prepared in advance, and the attorney should know the evidence that will be presented through the witnesses. The attorney must also be skilled at cross-examining opposing parties' witnesses. The attorney must know how to offer documents, photos, and physical objects into evidence.

[2] At each hearing, the attorney should keep the case theory in mind; advocate for the child to return home and for appropriate services, if that is the client's position; and request that the court state its expectations of all parties.

[3] Becoming a strong courtroom attorney takes practice and attention to detail. The attorney must be sure to learn the rules on presenting witnesses, impeaching testimony, and entering evidence. The attorney should seek out training in trial skills and observe more experienced trial attorneys to learn from them. Even if the attorney is more seasoned, effective direct and cross-examination require careful preparation. The attorney must know the relevant records well enough to be able to impeach adverse witnesses and bring out in both direct and cross-examinations any information that would support the client's position. Attorneys who are not as experienced may wish to consult with other experienced attorneys about complex cases. Presenting and cross-examining witnesses are skills with which the attorney must be comfortable.

[4] The attorney, in consultation with the client, should develop a witness list well before a hearing. The attorney should not assume the agency will call a witness, even if the witness is named on the agency's witness list. The attorney should, when possible, contact the potential witnesses to determine if they can provide helpful testimony.

[5] When appropriate, witnesses should be informed that a subpoena is on its way. The attorney should also ensure the subpoena is served. The attorney should subpoena potential agency witnesses (for example, a previous caseworker) who have

favorable information about the client.

[6] The attorney should set aside time before the hearing to fully prepare all witnesses in person. The attorney should remind the witnesses about the court date.

[7] Preparation is the key to successfully resolving a case, either in negotiation or trial. The attorney should plan as early as possible for the case and make arrangements accordingly. Witnesses may have direct knowledge of the allegations against the client. They may be service providers working with the client or individuals from the community who can testify generally about the family's strengths.

[8] When appropriate, the attorney should consider working with other parties who share the client's position (such as the child's representative) when creating a witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential witnesses have busy schedules and need advance warning about the date and time of the hearing.

[9] Witnesses are often nervous about testifying in court. The attorney should prepare them thoroughly so they feel comfortable with the process. Preparation may include rehearsing the specific questions that will be asked on direct examination and anticipating the questions that might arise on cross-examination. The attorney should provide written questions for those witnesses who need them.

[10] Often a case requires multiple experts in different roles, such as experts in medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The attorney should consider whether the opposing party is calling expert witnesses and determine whether the client needs to call any experts.

[11] When expert testimony is required, the attorney should identify the qualified experts and seek necessary funds to retain them in a timely manner. The attorney should subpoena the witnesses, giving them as much advance notice of the court date as possible. As is true for all witnesses, the attorney should spend as much time as possible preparing the expert witnesses for the hearing. The attorney should be competent in qualifying expert witnesses.

21. Review court orders to ensure accuracy and clarity. Review orders with the client. Take reasonable steps to

ensure the client complies with court orders.

Commentary

[1] The client may be angry about being involved in the child welfare system, and a court order that is not in the client's favor could add stress and frustration. It is essential that the attorney take time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the client.

[2] After the hearing, the attorney should review the written order to ensure it reflects the court's oral order, if any. If the order is incorrect, the attorney should take the necessary steps to correct it. The attorney should provide the client with a copy of the order and should review the order with the client to ensure the client understands it. If the client is unhappy with the order, the attorney should counsel the client about options for appeal or to request rehearing on the order, but the attorney should explain that the order is in effect unless a stay or other relief is secured. The attorney should counsel the client on the potential consequences of failing to comply with a court order.

22. Continually evaluate whether the case should be reviewed by the court prior to the next scheduled hearing date to ensure case progress.

Commentary

[1] The attorney should play an active role in assisting the client in complying with court orders, obtaining family interaction, and securing other necessary services. The attorney should speak with the client regularly about progress and any difficulties the client is encountering while trying to comply with the court order or service plan.

[2] If the client is attempting to comply with the order and case plan but another party, such as the department or a contracted provider, is not meeting the party's responsibilities, the attorney should approach the other party and seek assistance on behalf of the client.

[3] When the department is not offering appropriate services to meet the needs of the client to promote reunification, the attorney should first request the department in writing to provide the needed services to the client. If the department still does not provide reasonable efforts to preserve and unify the family or make it possible

for the child to return home safely, the attorney should consider filing a motion alleging the department is not making reasonable efforts and request the case immediately be brought back to court to litigate this issue. See Iowa Code section 232.102(12)—Reasonable Efforts.

23. Timely file reasonable and necessary post-hearing motions.

IV. Appeal

24. Consider and discuss appeal options and deadlines with the client.

Commentary

[1] The attorney should inform the client of appeal rights and the expedited appellate deadlines in juvenile cases. The attorney should counsel the client on the likelihood of a successful appeal and the potential consequences of an appeal. The attorney should always litigate the case and preserve the record with the assumption there may be a subsequent appeal.

25. Timely file appeal documents if the client decides to appeal. Adhere to the Iowa Rules of Appellate Procedure.

Commentary

[1] The attorney shall carefully review obligations under the Iowa Rules of Appellate Procedure and timely file all paperwork. A summary follows:

Notice of appeal. A notice of appeal must be filed within 15 days of the date of the order and signed by the attorney *and* the client. Iowa Rs. App. P. 6.101(1) and 6.102(1)(a); see Form 4 in rule 6.1401. The notice shall be served upon all counsel of record, all unrepresented parties, the attorney general, and the clerk of the supreme court pursuant to Iowa Rules of Civil Procedure 1.442(2) and 1.442(7). The notice of appeal shall include a certificate of service in the form provided in rule 1.442(7).

Notice of cross appeal. A notice of cross appeal must be filed within the 15-day limit for filing a notice of appeal, or within 10 days after filing of the notice of appeal, whichever is later. Iowa

R. App. P. 6.101(2)(a).

Petition on appeal. The protocol for a juvenile appeal under Iowa Code chapter 232 differs somewhat from other appeals. Unless a petition on appeal is filed, the juvenile appeal will be dismissed. Iowa Rs. App. P. 6.102(1)(b) and 6.201(1) & (2); see Form 5 in rule 6.1401. Ensure all necessary attachments are included, a certificate of service is included, and the petition is served in the same manner as the notice of appeal. Iowa R. App. P. 6.201(1). If the petition is not served within 15 days after filing the notice of appeal, the appeal will be dismissed with no recourse. Iowa R. App. P. 6.201(2). Extensions will most likely not be granted, as the rules explicitly state, “The time for filing a petition on appeal shall not be extended.” Iowa R. App. P. 6.201(1)(b).

Response to petition on appeal. A response to a petition on appeal is optional unless a notice of cross-appeal was filed. Iowa R. App. P. 6.202(1). Similar to the petition on appeal, careful attention should be paid to the rules with regard to notice, service, length, form (including acceptable font and number of pages), the number of copies to be served, and cover. See Form 6 in Iowa R. App. P. 6.1401.

