

**STATE OF CONNECTICUT
DIVISION OF PUBLIC DEFENDER SERVICES**

**PERFORMANCE GUIDELINES FOR COUNSEL IN CHILD PROTECTION
MATTERS**

PURPOSE:

These guidelines are intended to encourage Public Defenders and Assigned Counsel contracted by the Division of Public Defender Services to perform to a high standard of representation and to promote professionalism in the representation of Division clients. As used in these Performance Guidelines, (1) Public Defenders shall mean all Public Defenders, Executive Assistant Public Defenders, Supervisory Assistant Public Defenders, Senior Assistant Public Defenders, Assistant Public Defenders, Deputy Assistant Public Defenders and (2) counsel shall mean all Public Defenders and Assigned Counsel who contract with the Office of Chief Public Defender (OCPD).

These Guidelines are intended to be used as a guide for the representation of clients. However, the obligations due a client are not limited by the Guidelines articulated here; attorneys are also expected to use their individual professional judgment in representing clients. If that judgment mandates a departure from these Guidelines, the attorney should be aware of and be able to articulate the reasons that a departure from these Guidelines is in the client's best interests.

These Guidelines should be used by counsel in evaluating and improving their own performance and by supervising attorneys in evaluating staff performance. However, these Guidelines are not intended to be used as criteria for the judicial evaluation of performance or alleged misconduct or effectiveness of counsel.

SECTION 1: GENERAL PROVISIONS

GUIDELINE 1.1 ROLE OF COUNSEL

- 1) Counsel should zealously represent and advocate for each client and render effective assistance of counsel.
- 2) To ensure the preservation, protection and promotion of the client's rights and interests, counsel has a continuing obligation to:
 - a) be proficient in the applicable substantive and procedural law;
 - b) acquire and maintain appropriate experience, skills and training;
 - c) devote adequate time and resources to the case;
 - d) engage in the preparation necessary for quality representation;
 - e) endeavor to establish and maintain a relationship of trust and open communication with the client;
 - f) keep the client informed and seek the lawful objectives of the client;
 - g) promptly comply with reasonable requests for information including the attorney client file; and,
 - h) make accommodations and take reasonably necessary protective action where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.
- 3) Counsel should adhere to the Rules of Professional Conduct and other guidelines of professional conduct as stated in statutes, rules, court decisions, codes or canons and adhere to the Rules of the Superior Court.
- 4) Counsel should act with reasonable diligence and promptness in representing clients.
- 5) Counsel should abide by the policies adopted by the Connecticut Public Defender Services Commission and the Chief Public Defender in regard to the representation of a client.

GUIDELINE 1.2 CONFLICTS OF INTEREST

- 1) Counsel should adhere to the Rules of Professional Conduct regarding conflicts of interest.
- 2) Counsel should be cognizant of the existence of any potential and actual conflicts of interest which would impair counsel's ability to represent a client, including if the representation of one client in the same or a substantially related matter in which that person's interests are materially adverse to those of a current or former client, and report any such conflict to his/her supervisor immediately upon learning of such.

- 3) Except at arraignment, counsel should not represent a client when a conflict of interest exists between co-defendants or multiple defendants such that the representation of one client will be directly adverse to the other client.
- 4) Counsel should not represent a client if the representation of that client involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - a) the representation of one client will be directly adverse to another client; or
 - b) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- 5) Counsel who has formerly represented a client should not thereafter use information relating to the former representation to the disadvantage of a former client except as the Connecticut Rules of Professional Conduct would permit or require with respect to a client, or when the information has become generally known or reveal information except as the Rules permit.
- 6) Counsel should not withdraw solely on the basis of a personality conflict with the client or a difference of opinion as to how to proceed in the case, unless required by the Rules of Professional Conduct.
- 7) The filing or existence of a habeas corpus petition or grievance against counsel in regard to his/her quality of representation shall not create a conflict of interest per se. Withdrawal by counsel from the representation of a client under such circumstances should occur if ordered by the court upon motion by the client or if counsel is of the opinion that the filing or existence of the habeas corpus petition or grievance will interfere with counsel's ability to adequately represent the client.
- 8) Counsel should withdraw from representation: (1) upon the filing of a claim with the Connecticut Claims Commissioner or a civil lawsuit in state or federal court against counsel by a client alleging malpractice; (2) upon a finding of probable cause in connection with a grievance complaint; or, (3) if counsel has been scheduled to testify at a habeas corpus trial in which (a) counsel is the subject of the claim of ineffective assistance of counsel which has been raised in the petition and, (b) the pleadings have been closed.
- 9) Counsel shall not provide financial assistance to an indigent client in connection with a pending case except in accordance with the policies of the Public Defender Services Commission and the Rules of Professional Conduct.

