

## **Appendix B**

### **DEKALB COUNTY CHILD ADVOCACY CENTER PERFORMANCE STANDARDS FOR JUVENILE ADVOCACY REPRESENTATION**

Practice in deprivation cases is unique and challenging, requiring specialized skills and knowledge to assure the best legal representation of clients.

The purpose of these standards is to provide child advocate attorneys with a general guide to appropriate and zealous advocacy on behalf of clients in juvenile court deprivation and termination of parental rights proceedings.

#### **Performance Standard 1: Obligations of the Child Advocate Attorney**

The primary and most fundamental obligation of a child advocate attorney is to provide zealous and effective representation for his or her client's best interest at all stages of juvenile court deprivation proceedings. The advocate attorney's duty and responsibility is to promote and protect the child's best interest. If personal matters or conflicts in the dual role as Advocate and GAL make it impossible for the Advocate counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client or to request that a separate Guardian ad Litem be appointed to represent the child's best interests.

Attorneys also have an obligation to uphold the ethical standards of the State Bar of Georgia and to act in accordance with applicable Court Rules.

Basic obligations of child advocate attorneys include:

- a. Obtain copies of all pleadings, reports, motion papers, and other court filings.
- b. Inform other parties and their counsel that you represent the child and expect reasonable notice before case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family. The child's lawyer should be aware at all times of the placement location and contact information for the client, which should be displayed prominently and be easily accessible in the file.

- c. Attend all court appearances.
- d. Participate in settlement negotiations and otherwise attempt to expedite the court process so as to be sensitive to the child's sense of time and paramount goal of expediting permanency.

## **Performance Standard 2: Training and Experience of Child Advocate Attorneys**

### Commentary:

Child Advocate Attorney cases should not be taken on without the adequate experience and knowledge necessary to represent the client zealously.

- 2.1 Before practicing in juvenile court, child advocate attorneys (hereafter "counsel") should be proficient in applicable substantive and procedural Georgia juvenile law and should have appropriate experience, skills and training necessary to represent children.
  - a. At a minimum counsel should observe at least twenty hours of juvenile court, including every stage of a deprivation proceeding (including termination of parental rights proceedings) when such matters are available, and some observation of delinquency proceedings. Counsel should obtain appropriate formal and informal training in relevant areas of practice.
  - b. It is highly recommended that counsel work with a mentor before taking a case or have a mentor available to consult on a case.
- 2.2 Counsel should have a working knowledge of and seek ongoing training in the following areas:
  - a. pre-dispositional and dispositional services and programs available through the court, DFCS, and community-based social service agencies;
  - b. facilities available to serve children: on-site visits may be appropriate;
  - c. child and adolescent development;
  - d. the juvenile justice system;

- e. the child welfare system;
  - f. the Department of Juvenile Justice policies and procedures (to the extent that such information is made available by that agency);
  - g. the Division of Family and Children's Services policies and procedures (to the extent that such information is made available by that agency);
  - h. substance abuse issues;
  - i. mental health issues and common childhood diagnoses;
  - j. special education laws, rights and remedies;
  - k. competency and immaturity laws, issues and defenses;
  - l. post dispositional advocacy;
  - m. pathways to delinquency;
  - n. cultural, racial, gender, and sexual orientation diversity;
  - o. interviewing techniques for children;
  - p. working with children and building rapport with the child or adolescent client;
  - q. school related issues including school disciplinary procedures and zero tolerance policies;
  - r. areas of abuse, its effects and treatments.
- 2.3 Counsel should note that various court practices and procedures may differ.
- 2.4 Counsel has a continuing obligation to stay abreast of changes and development in the law.
- 2.5 Before agreeing to act as counselor accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer effective representation to a child in a particular matter. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.
- 2.6 When a child advocate attorney's caseload is so large that he or she is unable to satisfactorily meet these performance standards, counsel shall inform the Director of the Child Advocacy Center and then, if necessary, the court or courts before whom counsel's cases are pending. If the Director of the Child Advocacy Center determines that the caseloads for her entire office are so large that an individual child advocate attorney is unable to satisfactorily meet these performance standards, the Director of the Child Advocate Office shall inform the court or courts before whom cases are pending.