Reply to issues raised in cross appeal. A reply to the cross-appeal issues must be filed within 7 days after service of the Appellee’s response. Iowa R. App. P. 6.203.

Filing fee. Within 7 days after filing the notice of appeal, the appellant shall pay the filing fee as provided in Iowa Rule of Appellate Procedure 6.702(1) or request a waiver or deferral of the fee pursuant to rule 6.702(2).

Ordering transcript. Within 7 days after filing the notice of appeal, the appellant shall use a combined certificate to order a transcript from the court reporter. Iowa Rs. App. P. 6.803(1) and 6.804; see Form 2 in rule 6.1401.

Transmission of record. Within 30 days of the filing of the notice of appeal, the appellant shall request the clerk of the district court to transmit the record to the clerk of the supreme court. Iowa R. App. P. 6.204. In Iowa Code chapter 232 cases, the court reporter then has 30 days to file the transcript. Iowa R. App. P. 6.803(3)(b).

Disposition of appeal. After reviewing the petition on appeal, any response, any reply, and the record, the appellate court

may affirm or reverse, remand, or set the case for full briefing as directed by the court. Iowa Rs. App. P. 6.205(1) and 6.902(1)(d). If the court of appeals affirms or reverses the court's order, or remands the case, further review pursuant to Iowa Rule of Appellate Procedure 6.1103 may be sought. The court of appeals' refusal to grant full briefing shall not constitute grounds for further review by the supreme court. Iowa R. App. P. 6.205(2).

[2] The petition on appeal should clearly, concisely, and comprehensively state the material relevant facts, legal issues, and supporting legal authority as they relate to the issues presented for appeal. The petition should present all relevant case law and present the best legal arguments available in state and federal law for the client's position. The petition should include novel legal arguments if there is a chance of developing favorable law in support of the client's claim.

[3] The attorney shall keep the client informed of the status of the appeal. The client should be informed of the date, time, and place scheduled for oral argument of the appeal.

26. Timely review ruling and discuss its implications with the client.

Commentary

[1] The attorney shall communicate the result of the appeal and its implications immediately upon learning of the decision, so the client does not find out from another source, and the attorney shall provide the client with a copy of the appellate decision.

27. Consider and discuss further review options.

Commentary

[1] If the court of appeals affirms or reverses the court's order, or remands the case, further review pursuant to Iowa Rule of Appellate Procedure 6.1103 may be sought. The court of appeals' refusal to grant full briefing shall not constitute grounds for further review by the supreme court. Iowa R. App. P. 6.205(2).

CHAPTER 62
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REPRESENTING CHILDREN IN CUSTODY CASES

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CHAPTER 62

IOWA STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING CHILDREN IN CUSTODY CASES

I. Introduction

[1] Children deserve to have custody proceedings conducted in the manner least harmful to them and most likely to provide judges with the facts needed to decide the case. The Iowa Standards of Practice for Lawyers Representing Children in Custody Cases (Standards) are a model for good practice and consistency in the appointment and performance of lawyers representing children in Iowa custody cases.

[2] These Standards distinguish two distinct types of lawyers for children: (1) the Child's Attorney, who provides independent legal representation in a traditional attorney-client relationship, giving the child a strong voice in the proceedings; and (2) the Guardian ad Litem, who as a lawyer independently investigates, assesses, and advocates the child's best interests. While some courts in the past have appointed a lawyer, often called a Guardian ad Litem, to report or testify on the child's best interests and related information, this is not a lawyer's role under these Standards.

[3] These Standards seek to keep the best interests of children at the center of the court's attention and to build public confidence in a just and fair court system that works to promote the best interests of children. These Standards promote quality control, professionalism, clarity, uniformity, and predictability. They require that: (1) all participants in a case know the duties, powers, and limitations of the appointed role; and (2) lawyers have sufficient training, qualifications, compensation, time, and authority to do their jobs properly with the support and cooperation of the courts and other institutions.

[4] These Standards do not add obligations to the Iowa Rules of Professional Conduct, but like the comments to those rules, they provide guidance to attorneys representing children in custody cases for practicing in compliance with the rules. In the event of any conflict between these Standards and a Rule of Professional Conduct, the requirements of the rule take precedence.

II. Scope and Definitions

A. Scope

These Standards apply to the appointment and performance of lawyers serving as advocates for children or their interests in any case where temporary or permanent legal custody, physical custody, parenting plans, parenting time, access, or visitation are adjudicated, including but not limited to divorce, custody, domestic violence, contested adoptions, and contested private guardianship cases.

B. Definitions

- 1. “Child’s Attorney”:** A lawyer who provides independent legal counsel for a child, and who owes the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client.
- 2. “Guardian ad Litem”:** A lawyer who provides independent legal services for the purpose of protecting a child’s best interests without being bound by the child’s directives or objectives.

Commentary

[1] A lawyer should be either a Child’s Attorney or a Guardian ad Litem, not both. The duties common to both roles are found in Part III of these Standards. The unique duties of each are described separately in Parts IV and V. The essential distinction between the two lawyer roles is that the Guardian ad Litem investigates and advocates the best interests of the child as a lawyer in the litigation, while the Child’s Attorney is a lawyer who represents the child as a client. Neither kind of lawyer is a witness. Form should follow function in deciding which kind of lawyer to appoint. The role and duties of the lawyer should be tailored to the reasons for the appointment and the needs of the child.

[2] The role of “Guardian ad Litem” has become muddled through different usages in different states, with varying connotations. It is a venerable legal concept that has often been stretched beyond recognition to serve fundamentally new functions, such as parenting coordinator, referee, facilitator, arbitrator, evaluator, mediator, and advocate. Asking one Guardian ad Litem to perform several roles at once, to be all things to all people, is a messy, ineffective expedient. A court seeking expert or lay opinion testimony, written reports, or other nontraditional services should appoint an individual for that purpose, such as a Child and Family Reporter (CFR), and make clear that that person is not serving as a lawyer and is not a party. This person can be either a nonlawyer or a lawyer who chooses to serve in a

volunteer nonlawyer capacity.

III. Duties of All Lawyers for Children

In addition to their general ethical duties as lawyers and the specific duties set out in Parts IV and V, Child’s Attorneys and Guardians ad Litem also have the duties outlined in this section.

A. Accepting appointment

The lawyer should accept an appointment only with a full understanding of the issues and functions to be performed. If the appointed lawyer considers parts of the appointment order confusing or incompatible with the lawyer’s ethical duties, the lawyer should (1) decline the appointment, or (2) inform the court of the conflict and ask the court to clarify or change the terms of the order, or (3) both.

B. Lawyer’s roles

A lawyer appointed as a Child’s Attorney or Guardian ad Litem should not play any other role in the case and should not testify, file a report, or make recommendations except as ordered by the court when appointed in cases under Iowa Code chapter 600, 600A, or both.

Commentary

[1] Neither a Child’s Attorney nor a Guardian ad Litem should be a witness, which means that the lawyer should not be cross-examined and more importantly should not testify or make a written or oral report or recommendation to the court but instead should offer traditional evidence-based legal arguments just as any other lawyer would. However, explaining what result a client wants, or proffering what one hopes to prove, is not testifying; those are things all lawyers do.

