**In the Supreme Court of Iowa**

FILED
OCT 16 2013
CLERK SUPREME COURT

| | | |
|---|---|---|
| **In the Matter of the New Rule of Juvenile Procedure 8.36** | ) ) ) | **Order** |

Following a full-day public hearing, and the consideration of extensive written comments, the supreme court has decided to promulgate (1) a new rule of juvenile procedure 8.36 and (2) standards for practice for attorneys who represent parents in juvenile court proceedings. The court has adopted, in part, recommendations made by the Representation Task Force, co-chaired by Judge Susan Christensen and State Public Defender Sam Langholz.

The Task Force was concerned about the need for high-quality representation of parents in juvenile court proceedings. Accordingly, the Task Force recommended to the court that it require attorneys representing parents in juvenile court proceedings to meet an initial training and experience requirement, to complete five hours of continuing legal education in juvenile law each year, and to adhere to certain practice standards.

These proposals were submitted for public comment last fall. While some commenters supported the proposals, others opposed them. Many commenters also had specific suggestions or criticisms. Because of the intense public interest in the proposals, the court decided to reopen the comment period and conduct an all-day public hearing on July 9, 2013. This public hearing included both supporters and opponents of the proposed new rule and proposed standards.

The written comments and the testimony at the public hearing have been extraordinarily helpful to the court. The court thanks the Task Force for its initial work and the commenters and the parties appearing at the public hearing for their important contributions in juvenile court practice.

After considering the various points raised, the court has decided to proceed as follows. The court is promulgating a new rule 8.36 that will apply to attorneys who are appointed to represent parents in juvenile court. Rule 8.36 does not include an initial training or experience requirement. The following are highlights of the rule:

1. Attorneys covered by the rule will be required to complete three hours of accredited CLE annually relating to the legal, ethical, medical, psychological, or social issues arising in juvenile court. These classes can be counted toward the annual CLE requirement and it is expected that they will be available throughout the state at little or no charge.
2. Attorneys covered by the rule will be expected to keep track of relevant coursework they have completed, and to demonstrate compliance with the rule upon request by a judge or by the State Public Defender's office, but there is no separate reporting requirement.
3. The rule will take effect on January 1, 2015, at which time attorneys covered by the rule will have to be in compliance with the CLE requirement before they can take further appointments.

In addition, the court is adopting the proposed standards, substantially in the form recommended by the Task Force. The standards will apply to attorneys representing parents in juvenile court. The court wants to elevate the importance of children's justice issues and believes the standards will help achieve that purpose. These standards of practice do not add obligations to the Iowa Rules of Professional Conduct, but 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 shall take precedence. The standards of practice will not be published as a rule, but will be posted on the Iowa Judicial Branch website.

The actual texts of rule 8.36 and of the standards are attached to this order.

Dated this 16th day of October, 2013.

The Supreme Court of Iowa

By Mark S. Cady

Mark S. Cady, Chief Justice

## PARENT REPRESENTATION

**Rule 8.36 Educational requirements for court-appointed attorneys representing parents.**

**8.36(1)** *Three-hour annual minimum.* Court-appointed attorneys representing parents in juvenile court are required to participate annually in a minimum of three hours of continuing legal education relating to juvenile court proceedings. An attorney shall not accept juvenile court appointment representing a parent unless the attorney has fulfilled this three-hour minimum requirement either in the previous calendar year or earlier in the calendar year of the appointment.

**8.36(2)** *Qualifying courses*.

*a.* For purposes of this rule, "continuing legal education relating to juvenile court proceedings" means instruction that meets all three of the following criteria:

(1) It relates to the legal, ethical, medical, psychological, or social issues arising in juvenile court proceedings.

(2) It has been approved by the Iowa Children's Justice Initiative.

(3) It has been accredited by the commission on continuing legal education.

*b.* The Iowa Children's Justice Initiative is responsible for publicizing courses that meet the criteria of rule 8.36(2). It is anticipated that these courses will be available throughout the state at little or no cost to the attorney.