GUIDELINE 1.3 LAWYER-CLIENT RELATIONSHIP

- 1) Counsel should seek to establish a relationship of trust and confidence with the client.

- 2) As soon as practicable after being appointed, counsel should contact the client and conduct an initial client interview.
- 3) Counsel should schedule confidential legal visits with the incarcerated client when necessary to provide effective representation and maintain effective communication with the client by mail or telephone.
- 4) Counsel should preserve all client confidences and should not knowingly disclose privileged and confidential information obtained during the course of representation, unless authorized to do so by the client or the court or as otherwise permitted by law or the Connecticut Rules of Professional Conduct.
- 5) Counsel should ensure that barriers to communication with the clients, such as differences in language or literacy, are overcome. Counsel should make accommodations and take reasonably necessary protective action where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.

GUIDELINE 1.4 DUTY TO KEEP CLIENT INFORMED

- 1) Counsel should promptly keep the client informed of any developments in the case and the progress of the preparation of the case, and promptly provide sufficient information to permit intelligent participation in decision making by the client.
- 2) Counsel should promptly comply with reasonable requests for information received from the client including requests for a copy of the attorney client file and promptly reply to client correspondence and telephone calls.
- 3) Counsel in a delinquency matter should inform and explain to the client that he/she has the constitutional right to (1) plead not guilty; (2) in an adult criminal matter to be tried by a judge or a jury; (3) to the assistance of counsel; (4) to confront and cross-examine witnesses against him/her; (5) to testify; and, (6) to not be compelled to incriminate him/herself.
- 4) Counsel for a parent in a child protection matter should inform and explain to the client that he/she has the right to admit or (1) deny the allegations against them; (2) to have the allegations tried before a judge; (3) to the assistance of counsel; (4) to confront and cross examine the witnesses against them; (5) to testify; (6) to maintain some decision making authority over their child while the allegations are pending; (7) to propose alternative placement options for their child; (8) to have the Department of Children and Families provide services and make reasonable efforts to reunite their families.

- 5) Counsel for a minor child or a guardian ad litem in a child protection or family matter shall keep the child informed of the progress of a case in a developmentally appropriate manner tailored to the needs of the client. Counsel should discuss the case with the child to determine the child's goals and desired outcomes.
- 6) Counsel should explain to the client the court procedures and provide sufficient information to the client so that he/she can participate intelligently in decisions relating to the objectives in the case.
- 7) Counsel should explain the attorney-client privilege to the client and explain to the client that he/she is not required to speak to anyone regarding the case without counsel present.

GUIDELINE 1.5 PROTECTING CONFIDENTIALITY

Counsel should ensure that confidential communications between counsel and the client are conducted in privacy, including making reasonable efforts to compel court and other officials to make necessary accommodations for confidential and privileged discussions between counsel and clients in places where clients must confer with counsel. Counsel in juvenile matters must be aware that the attorney client privilege runs to the client but not to the parent or guardian. The client must be advised of this. Care must be taken to keep protected communication confidential.

GUIDELINE 1.6 REPRESENTATION AFTER DISPOSITION IN JUVENILE MATTERS

Counsel's responsibility to the client is governed by Section 3-9 of the Connecticut Practice Book. Counsel is expected to maintain representation of the client through the end of all court orders in delinquency and child welfare cases. Counsel in delinquency cases are expected to maintain active representation until the child's probation or commitment period ends unless proper referral is made to the OCPD Post Conviction Unit. Counsel in Child Welfare Matters are expected to maintain active representation through the conclusion of the client's involvement with DCF.

GUIDELINE 1.7 THE IMPAIRED CHILD CLIENT

- 1) Counsel for the minor child shall determine whether the child client's ability to make decisions or to communicate in connection with the case is impaired due to age, mental impairment or other reason. In making the determination, the lawyer should consult the child and may consult other individuals or entities that can provide the child's lawyer with the information and assistance necessary to determine the child's ability to direct the representation.