[2] If these Standards are properly applied, it will not be possible for courts to make a dual appointment, but there may be cases in which such an appointment was made before these Standards were adopted. The Child’s Attorney role involves a confidential relationship with privileged communications. Because the child has a right to confidentiality and advocacy of the child’s position, the Child’s Attorney can never abandon this role while remaining involved in the case in any way. Once a lawyer has an attorney-client relationship with a child, the lawyer cannot and should not assume any other role for the child, especially as Guardian ad Litem or witness or CFR who investigates and makes a report.

C. Independence

The lawyer should be independent from the court and other participants in the litigation and unprejudiced and uncompromised in the lawyer's independent action. The lawyer has the right and the responsibility to exercise independent professional judgment in carrying out the duties the court assigns and to participate in the case as fully and freely as a lawyer for a party.

Commentary

[1] The lawyer should not prejudge the case. A lawyer may receive payment from a court, a government entity, or even from a parent, relative, or other adult so long as the lawyer retains the full authority for independent action.

D. Limited appointments

The court may limit a lawyer's appointment to a specific issue and direct the lawyer accordingly.

E. Initial tasks

Immediately after being appointed, the lawyer should review the file. The lawyer should inform other parties or counsel of the appointment and that as counsel of record the lawyer should receive copies of pleadings, discovery exchanges, and reasonable notification of hearings and of major changes of circumstances affecting the child.

F. Meeting with the child

The lawyer should meet with the child, adapting all communications to the child's age, level of education, cognitive development, cultural background, and degree of language acquisition, using an interpreter if necessary. The lawyer should inform the child about the court system, the proceedings, and the lawyer's responsibilities. The lawyer should elicit and assess the child's views.

Commentary

[1] Establishing and maintaining a relationship with a child is the foundation of representation. Competent representation requires a child-centered approach and developmentally appropriate communication. All appointed lawyers should meet with the child and focus on the needs and circumstances of the individual child. Even nonverbal children can reveal

much about their needs and interests through their behaviors and developmental levels. Meeting with the child also allows the lawyer to assess the child's circumstances, often leading to a greater understanding of the case, which may lead to creative solutions in the child's interest.

[2] The nature of the legal proceeding or issue should be explained to the child in a developmentally appropriate manner. The lawyer must speak clearly, precisely, and in terms the child can understand. A child may not understand legal terminology. Also, because of a particular child's developmental limitations, the lawyer may not completely understand what the child says. Therefore, the lawyer must learn how to ask developmentally appropriate, nonsuggestive questions and how to interpret the child's responses. The lawyer may work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication.

[3] While the lawyer should always take the child's point of view into account, caution should be used because the child's stated views and desires may vary over time or may be the result of fear, intimidation, or manipulation. Lawyers may need to collaborate with other professionals to gain a full understanding of the child's needs and wishes.

G. Pretrial responsibilities

The lawyer should:

- 1. Conduct thorough, continuing, and independent discovery and investigations.**
- 2. Develop a theory and strategy of the case to implement at hearings, including presentation of factual and legal issues.**
- 3. Stay apprised of other court proceedings affecting the child, the parties, and other household members.**
- 4. Attend meetings involving issues within the scope of the appointment.**
- 5. Take any necessary and appropriate action to expedite the proceedings.**
- 6. Participate in, and when appropriate, initiate negotiations and mediation. The lawyer should clarify, when necessary, that the lawyer is not acting as a mediator. A lawyer who participates in a mediation should be bound by the confidentiality and**

privilege rules governing the mediation.

- 7. Participate in depositions, pretrial conferences, and hearings.**
- 8. File or make petitions, motions, responses, or objections when necessary.**
- 9. Where appropriate, within a lawyer's area of competency and not prohibited by law, request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment.**

Commentary

[1] The lawyer should investigate the facts of the case to get a sense of the people involved and the real issues in the case, just as any other lawyer would. Guardians ad Litem have additional investigation duties described in Standard V.D.

[2] By attending relevant meetings, the lawyer can present the child's perspective, gather information, and sometimes help negotiate a full or partial settlement. The lawyer may not need to attend if another person involved in the case, such as a social worker, can obtain information or present the child's perspective, or when the meeting will not be materially relevant to any issues in the case.

[3] The lawyer is in a pivotal position in negotiations. The lawyer should attempt to resolve the case in the least adversarial manner possible, considering whether therapeutic intervention, parenting or co-parenting education, mediation, or other dispute resolution methods are appropriate. The lawyer may effectively assist negotiations of the parties and their lawyers by focusing on the needs of the child, including where appropriate the impact of domestic violence. Settlement frequently obtains at least short-term relief for all parties involved and is often the best way to resolve a case. The lawyer's role is to advocate the child's interests and point of view in the negotiation process. If a party is legally represented, it is unethical for a lawyer to negotiate with the party directly without the consent of the party's lawyer.

[4] The lawyer should file any appropriate pleadings on behalf of the child, including responses to the pleadings of other parties, to ensure that appropriate issues are properly before the court and expedite the court's consideration of issues important to the child's interests. Where available under state law or court rules or by permission of the court, relief requested may include, but is not limited to: (1) a mental or physical examination of a

party or the child; (2) a parenting, custody, or visitation evaluation; (3) an increase, decrease, or termination of parenting time; (4) services for the child or family; (5) contempt for noncompliance with a court order; (6) a protective order concerning the child's privileged communications; and (7) dismissal of petitions or motions.

[5] The child's interests may be served through proceedings not connected with the case in which the lawyer is participating. For example, issues to be addressed may include: (1) child support; (2) delinquency or status offender matters; (3) Supplemental Security Income and other public benefits access; (4) mental health proceedings; (5) visitation, access, or parenting time with parents, siblings, or third parties; (6) paternity; (7) personal injury actions; (8) school or education issues, especially for a child with disabilities; (9) guardianship; (10) termination of parental rights; (11) adoption; and (12) a protective order concerning the child's tangible or intangible property.

H. Hearings

The lawyer should participate actively in all hearings and conferences with the court on issues within the scope of the appointment. Specifically, the lawyer should:

- 1. Introduce herself or himself to the court as the Child's Attorney or Guardian ad Litem at the beginning of any hearing.**
- 2. Make appropriate motions, including motions in limine and evidentiary objections, file briefs, and preserve issues for appeal, as appropriate.**
- 3. Present and cross-examine witnesses and offer exhibits as necessary.**
- 4. If a child is to meet with the judge or testify, prepare the child, familiarizing the child with the places, people, procedures, and questioning that the child will be exposed to, and seek to minimize any harm to the child from the process.**
- 5. Seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner and that testimony is presented in a manner that is admissible.**
- 6. Where appropriate, introduce evidence and make arguments on the child's competency to testify or the reliability of the child's testimony or out-of-court statements. The lawyer should be**

familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility.

7. Make a closing argument, proposing specific findings of fact and conclusions of law.

8. Ensure that a written order is made and that it conforms to the court's oral rulings and statutorily required findings and notices.