**8.36(3)** *Recordkeeping.* Court-appointed attorneys representing parents in juvenile court proceedings are responsible for maintaining records of their compliance with this rule and reporting required instruction on the annual report required by Iowa Court Rule 41.4. A judge presiding over a juvenile proceeding, or the State Public Defender, may require an attorney to certify compliance with this rule and to provide the attorney's annual reports and any other records demonstrating compliance with this rule.

**8.36(4)** *Effective date.* This rule applies to court appointments that occur on or after January 1, 2015. Attorneys appointed to represent parents in juvenile court proceedings on or after January 1, 2015, must have completed three hours of continuing legal education relating to juvenile court proceedings either during calendar year 2014 or during calendar year 2015 prior to their appointment.

# 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, 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 shall take precedence.**

The parent's attorney shall:

## 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.

## 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.

**Investigation & 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.

**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:**

## 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

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 his or her 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.

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 (ASFA), 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. §§ 1901–1963~~,~~; the ICWA Regulations, 25 C.F.R. Part 23~~,~~; and the 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 (HIPPA), P.L., 104–192 § 264, 42 U.S.C. § 1320d–2 (in relevant part)
- Public Health Act, 42 U.S.C. Sec. 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

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.)

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.

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, or 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 (ASFA) 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

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.

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.

## 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

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.

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

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

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 he or she 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 his or her rights and responsibilities and try to assist the client in carrying them out.

The attorney must explain to the client the decision-making authority that remains with the client and that which 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 or 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 his or her 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 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

Attorneys must understand and adhere to ethical obligations and all confidentiality laws, including chapter 232 of the Iowa Code. 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.

Confidential information contained in a client's substance-related disorder treatment records, domestic violence treatment records, mental health records, and 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.

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

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.

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

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.

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

*Absent Parents*

The attorney should make reasonable attempts to locate and communicate with missing 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.

*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 Bureau of Prison 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.

*Services*

The attorney should assist the 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.

*Communication*

The attorney should counsel the client on the importance of maintaining regular contact with the 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 parent's attorney should also communicate with the parent's criminal defense attorney. There may be issues related to self-incrimination and timing that requires coordination between cases.

*Appearance in Court*

The 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 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

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 cost 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

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.

The child welfare system comprises a diverse group of people, including the clients and professionals involved. Each person comes to this system with his or her 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.

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.

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 resolve the barriers.

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.

Attorneys representing parents must be able to determine whether a client's mental status, including mental illness and 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.

## Investigation & Court Preparation:

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

Commentary

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

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.

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

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.

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.

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

The attorney should obtain reports and records from service providers.

Discovery is not limited to information regarding the client, but may include records of others such as the other parent, stepparent, child, relative, and non-relative 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 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 counsel. The attorney may be able to intercede and assist the client with service providers, agency caseworkers, and others.

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.

The attorney should, consistent with the client's interests and goals, and when appropriate, 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

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.

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).

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).

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

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.

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.

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

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 are recruited to supervise family interaction rather than caseworkers. 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.

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 to 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.

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).

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 could model effective parenting skills

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 attend services

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

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. But the critical nature of family team meetings may be misunderstood by attorneys for parents. 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.

An 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.

The attorney should be available to accompany the client to other important meetings during a case if the client requests. Whenever possible, the parent's 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

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.

The attorney and the client must be prepared and present in court. Counsel'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 an 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

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.

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.

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.

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.

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.

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.

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 could testify generally about the family's strengths.

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.

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.

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.

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

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.

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. The attorney should counsel the client about all options, including appeal. Regardless of whether an appeal is appropriate, the attorney should counsel the client about potential consequences of not complying with the 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

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.

If the client is attempting to comply with the order and case plan but other parties, such as the department or a contracted provider, are not meeting their responsibilities, the attorney should approach the other party and seek assistance on behalf of the client.

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(10)—Reasonable Efforts.

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

## Appeal:

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

Commentary

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

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 R. 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 R. Civ. P. 1.442(2) and 1.442(7). The notice of appeal shall include a certificate of service in the form provided in Iowa R. Civ. P. 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 R. App. P. 6.102(1)(b); 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 rule 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 rule 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 R. 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 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 R. 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 R. App. P. 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).

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.

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

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

If the court of appeals affirms or reverses the court's order, or remands the case, further review pursuant to Iowa R. App. P. 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).