- 2) If the child client is impaired and unable to communicate or direct the representation, counsel for the minor child shall take protective action as contemplated by Section 1.14 of the Connecticut Rules of Professional Conduct.
- 3) When a child client is impaired the counsel for the minor child shall make a good faith effort to determine the child's needs and wishes. The child's lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the child client.
- 4) Where a normal client-lawyer relationship is not reasonably possible to maintain, counsel for the minor child in a child welfare matter shall make a substituted judgment determination. A substituted judgment determination includes determining what the child would decide if he or she were capable of making an adequately considered decision, and representing the child in accordance with that determination. Counsel for the minor child should take direction from the child as the child develops the capacity to direct the lawyer. Counsel for the minor child shall advise the court of the determination of capacity and any subsequent change in that determination.
- 5) Where counsel for the minor child in a juvenile delinquency case believes that the child is impaired and is unable to participate in his or her own defense or comprehend the proceedings, counsel should have the child evaluated to determine competency to stand trial.
- 6) In cases where the child client is impaired, counsel for the minor child may consult with the guardian ad litem. The attorney for the child must take care not to substitute the role of best interest advocate but to continue to advocate on behalf of the child's wishes to the best of their ability.

SECTION II TRAINING AND EXPERIENCE

GUIDELINE 2.1 GENERAL QUALIFICATIONS

- 1) Counsel should be familiar with substantive criminal or civil law, criminal or civil procedural law, the Connecticut Rules of Practice and the prevailing customs or practices of the court in which he/she practices.
- 2) Counsel for the minor child and Guardians ad litem in Family Matters must complete the training program required by Section 25-62 and 25-62A of the Connecticut Practice Book.
- 3) Counsel for in Child Welfare matters are required to complete pre service training of up to three days prior to being eligible to represent child or parent clients.

- 4) Counsel in juvenile delinquency, child welfare and family matters should have training in the following areas:
 - a. adolescent and child development;
 - b. adolescent brain development as it relates to decision making;
 - c. special issues relating to child's statements;
 - d. educational Issues and Special education;
 - e. domestic violence and its effect on children;
 - f. impact of incarceration on families; and,
 - g. adolescent and adult substance abuse.

GUIDELINE 2.2 CONTINUING OBLIGATION

- 1) Counsel has a continuing obligation to stay abreast of changes and developments in criminal and civil law and criminal and civil procedure as it applies to his/her legal practice.
- 2) Counsel has an obligation to continue his/her legal training, professional development and education through the weekly review of the Connecticut Law Journal and other legal periodicals. Counsel should participate in person or via taped or multimedia programs, in Public Defender, bar and professional legal association, regional, or national legal training events, legal seminars and training. Public Defenders employed by the Commission should complete a minimum of twelve hours of such training annually. Assigned Counsel must complete a minimum of six hours of such training annually and certify such completion to the Office of Chief Public Defender annually.
- 3) Supervisory attorneys as office heads shall be provided with management training on a regular periodic basis.

GUIDELINE 2.3 PUBLIC DEFENDER STAFF ATTORNEYS

- 1) Newly hired Public Defenders shall be required to participate in the following training activities during their first year as employees of the Division of Public Defender Services:
 - a) A New Attorney Training Program conducted by the OCPD Training Department covering the duties and responsibilities of a Public Defender, ethics of defense practice, basic criminal practice and procedure, and a review of the Connecticut Public Defender Services Commission Guidelines on Indigent Defense. Said Training Program shall be conducted over a twelve-month period in accordance with a curriculum developed by the OCPD Training Department. An appropriate training in juvenile matters may be substituted for any part of the program at the discretion of the Director of Delinquency Defense and Child Protections and the Director of Training
 - b) A Trial Advocacy Program conducted by the OCPD Training Department covering the development of basic trial skills for criminal defense. When

available, a newly hired attorney in juvenile matters may participate in an approved trial advocacy program focused on juvenile delinquency matters at the discretion of the Director of Delinquency Defense and Child Protections and the Director of Training.

- c) A Mentor Program through which newly hired Public Defenders will be paired with an experienced Public Defender for the first six months of employment. The mentor will be available to meet periodically with the new Public Defender and to provide advice and assistance as necessary to support the new Public Defender during this transition period.
- d) The Chief Public Defender may vary any of the requirements of this section based on the prior experience of the newly hired Public Defender.