Commentary

[1] Although the lawyer's position may overlap with the position of one or more parties, the lawyer should be prepared to participate fully in any proceedings and not merely defer to the other parties. The lawyer should address the child's interests, describe the issues from the child's perspective, keep the case focused on the child's needs, discuss the effect of various dispositions on the child, and, when appropriate, present creative alternative solutions to the court.

[2] A brief formal introduction should not be omitted, because in order to make an informed decision on the merits, the court must be mindful of the lawyer's exact role, with its specific duties and constraints. Even though the appointment order states the nature of the appointment, judges should be reminded at each hearing which role the lawyer is playing.

[3] The lawyer's preparation of the child should include attention to the child's developmental needs and abilities. The lawyer should also prepare the child for the possibility that the judge may render a decision against the child's wishes, explaining that such a result would not be the child's fault.

[4] If the child does not wish to testify or would be harmed by testifying, the lawyer should seek a stipulation of the parties not to call the child as a witness or should seek a protective order from the court. The lawyer should seek to minimize adverse consequences by seeking any appropriate accommodations permitted by law so that the child's views are presented to the court in the manner least harmful to the child, such as having the testimony taken informally in chambers without the parents present. The lawyer should seek any necessary assistance from the court, including location of the testimony, determination of who will be present, and restrictions on the manner and phrasing of questions posed to the child. The child should be told beforehand whether in-chambers testimony will be shared with others, such as parents who might be excluded from chambers.

[5] Questions to the child should be phrased consistently with the law

and research regarding children's competency, memory, and suggestibility. The information a child gives is often misleading, especially if adults have not understood how to ask children developmentally appropriate questions and how to interpret their answers properly. The lawyer must become skilled at recognizing the child's developmental limitations. It may be appropriate to present expert testimony on the issue or have an expert present when a young child is directly involved in the litigation to point out any developmentally inappropriate phrasing of questions.

[6] The competency issue may arise in the unusual circumstance of the child being called as a live witness, as well as when the child's input is sought by other means such as in-chambers meetings, closed-circuit television testimony, etc. Iowa has no presumptive ages of competency; rather, courts engage in more flexible, case-by-case analyses. Competency to testify involves the abilities to perceive and relate. If necessary and appropriate, the lawyer should present expert testimony to establish competency or reliability or to rehabilitate any impeachment of the child on those bases.

I. Appeals

- 1. If an appeal on behalf of the child is permitted by state law, and if it has been decided pursuant to Standard IV.D or V.F that such an appeal is necessary, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal. See Iowa Rule of Appellate Procedure 6.109(4).**
- 2. The lawyer should participate in any appeal filed by another party concerning issues relevant to the child and within the scope of the appointment, unless discharged.**
- 3. When the appeals court's decision is received, the lawyer should explain it to the child.**

Commentary

[1] The lawyer should take a position in any appeal filed by a party, consistent with the other provisions in these Standards. If the child's interests are affected by the issues raised in the appeal, the lawyer should seek an appointment on appeal or seek appointment of appellate counsel.

[2] As with other court decisions, the lawyer should explain in terms the child can understand the nature and consequences of the appeals court's

decision, whether there are further appellate remedies, and what more, if anything, will be done in the trial court following the decision.

J. Enforcement

The lawyer should monitor the implementation of the court's orders and address any noncompliance.

K. End of representation

When the representation ends, the lawyer should inform the child in a developmentally appropriate manner.

IV. Child's Attorneys

A. Ethics and confidentiality

- 1. Child's Attorneys are bound by Iowa's ethics rules in all matters.**
- 2. A Child's Attorney appointed to represent two or more children should remain alert to the possibility of a conflict that could require the lawyer to decline representation or withdraw from representing all of the children.**

Commentary

[1] The child is an individual with independent views. To ensure that the child's independent voice is heard, the Child's Attorney should advocate the child's articulated position, and owes traditional duties to the child as client, subject to Iowa Rules of Professional Conduct 32:1.2(a) and 32:1.14.

[2] The Iowa Rules of Professional Conduct impose a broad duty of confidentiality concerning all "information relating to the representation of a client," but they also modify the traditional exceptions to confidentiality. Under rule 32:1.6, a lawyer may reveal information without the client's informed consent "to the extent the lawyer reasonably believes necessary . . . to prevent reasonably certain death or substantial bodily harm," or "to comply with other law or a court order," or when "the disclosure is impliedly authorized in order to carry out the representation." Also, according to rule 32:1.14(c), "the lawyer is impliedly authorized under rule 32:1.6 to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests" when acting under rule 32:1.14 to protect a client with "diminished capacity" who "is at risk of substantial physical,

financial, or other harm.”

[3] Iowa Rule of Professional Conduct 32:1.7 provides that “a lawyer shall not represent a client if . . . the representation of one client will be directly adverse to another client” Some diversity between siblings’ views and priorities does not pose a direct conflict. But when two siblings aim to achieve fundamentally incompatible outcomes in the case as a whole, they are “directly adverse.” Comment [8] to rule 32:1.7 states that “a conflict of interest exists if there is a significant risk that a lawyer’s ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited [A] lawyer asked to represent several individuals . . . is likely to be materially limited in the lawyer’s ability to recommend or advocate all possible positions that each might take because of the lawyer’s duty of loyalty to the others. . . . The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer’s independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.”

B. Informing and counseling the client

In a developmentally appropriate manner, the Child’s Attorney should:

- 1. Meet with the child upon appointment, before court hearings, when apprised of emergencies or significant events affecting the child and at other times as needed to gain the child’s trust and establish a rapport with the child.**
- 2. Explain to the child what is expected to happen before, during, and after each hearing.**
- 3. Advise the child and provide guidance, communicating in a way that maximizes the child’s ability to direct the representation.**
- 4. Discuss each substantive order and its consequences with the child.**

Commentary

[1] Meeting with the child is important before court hearings and case reviews. Such in-person meetings allow the lawyer to explain to the child what is happening, what alternatives might be available, and what will happen next.

[2] The Child's Attorney has an obligation to explain clearly, precisely, and in terms the child can understand, the meaning and consequences of the child's choices. A child may not understand the implications of a particular course of action. The lawyer has a duty to explain in a developmentally appropriate way such information as will assist the child in having maximum input in decision-making. The lawyer should inform the child of the relevant facts and applicable laws and the ramifications of taking various positions, which may include the impact of such decisions on other family members or on future legal proceedings. The lawyer may express an opinion concerning the likelihood of the court or other parties accepting particular positions. The lawyer may inform the child of an expert's recommendations germane to the issue.

[3] As in any other attorney-client relationship, the lawyer may express the lawyer's assessment of the case, the best position for the child to take, and the reasons underlying such recommendation, and the lawyer may counsel against the pursuit of particular goals sought by the client. However, a child may agree with the lawyer for inappropriate reasons. A lawyer must remain aware of the power dynamics inherent in adult-child relationships, recognize that the child may be more susceptible to intimidation and manipulation than some adult clients, and strive to detect and neutralize those factors. The lawyer should carefully choose the best time to express the lawyer's assessment of the case. The lawyer needs to understand what the child knows and what factors are influencing the child's decision. The lawyer should attempt to determine from the child's opinion and reasoning what factors have been most influential or have been confusing or glided over by the child.