### **Performance Standard 3: The Role of the Child Advocate Attorney**

- 3.1 Counsel's principal duty is to zealously advocate for the client's best interests. The lawyer's duty is to form a principled position of the child's best interests and advocate for that position. Nevertheless, the

child advocate attorney also has an obligation to inform the court of the child's desires, even when the child's wishes diverge from the attorney's determination of the child's best interests. The determination of a child's best interests must be formed by an explicit analysis of the actual available options.

- 3.2 In order to effectively advocate for the best interests of the client and to provide suggestions for appropriate dispositional options, counsel should take a holistic approach to juvenile advocacy, evaluating all factors which may have contributed to the existing circumstances.

#### **Performance Standard 4: Definition of the Client**

- 4.1 The Attorney's client is the child. Counsel's principal duty is to represent the child's best interest.
- 4.2 Counsel should remember that, even though the client is a child, all attorney client privileges and obligations attach, except with regard to issues of confidentiality that may arise due to the dual role of attorney and Guardian ad Litem described in standards 1 and 3.1. In cases in which such issues may arise, counsel should keep the child client fully informed of the extent to which communications will be kept confidential.

#### **Performance Standard 5: Counsel's Relationship With Client**

- 5.1 The initial interview and investigation should occur as soon after appointment as possible. In preparation for the interview, counsel should:
  - a. schedule the interview to allow for ample time to speak with the client;
  - b. collect any relevant information to bring.
- 5.2 At the interview, counsel should, in a developmentally appropriate manner:
  - a. explain to the client the role of counsel. It is important to clarify that counsel represents the legal and best interests of the child;
  - b. explain the allegations against the parents or guardian and possible disposition;
  - c. explain the juvenile court process, timelines and the role of all the parties involved, such as judge, counsel, client and parent;
  - d. obtain signed releases by the client and guardian, where appropriate, for medical and mental health records, school records, social service records, employment records, etc. Counsel should advise the client of the potential use of this information and the privileges that attach to this information;
  - e. counsel should obtain information from the client concerning

the facts of the matter, and any other relevant information, except where a forensic specialist is necessary so as not to re-traumatize the child.

- f. one focus of the initial interview and investigation will be to obtain information. Such information should generally include:
  - i. client's residence and length of time at that residence;
  - ii. client's legal custody (parent, relative or other guardian) and physical custody (person responsible to supervise client): names, addresses and phone numbers;
  - iii. health (mental and physical) and employment background;
  - iv. client's school placement, status, attendance and special education designation;
  - v. whether the client or his or her family has had previous contact with the juvenile court system, and/or child welfare system and the nature and status of that contact;
  - vi. possible adults willing to assume responsibility for the child;
  - vii. general circumstances of abuse and neglect, as well as specific information relating to the allegations in the deprivation petition. Such inquiry should be made of the child only so long as it is within the appropriate parameters of interviewing standards as it relates to victim interviews; and
  - viii. to observe the physical and mental well being of client and possible need for intervention.

- 5.3 The child advocate attorney should maintain a relationship with the child throughout the representation. Irrespective of age, the attorney should meet with the child-client prior to court hearings. The attorney or a designee appropriate in the circumstances in the attorney's reasonable professional judgment, should meet with the child-client when apprised of emergencies or significant events impacting on the child.

## **Performance Standard 6: Investigation and Discovery**

Child advocate attorneys have a duty to obtain all relevant information to deprivation cases, through formal and informal discovery mechanisms and through an independent investigation.