[4] The Child's Attorney has dual fiduciary duties to the child that must be balanced. On the one hand, the lawyer has a duty to ensure that the child is given the information necessary to make an informed decision, including advice and guidance. On the other hand, the lawyer has a duty not to overbear the will of the child. While the lawyer may attempt to persuade the child to accept a particular position, the lawyer may not advocate a position contrary to the child's expressed position except as provided by the applicable ethical standards.

[5] Consistent with the rules of confidentiality and with sensitivity to the child's privacy, the lawyer should consult with the child's therapist and other experts and obtain appropriate records. For example, a child's therapist may help the child to understand why an expressed position is dangerous, foolish, or not in the child's best interests. The therapist might also assist the lawyer in understanding the child's perspective, priorities, and individual needs. Similarly, significant persons in the child's life may educate the lawyer about

the child's needs, priorities, and previous experiences.

[6] As developmentally appropriate, the Child's Attorney should consult the child prior to any settlement becoming binding.

[7] The child is entitled to understand what the court has done and what that means to the child, at least with respect to those portions of the order that directly affect the child. Children sometimes assume that orders are final and not subject to change. Therefore, the lawyer should explain whether the order may be modified at another hearing, or whether the actions of the parties may affect how the order is carried out.

C. Client decisions

The Child's Attorney should abide by the child's decisions about the objectives of the representation with respect to each issue on which the child is competent to direct the lawyer and does so. The Child's Attorney should pursue the child's expressed objectives unless the child requests otherwise and follow the child's direction throughout the case.

Commentary

[1] The child is entitled to determine the overall objectives to be pursued. The Child's Attorney may make certain decisions about the manner of achieving those objectives, particularly on procedural matters, as any adult's lawyer would. These Standards do not require the lawyer to consult with the child on matters that would not require consultation with an adult client, or to discuss with the child issues for which the child's developmental limitations make it not feasible to obtain the child's direction, as with an infant or preverbal child.

- 1. The Child's Attorney should make a separate determination whether the child has "diminished capacity" pursuant to Iowa Rule of Professional Conduct 32:1.14 with respect to each issue for which the child is called upon to direct the representation.**

Commentary

[1] These Standards do not presume that children of certain ages are "impaired," "disabled," "incompetent," or lack capacity to determine their position in litigation. Disability is contextual, incremental, and may be intermittent. The child's ability to contribute to a determination of the child's position is functional, depending upon the particular position and the

circumstances prevailing at the time the position must be determined. Therefore, a child may be able to determine some positions in the case but not others. Similarly, a child may be able to direct the lawyer with respect to a particular issue at one time but not at another.

2. If the child does not express objectives of representation, the Child's Attorney should make a good faith effort to determine the child's wishes and advocate according to those wishes as if the child had expressed them. If a child does not or will not express objectives regarding a particular issue or issues, the Child's Attorney should determine and advocate the child's legal interests or request the appointment of a Guardian ad Litem.

Commentary

[1] There are circumstances in which a child is unable to express any positions, as in the case of a preverbal child. Under such circumstances, the Child's Attorney should represent the child's legal interests or request appointment of a Guardian ad Litem. "Legal interests" are distinct from "best interests" and from the child's objectives. Legal interests are interests of the child that are specifically recognized in law and that can be protected through the courts. A child's legal interests could include, for example, depending on the nature of the case: a special needs child's right to appropriate educational, medical, or mental health services; helping assure that children needing residential placement are placed in the least restrictive setting consistent with their needs; a child's child support, governmental, and other financial benefits; visitation with siblings, family members, or others the child wishes to maintain contact with; and a child's due process or other procedural rights.

[2] The child's failure to express a position is different from being unable to do so and from directing the lawyer not to take a position on certain issues. The child may have no opinion with respect to a particular issue or may delegate the decision-making authority. The child may not want to assume the responsibility of expressing a position because of loyalty conflicts or the desire not to hurt one of the parties. In that case, the lawyer is free to pursue the objective that appears to be in the client's legal interests based on information the lawyer has and positions the child has already expressed. A position chosen by the lawyer should not contradict or undermine other issues about which the child has expressed a viewpoint. However, before reaching that point the lawyer should clarify with the child whether the child wants the lawyer to take a position, remain silent with respect to that issue, or express a point of view only if the party is out of the room. The lawyer is

then bound by the child's directive.

- 3. If the Child's Attorney determines that pursuing the child's expressed objective would put the child at risk of substantial physical, financial, or other harm, and is not merely contrary to the lawyer's opinion of the child's interests, the lawyer may request appointment of a separate Guardian ad Litem and continue to represent the child's expressed position, unless the child's position is prohibited by law or without any factual foundation. The Child's Attorney should not reveal the reason for the request for a Guardian ad Litem, which would compromise the child's position, unless such disclosure is authorized by the applicable ethics rule on confidentiality.**

Commentary

[1] One of the most difficult ethical issues for lawyers representing children occurs when the child is able to express a position and does so, but the lawyer believes that the position chosen is wholly inappropriate or could result in serious injury to the child. This is particularly likely to happen with respect to an abused child whose home is unsafe, but who desires to remain or return home. A child may desire to live in a dangerous situation because it is all the child knows, because of a feeling of blame or of responsibility to take care of a parent, or because of threats or other reasons to fear the parent. The child may choose to deal with a known situation rather than risk the unknown.

[2] It should be remembered in this context that the lawyer is bound to pursue the client's objectives only through means permitted by law and ethical rules. The lawyer may be subject personally to sanctions for taking positions that are not well grounded in fact and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

[3] In most cases the ethical conflict involved in asserting a position that would seriously endanger the child, especially by disclosure of privileged information, can be resolved through the lawyer's counseling function, if the lawyer has taken the time to establish rapport with the child and gain the child's trust. While the lawyer should be careful not to apply undue pressure to the child, the lawyer's advice and guidance can often persuade the child to change a dangerous or imprudent position or at least identify alternative choices in case the court denies the child's first choice.

[4] If the child cannot be persuaded, the lawyer has a duty to safeguard

the child's interests by requesting appointment of a Guardian ad Litem. As a practical matter, this may not adequately protect the child if the danger to the child was revealed only in a confidential disclosure to the lawyer, because the Guardian ad Litem may never learn of the disclosed danger.

[5] Iowa Rule of Professional Conduct 32:1.14 provides that "when the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action" and "the lawyer is impliedly authorized under rule 32:1.6 to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests."

[6] If there is a substantial danger of serious injury or death, the lawyer must take the minimum steps necessary to ensure the child's safety, respecting and following the child's direction to the greatest extent possible consistent with the child's safety and ethical rules.

4. The Child's Attorney should discuss with the child whether to ask the judge to meet with the child and whether to call the child as a witness. The decision should include consideration of the child's needs and desires to do either of these, any potential repercussions of such a decision or harm to the child from testifying or being involved in the case, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions that may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand cross-examination. Ultimately, the Child's Attorney is bound by the child's direction concerning testifying.

Commentary

[1] Decisions about the child testifying should be made individually based on the circumstances. If the child has a therapist, the Child's Attorney should consult the therapist about the decision and for help in preparing the child. In the absence of compelling reasons, a child who has a strong desire to testify should be called to do so.

D. Appeals

If an appeal on behalf of the child is permitted, the Child's Attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If the child, after

consultation, wishes to appeal the order, and the appeal has merit, the Child's Attorney should appeal. If the Child's Attorney determines that an appeal would be frivolous or that the Child's Attorney lacks the expertise necessary to handle the appeal, the Child's Attorney should notify the court and seek to be discharged or replaced.

Commentary

[1] The Child's Attorney should explain not only any legal possibility of an appeal, but also the ramifications of filing an appeal, including delaying conclusion of the case, and what will happen pending a final decision.

E. Obligations after initial disposition

The Child's Attorney should perform, or when discharged, seek to ensure, continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child's placement or services, so long as the court maintains its jurisdiction.

Commentary

[1] Representing a child continually presents new tasks and challenges due to the passage of time and the changing needs of the child. The Child's Attorney should stay in touch with the child, the parties or their counsel, and any other caretakers, case workers, and service providers throughout the term of appointment to attempt to ensure that the child's needs are met and that the case moves quickly to an appropriate resolution.

F. End of representation

The Child's Attorney should discuss the end of the legal representation with the child, what contacts, if any, the Child's Attorney and the child will continue to have, and how the child can obtain assistance in the future if necessary.

V. Guardians ad Litem

A. Ethics

Guardians ad Litem are bound by Iowa's ethics rules in all matters except as dictated by the absence of a traditional attorney-client relationship with the child and the particular requirements of their appointed tasks.

Even outside of an attorney-client relationship, all lawyers have certain ethical duties toward the court, parties in a case, the justice system, and the public.

Commentary

[1] Siblings with conflicting views do not pose a conflict of interest for a Guardian ad Litem, because such a lawyer is not bound to advocate a client's objective. A Guardian ad Litem in such a case should report the relevant views of all the children in accordance with Standard V.E.3, and advocate the children's best interests in accordance with Standard V.E.1.

B. Confidentiality

A child's communications with the Guardian ad Litem are subject to Iowa's ethics rules on attorney-client confidentiality, except that the lawyer may also use the child's confidences for the purposes of the representation without disclosing them.

Commentary

[1] Iowa Rule of Professional Conduct 32:1.6(a) bars any release of information except for disclosures that are "impliedly authorized in order to carry out the representation." Under rule 32:1.6, a lawyer may reveal confidences "to prevent reasonably certain death or substantial bodily harm," "to comply with other law or a court order," or for other named reasons. As for communications that are not subject to disclosure under these or other applicable ethics rules, a Guardian ad Litem may use the communications to further the child's best interests without disclosing them. An example of this distinction is if a child tells the lawyer that a parent takes drugs: the lawyer may seek and present other evidence of the drug use, but may not reveal that the initial information came from the child. For more discussion of exceptions to confidentiality, see the Commentary to Standard IV.A.

C. Explaining role to the child

In a developmentally appropriate manner, the Guardian ad Litem should explain to the child that the Guardian ad Litem will (1) investigate and advocate the child's best interests, (2) investigate the child's views relating to the case and will report them to the court unless the child requests that they not be reported, and (3) use information from the child for those purposes, but (4) not necessarily advocate what the child wants as a lawyer for a client would.

D. Investigations

The Guardian ad Litem should conduct thorough, continuing, and independent investigations, including:

- 1. Reviewing any court files of the child and of siblings who are minors or are still in the home, potentially relevant court files of parties and other household members, and case-related records of any social service agency and other service providers.**
- 2. Reviewing the child's social services records, if any, mental health records (except as otherwise provided in Standard VI.A.3), drug and alcohol-related records, medical records, law enforcement records, school records, and other records relevant to the case.**
- 3. Contacting lawyers for the parties, and nonlawyer representatives or court-appointed special advocates (CASAs).**
- 4. Contacting and meeting with the parties with permission of their lawyers.**
- 5. Interviewing individuals significantly involved with the child, who may in the Guardian ad Litem's discretion include, if appropriate, case workers, caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses.**
- 6. Reviewing the relevant evidence personally, rather than relying on other parties' or counsel's descriptions and characterizations of it.**
- 7. Staying apprised of other court proceedings affecting the child, the parties, and other household members.**

Commentary

[1] Relevant files to review include those concerning child protective services, developmental disabilities, juvenile delinquency, mental health, and educational agencies. These records can provide a more complete context for the current problems of the child and family. Information in the files may suggest additional professionals and lay witnesses who should be contacted.

[2] Though courts should order automatic access to records, the Guardian ad Litem may still need to use subpoenas or other discovery or motion procedures to obtain the relevant records, especially those pertaining to the parties.

[3] Meetings with the child and all parties are among the most important elements of a competent investigation. However, there may be a few cases where a party's lawyer will not allow the Guardian ad Litem to communicate with the party. Iowa Rule of Professional Conduct 32:4.2 prohibits such contact without consent of the party's lawyer. In some such cases, the Guardian ad Litem may be able to obtain permission for a meeting with the party's lawyer present. When the party has no lawyer, rule 32:4.3 allows contact but requires reasonable efforts to correct any apparent misunderstanding of the Guardian ad Litem's role.

[4] The parties' lawyers may have information not included in any of the available records. They can provide information on their clients' perspectives.

E. Advocating the child's best interests

- 1. Any assessment of, or argument on, the child's best interests should be based on objective criteria as set forth in the law related to the purposes of the proceedings.**
- 2. Guardians ad Litem should bring to the attention of the court any facts that when considered in context seriously call into question the advisability of any agreed settlement.**
- 3. At hearings on custody or parenting time, Guardians ad Litem should present the child's expressed desires (if any) to the court, except for those that the child expressly does not want presented.**

Commentary

[1] Determining a child's best interests is a matter of gathering and weighing evidence, reaching factual conclusions, and then applying legal standards to those interests. Factors in determining a child's interests are generally stated in Iowa's statutes and case law, and Guardians ad Litem must be familiar with these factors and how courts apply them. A child's desires are usually one of many factors in deciding custody and parenting time, and the weight given the desires varies with age and circumstances.

[2] A Guardian ad Litem is functioning in a nontraditional role by

determining the position to be advocated independently of the client. The Guardian ad Litem should base this determination on objective criteria concerning the child's needs and interests and not merely on the Guardian ad Litem's personal values, philosophies, and experiences. A best-interests case should be based on Iowa's governing statute and case law, or a good-faith argument for modification of case law. The Guardian ad Litem should not use any other theory, doctrine, model, technique, ideology, or personal rule without explicitly arguing for it in terms of governing law or the best interests of the child. The trier of fact needs to understand any such theory in order to make an informed decision in the case.

[3] The Guardian ad Litem must consider the child's individual needs. The child's various needs and interests may be in conflict and must be weighed against each other. The child's developmental level, including the child's sense of time, is relevant to an assessment of needs. The lawyer may seek the advice and consultation of experts and other knowledgeable people in determining and weighing such needs and interests.