- 6.1 Counsel has a duty to conduct a prompt investigation and prompt discovery of each case. Counsel has a duty to continue to conduct an ongoing investigation, and serve new discovery requests as needed, prior to review hearings, termination of parental rights proceedings, non-reunification hearings, or any other hearing involving a child who has previously been adjudicated as deprived.
- 6.2 When conducting the investigation counsel should:

- a. If not done previously, conduct an in-depth interview of the client as described in Performance Standard Five, *supra*.
- b. Attempt to interview witnesses, favorable or adverse, obtain any relevant history of the witnesses, for example, as appropriate: school personnel, case workers (with the consent of counsel for the agency, if required), biological parents (with the consent of counsel), foster parents, neighbors, relatives, family friends/mentors/coaches/clergy, medical and mental health providers, law enforcement officers, and any other potential witnesses or sources of information.
- c. Examine the police reports and any other records, documents and statements, including the court files as needed.
- d. Counsel should ascertain whether any physical or photographic evidence exists and should make a prompt request to examine such evidence.
- e. Counsel should ascertain whether the assistance of an expert is needed in preparation of the child advocate's case (whether case-in-chief or rebuttal) or to understand or rebut DFCS's or the parents' case.
- f. Counsel should when available and appropriate, obtain and review:
  1. Records from private foster care agencies or other private agencies providing services to the child or the child's family, including mental health and substance abuse treatment records.
  2. School records.
  3. Medical records.

### **Performance Standard 7: Preparation for Adjudicatory Hearing**

7.1 Counsel should develop a theory of the case.

7.2 Pretrial Motions:

- a. Counsel should review all statements, reports and other evidence to determine whether a motion is appropriate.
- b. Counsel should make oral or written motions as soon as possible due to the time constraints of juvenile court.
- c. Counsel should be aware of the burdens of proof, evidentiary principles and court procedures applying to the motions hearing.
- d. Counsel has the continuing duty to file pretrial motions as issues arise or new evidence is discovered.

7.3 Counsel should be fully informed as to the rules of evidence, court

rules, and the law relating to all stages of the hearing process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudicatory hearing.

- 7.4 Counsel should be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review.
- 7.5 Counsel should advise the client as to suitable courtroom dress and demeanor and circumstances under which he may be examined by the Court.

### **Performance Standard 8: Attorney's Duty at Adjudicatory Hearing**

- 8.1 Counsel should be aware that except for certain circumstances, juvenile proceedings are confidential. (See *O.C.G.A.* §§ 15-11-78 and -79).
- 8.2 Counsel should use the opening statement as an opportunity to educate the judge as to counsel's theory of the case. Counsel should consider the advantages and disadvantages of the disclosure of information during the opening statement.
- 8.3 Counsel should make motions and objections, on the record or in writing as necessary and in accordance with local court rules.
- 8.4 Counsel should participate in the litigation process, including direct examination of witnesses (lay and expert), documentary, and physical evidence. (However, where counsel is not petitioner, presentation need not be cumulative.)
- 8.5 Counsel should consider whether the child-client should testify, and if so:
  - 1. Be prepared to meet any challenges to the child's competency as a witness.
  - 2. Ensure that the child is adequately prepared by, among other things, familiarizing the child with the courtroom and court procedures.
  - 3. Request that the court put in place appropriate protections, if necessary, such as excluding non-parties from the courtroom; excluding non-lawyers from the courtroom; or conducting the examination *in camera*.
- 8.6 Counsel should cross-examine witnesses of other parties, including voir dire regarding documentary or physical evidence and

qualifications of experts.

- 8.7 Counsel should use the closing argument to summarize the evidence and testimony as it applies to the theory of the case. Counsel should also make recommendations as to disposition of the case.
- 8.8 Counsel should review any written order entered on any matter of importance to the child's interests to verify that it matches the court's directive on the record and, when necessary, should take appropriate steps to ensure that the order accurately reflects the court's findings and directives.

### **Performance Standard 9: Duty at the Disposition Hearing**

Commentary:

The active participation of counsel at disposition is essential. In many cases, counsel's most valuable service to clients will be rendered at this stage of the proceeding. An important part of representation in a deprivation case is planning for disposition.

#### 9.1 Preparation for Hearing:

- a. Based on the child advocate attorney's investigation and knowledge of the case and the client's needs, the attorney should prepare a theory of disposition that will best meet the client's needs. In consultation with the client and collateral contacts, the attorney should formulate a recommendation as to types of placement and service resources necessary to ensure the child's safety, permanency, and well-being. Counsel should explain to the client the nature of the disposition hearing, the issues involved and the alternatives open to the court.