[4] As a general rule Guardians ad Litem should encourage, not undermine, settlements. However, in unusual cases where the Guardian ad Litem reasonably believes the settlement would endanger the child and the court would not approve the settlement were it aware of certain facts, the Guardian ad Litem should bring those facts to the court's attention. This should not be done by ex parte communication. The Guardian ad Litem should ordinarily discuss the Guardian ad Litem's concerns with the parties and counsel in an attempt to change the settlement before involving the judge.

F. Appeals

If an appeal on behalf of the child is permitted, the Guardian ad Litem should appeal when the Guardian ad Litem believes that (1) the trial court's decision is significantly detrimental to the child's welfare, (2) an appeal could be successful considering the law, the standard of review, and the evidence that can be presented to the appellate court, and (3) the probability and degree of benefit to the child outweighs the probability and degree of detriment to the child from extending the litigation and expense that the parties will undergo. See Iowa R. App. P. 6.109(4).

VI. Training

Training for lawyers representing children in custody cases should cover:

- 1. Relevant state and federal laws, agency regulations, court decisions, and court rules.**
- 2. The legal standards applicable in each kind of case in which the lawyer may be appointed, including child custody and visitation law.**
- 3. Applicable representation guidelines and standards.**
- 4. The court process and key personnel in child-related litigation, including custody evaluations and mediation.**
- 5. Children's development, needs, and abilities at different ages.**
- 6. Communicating with children.**
- 7. Preparing and presenting a child's viewpoints, including child testimony and alternatives to direct testimony.**
- 8. Recognizing, evaluating, and understanding evidence of child abuse and neglect.**
- 9. Family dynamics and dysfunction, domestic violence, and substance abuse.**
- 10. The multidisciplinary input required in child-related cases, including information on local experts who can provide evaluation, consultation, and testimony.**
- 11. Available services for child welfare, family preservation, medical care, mental health, education, and special needs, including placement, evaluation and diagnostic, and treatment services, and provisions and constraints related to agency payment for services.**
- 12. Basic information about state and federal laws and treaties on child custody jurisdiction, enforcement, and child abduction.**

Commentary

[1] Courts, bar associations, and other organizations should sponsor, fund, and participate in training. They should also offer advanced and new-developments training and provide mentors for lawyers who are new to child

representation. Training in custody law is especially important because not everyone seeking to represent children will have a family law background. Lawyers must be trained to distinguish between the different kinds of cases in which they may be appointed and the different legal standards to be applied.

[2] Training should address the impact of spousal or domestic partner violence on custody and parenting time and any statutes or case law regarding how allegations or findings of domestic violence should affect custody or parenting time determinations. Training should also sensitize lawyers to the dangers that domestic violence victims and their children face in attempting to flee abusive situations and how that may affect custody awards to victims.

CHAPTER 63
IOWA STANDARDS OF PRACTICE FOR
CHILD AND FAMILY REPORTERS IN CHILD CUSTODY CASES

I. Introduction

II. Role of a Child and Family Reporter

- A. The CFR gathers and reports factual data to the court
- B. The CFR must remain impartial and avoid conflicts of interest
- C. The CFR does not act as an attorney or advocate
- D. The CFR must not serve dual or multiple roles
- E. Payment of the CFR's fees is governed by the court's order of appointment

III. Duties of the Child and Family Reporter

- A. The CFR acts pursuant to the court's order of appointment
- B. The CFR includes all parties in communications with the court or another party
- C. The CFR conducts an appropriate investigation
- D. The CFR preserves confidentiality
- E. The CFR seeks to preserve the safety of all participants in the process
- F. The CFR may include recommendations pursuant to the appointment order

IV. CFR Reports and Records

- A. The CFR prepares a clear, concise, and timely report for the court, the parties, and the parties' counsel
- B. The CFR and the court maintain the confidentiality of the CFR report and files
- C. The CFR as a witness

CHAPTER 63
IOWA STANDARDS OF PRACTICE FOR
CHILD AND FAMILY REPORTERS IN CHILD CUSTODY CASES

I. Introduction

[1] A Child and Family Reporter (CFR) is appointed by the court to gather and report factual information in cases involving the care and custody of minor children and other matters bearing on the interests or rights of children under Iowa Code chapters 598 and 600B. A CFR report provides a brief assessment of home conditions, parenting capabilities, and other matters pertinent to the best interests of the child. The court may appoint an attorney, a mental health professional, or another individual whom the court believes is able to carry out the CFR role.

[2] The purpose of these standards is to provide guidance for CFRs, to promote uniformity, consistency, and accountability in CFR reports; to promote respect for the rights of parties and their children; and to improve custody, visitation, and other outcomes for children.

[3] These standards do not add obligations to the Iowa Rules of Professional Conduct, but like the comments to those rules, they provide guidance to those serving as CFRs in custody cases for practicing in compliance with the CFRs professional ethical obligations and rules of professional conduct. In the event of any conflict between these standards and a rule of professional conduct for attorneys, the requirements of the rule take precedence.

II. Role of a Child and Family Reporter

A. The CFR gathers and reports factual data to the court.

Commentary

[1] The role of the CFR is to gather and report factual information that will assist the court in making custody, visitation, or other decisions related to the welfare of a child. Unless the appointing judge specifies otherwise, the CFR role is limited to gathering and reporting information to the court. The CFR may include recommendations in the report only if the court's appointment order authorizes inclusion of such recommendations.

B. The CFR must remain impartial and avoid conflicts of interest.

Commentary

[1] The CFR must approach all family members and parties with an attitude of respect and openness in order to hear their account of the relevant facts regardless of any allegations that have been made. The CFR must not engage in conduct

manifesting bias or prejudice based on race, religion, ethnicity, disability, age, socioeconomic status, marital status, or sexual orientation against a party, witness, counsel, or other person involved in a case.

[2] The CFR must decline or withdraw from an appointment if the CFR has a conflict of interest, information, or personal relationship that could influence the process or outcome of the investigation. If the CFR has any prior or existing direct or indirect relationship with the parties, their families, their attorneys, material witnesses, or someone else connected with the family, the CFR must consider whether the CFR's impartiality is compromised because of the relationship. The CFR must decline the appointment if:

1. The CFR (or the CFR's law firm) previously advised or acted as counsel for a party, child, or other person closely aligned to a party (such as a spouse or nonmarital partner), or a material witness;
2. The CFR has provided counseling or other services to a child, a party, another member of the family, or a material witness; or
3. The CFR has or had a family relationship or other close personal relationship (including an intimate or dating relationship) with a party, a member of the party's family, a material witness, or counsel of record.

C. The CFR does not act as an attorney or advocate.

Commentary

[1] The CFR serves as an objective and even-handed reporter. The CFR must not provide legal advice or act as an advocate or attorney for the child. The CFR does not conduct depositions or engage in direct or cross-examination of witnesses and does not file motions except as related to performance of the CFR's responsibilities. For example, a CFR might file a motion seeking access to an individual, regarding fees or seeking an additional evaluation, but should not file motions related to the substance of the proceedings. If called as a witness, the CFR may be subject to direct or cross-examination by both parties. The CFR refers the parties to their attorneys for legal advice.

D. The CFR must not serve dual or multiple roles.

Commentary

[1] The CFR must not provide legal, mental health, mediation, or other professional services to any party or the child during the investigation and pendency of the case.

[2] The CFR may not later accept an appointment as an attorney for a child or guardian ad litem in the same case or the same family. The CFR may accept the

separate role of parenting coordinator or arbitrator after all of the CFR's duties are completed and after the court has terminated the CFR appointment, but only with the written, informed consent of all parties.

E. Payment of the CFR's fees is governed by the court's order of appointment.

Commentary

[1] The court's appointment order allocates responsibility for payment of the CFR's fees based on a fixed fee or stated hourly rates. If the appointment order specifies a presumptive maximum, the CFR may not exceed this fee cap without securing permission from the court.

III. Duties of the Child and Family Reporter

A. The CFR acts pursuant to the court's order of appointment.

Commentary

[1] Upon appointment, the CFR should review the court's order of appointment and ask for clarification or modification of the order when necessary. If the order would require the CFR to act beyond the scope of the CFR's competence or perform multiple contradictory roles, the CFR should inform the court. Any issues regarding time needed to complete a report or arrangements for payment of fees should be addressed immediately upon notice of appointment and before beginning any work on the case. If any conflicts or other issues cannot be resolved, the CFR should decline the appointment or request removal from the case.

[2] The CFR appointment terminates at the time specified in the court's order but in no event later than entry of permanent orders or the post-decree order resolving the issue for which the appointment was made.

B. The CFR includes all parties in communications with the court or another party.

Commentary

[1] If the CFR needs to communicate with the court during the course of the appointment, communication should be carried out in writing with copies to the parties and their counsel, or by conference call, or at a status conference or court hearing. If the children are represented by an attorney or guardian ad litem, that individual should be treated as counsel for purposes of these communications.

[2] If the CFR sends a substantive written communication to one party or counsel, the CFR must send a copy of the communication to the opposing party or

counsel and any representative of the child. The CFR must send copies of any documents the CFR files with the court to counsel of record and self-represented parties.

C. The CFR conducts an appropriate investigation.

Commentary

[1] The CFR may investigate only those areas the court has specified in its order of appointment and may not broaden the scope of investigation without obtaining authority from the court in advance. The CFR may not perform a clinical assessment, conduct psychological testing, or conduct drug and alcohol or other evaluations unless specifically ordered by the court. If the CFR believes other evaluations would benefit the parties or the child and assist the court, the CFR should provide this information to the court as soon as possible.

[2] At the outset of the investigation, the CFR should invite all counsel and parties to provide relevant information and documents and a list of witnesses and professionals who can provide relevant information. When possible, the CFR accesses original sources of information and uses multiple sources to investigate any disputed events or facts. The CFR should spend sufficient time interviewing parties and investigating their concerns to gather relevant information to respond to the court's inquiry. The CFR decides whether to conduct home visits, and if no home visits are conducted, the CFR should explain this decision in the CFR's report.

[3] As part of the investigation, the CFR must meet with the child and allow an opportunity for the child to provide information about the child and the child's family. The CFR should communicate with the child in an age-appropriate manner and consider the child's views and wishes. When appropriate, the CFR should observe the child with each parent or party.

[4] In meeting with the parties and the child, the CFR should explain the CFR role, the purpose of the investigation, and how the information the CFR collects will be reported to the court. A party may request to have counsel present during an interview, but the CFR controls the interview and conducts the questioning. The CFR should arrange for a qualified interpreter if a party or the child is not completely comfortable or fluent using the English language.

D. The CFR preserves confidentiality.

Commentary

[1] Information gathered by the CFR is confidential. The CFR may not disclose information about the parties, the child, or the services rendered by the CFR to any person who is not a party or counsel in the case except as necessary to gather

information and complete the investigation and report, or to perform responsibilities related to the court's order of appointment. This prohibition is permanent and includes any writing, lectures, or other media communication by the CFR.

[2] Before obtaining privileged or confidential information about the parties or the children, the CFR must obtain appropriate release forms or court orders. Some third parties or providers may be unaware of the protections that apply to confidential information relating to the parties or the child, but the CFR may only review information after appropriate releases or orders have been provided. If a privilege is not properly waived, a judge may allow a motion to strike reference to the information from the CFR report.

E. The CFR seeks to preserve the safety of all participants in the process.

Commentary

[1] The CFR should inquire at the outset of the investigation about any safety risks related to the investigation for the parties, the child, or others because of any party's mental illness, substance abuse, domestic violence, child abuse, or history of violence against others. The CFR should attempt to conduct the investigation in such a manner as to avoid likely harm to the child, a party, the CFR, or others.

[2] When the CFR suspects or knows that a child is being neglected or abused, the CFR may take appropriate steps to inform law enforcement or the department of human services and must comply with all mandatory professional reporting requirements.

F. The CFR may include recommendations pursuant to the appointment order.

Commentary

[1] If the court's order of appointment authorizes it, the CFR may make recommendations regarding services, parenting schedules, or other matters as directed by the court.

IV. CFR Reports and Records

A. The CFR prepares a clear, concise, and timely report for the court, the parties, and the parties' counsel.

Commentary

[1] The CFR must present the results of the CFR's investigation in a written report to the court with copies delivered to the parties and their counsel. The report sets forth the information the CFR obtained in the course of the investigation. Any recommendations the court requests based on the facts collected should be confined to a separate section at the conclusion of the CFR's report.

[2] The CFR's report should include information about the CFR's investigation process, identifying the persons interviewed and the records reviewed. The report should be as factual and detailed as possible, as well as accurate, objective, and unbiased. The report should clearly identify the sources of all information included. If a party has failed to or refused to participate or provide information, the report should disclose this fact.

[3] The CFR must retain any notes, records, documents, recordings, or other material gathered or created during the investigation so that these materials are available for discovery, trial, appeal, and remand of the case.

B. The CFR and the court maintain the confidentiality of the CFR's report and files.

Commentary

[1] The CFR's report and underlying materials are considered sealed and not open to inspection except with consent of the court. The CFR must maintain the confidentiality of the CFR's file and report and disclose these only to the parties and their counsel or pursuant to court order.

[2] After the CFR's report has been filed and prior to any scheduled hearing in the case, upon request of the parties or their counsel, the CFR must make copies of the CFR's file and any information underlying the report available to the parties and their counsel. This includes disclosure of the names and addresses of all persons the CFR has consulted, CFR notes, and witness statements. However, if the CFR believes that release of any particular information would endanger any person's welfare, the CFR should inform counsel and the court and await further order from the court before releasing the information in question.

C. The CFR as a witness.

Commentary

[1] Pursuant to Iowa Code section 598.12B(2) (2017), the CFR's report must be submitted to the court and available to all parties. The CFR's report will be a part of the record unless the court otherwise orders. Any party may call the CFR as a witness. If called as a witness, the CFR may be cross-examined concerning the report.