#### 9.2 During the hearing:

- a. Counsel should insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence.
- b. Counsel should subpoena witnesses and present evidence to support counsel's proposed disposition plan.
- c. Counsel should fully cross examine adverse witnesses, and challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court.
- d. Counsel should consider whether the client should make a statement to the court.
- e. Counsel should advocate for a comprehensive dispositional order

that, at a minimum, includes provisions regarding placement (including adequate consideration of available relative resources); services for the child; services for the parents; and a visitation plan as appropriate.

**Performance Standard 10: Child Advocate Attorney's Continuing Duty to Client**

- 10.1 The child's attorney should ensure that the child understands the court's order after the hearing is concluded.
- 10.2 The child's attorney should attempt to resolve any non-compliance with the court's order as appropriate under the circumstances and the rules of professional responsibility, and, if necessary, by requesting court intervention through a motion to compel or for contempt of court.
- 10.3 The Child Advocate Attorney continues to represent the child so long as the Juvenile Court retains jurisdiction in the case. In periods between court hearings, if the child advocate attorney becomes aware that the client or the client's family needs community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services by advocating with DFCS or by bringing an appropriate request or motion to the Court. The Advocate Attorney should review placement orders granting legal custody to DFCS of any client in the physical custody of DFCS and upon discovery that an order has lapsed, take appropriate steps to ensure the continued protection of the child's interests.
- 10.4 The child's lawyer should make all reasonable efforts to be aware at all times of the placement location and contact information for the client, which should be displayed prominently and be easily accessible in the file. Whenever there is a move the Child Advocate Attorney should monitor whether necessary services should continue. The child advocate attorney should always advocate that the child be placed in the most appropriate, least restrictive environment consistent with the child's needs. If the child is placed in a placement which the child advocate attorney deems inappropriate, this should be brought to

the attention of appropriate DFCS officials and, if necessary, the Juvenile Court.

**Performance Standard 11: Conflicts of Interest**

- 11.1 At a minimum, child advocate attorneys should decline to represent children in the following circumstances:
- i. The attorney, or another attorney in the Child Advocate Office, represents, or has represented, the Defendant parent or guardian.
  - ii. Children in a sibling group have conflicting accounts of facts material to the deprivation or TPR determination.
  - iii. Positions to be taken on behalf of children in a sibling group are mutually exclusive and conflict in a material way.
- 11.2 Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.
- 11.3 If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Uniform Rules of Court and in accordance with the Disciplinary Rules of the State Bar of Georgia.
- 11.4 When a conflict between or among siblings develops after representation has begun, in general, the attorney should withdraw from representing all siblings.

**Performance Standard 12: Child's Right to an Appeal**

Commentary:

Appeals from judgments in juvenile court are handled in the same manner as appeals from superior court.

- 12.1 Counsel should inform the client, in a developmentally appropriate manner, of his or her right to an appeal, the steps necessary to appeal

and the likelihood of success. If after such consultation, the child wishes to appeal the order, and the appeal has merit, 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.

- 12.2 The child's attorney should participate in an appeal filed by another party.
- 12.3 When the appeal decision is received, the child's attorney should explain the outcome of the case to the child.
- 12.4 Counsel should know the rules of both the Supreme Court and the Court of Appeals concerning the filing of appeals.

### **Performance Standard 13: Special Considerations**

- 13.1 **Time Limits:** Counsel should be aware of the time limits applicable in juvenile court and the unique circumstances of a deprivation case. The child advocate attorney should be sensitive to a child's sense of time and endeavor at all stages of a case to expedite the matter and urge the court to do so as well.
- 13.2 **Confidentiality of Proceedings and Records:** Counsel should be aware that, except in certain circumstances, the general public is excluded from all juvenile court proceedings and that juvenile records are not available to the public.
- 13.3 **Immigration Counsel** should be aware of the collateral effects of a juvenile court proceeding on the client or client's family's immigration status and consult with an expert if necessary.
- 13.4 **Special Education:** Counsel should be aware of any rights the client may have under special education laws.
- 13.5 **Cessation of representation:** The child's attorney should discuss the end of the legal representation with the child, and determine what contacts, if any, they will continue to have.