GUIDELINE 2.4 ASSIGNED COUNSEL IN JUVENILE AND FAMILY MATTER

- 1) New Assigned Counsel for Juvenile Matters-Child Protection must complete a three day pre service training on child protection practice and procedure before being assigned cases under the contract. The new Assigned Counsel must also attend a fourth day of follow up training and work with a mentor for the first year of the contract or as deemed necessary by the Office of Chief Public Defender.
- 2) Assigned Counsel for Family Matters-AMC/GAL must complete the 6 day training program required by Connecticut Practice Book Section 25a-62 before being eligible to take cases.
- 3) New Assigned Counsel for Juvenile Matters-Delinquency must participate in Basic Training for Assigned Counsel.
- 4) All Assigned Counsel for Juvenile and Family Matters must certify that they have completed 6 hours of training annually at the time of renewal of the contract.

SECTION III: CHILD WELFARE MATTERS

GUIDELINE 3.1 SCOPE OF REPRESENTATION IN A CHILD WELFARE MATTER

- 1) The duration of an appearance in child welfare cases is governed by Section 3-9 of the Connecticut Practice Book. If a child is remaining in DCF custody after age 18, an attorney can petition OCPD for permission to continue to be compensated for representation.
- 2) The attorney must attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.

- 3) The attorney should discuss the end of the legal representation and determine what contacts, if any, the attorney and the client will continue to have.

GUIDELINE 3.2 ROLE OF COUNSEL FOR THE CHILD IN A CHILD PROTECTION MATTER

Counsel should abide by the general guidelines enumerated in Section I.

- 1) Counsel for the minor child in a child welfare case shall be an advocate for the client's wishes, interests, rights and goals. In a manner appropriate to the client's age and development, the lawyer shall elicit the child's wishes and advise the child as to options. Counsel shall diligently and zealously protect and advance the client's interests, rights and goals in the proceedings.
- 2) When the child is capable of directing the representation by expressing his or her objectives, the child's lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct and these Guidelines.
- 3) Counsel for the minor child shall also be an advisor and counselor. This involves explaining the likelihood of achieving the client's goals and, where appropriate, identifying alternatives for the client's consideration. In addition, counsel should explain the risks, if any, inherent in the client's position.
- 4) Counsel shall meet with and consult with the client prior to the each court hearing.
- 5) Counsel shall remain in communication with the client during the course of the case to discuss, to the extent possible given the client's age and abilities, the progress of the case, trial strategy and preparation, negotiation and settlement strategies, and post-trial goals.
- 6) Counsel in juvenile matters often has occasion to counsel the client and, in some cases, the client's family with respect to related non-legal matters (e.g. education, family, therapy, etc.), which should be discharged to the best of counsel's training and ability or with appropriate assistance of other professions by referral.
- 7) Counsel should exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client's history or condition or the history or condition of the client's parents. In general, counsel should not disclose information or conclusions contained in such reports to the extent that, in counsel's judgment based on knowledge of the client and the client's family, revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

- 8) When a dispositional decision has been reached by the court, it is counsel's duty to explain the nature, obligations, and consequences of the disposition to the client and to urge upon the client the need for accepting and cooperating with the dispositional order.

GUIDELINE 3.3 CONTROL AND DIRECTION OF THE CASE, COUNSEL FOR THE CHILD

- 1) If the child client expresses a desire to attend a hearing, and such attendance is appropriate given the child's age and abilities and the nature of the proceedings, counsel shall take steps to assure the child's attendance.
- 2) Counsel shall explain the results of all court hearings and administrative proceedings to the child in a developmentally appropriate manner.
- 3) The child's attorney should monitor the implementation of the court's orders and communicate to the responsible agency and if necessary, the court, any non compliance.
- 4) The following educational information should be obtained for all school age clients:
 - a) grade level achievement for reading;
 - b) if the child has been identified as qualifying for special education services any IEP plans;
 - c) any supportive services being provided by the local school; and,
 - d) any concerns the child or the caregiver has about the child's education
- 5) For children who will reach adulthood while still committed to the Department of Children and Families or who are wards of the state due to their parental rights having been terminated by the Superior Court for Juvenile Matters, Counsel should meet with the child at age 16 to begin planning for transition and should meet with the client regularly to ensure that proper services are provided for successful transition to independence.

GUIDELINE 3.4 CLIENT COMMUNICATION, COUNSEL FOR THE CHILD

- 1) Counsel should conduct a client interview as soon as practicable after being appointed by the court.
- 2) To the extent possible, counsel should prepare for this interview with the client by obtaining and reviewing relevant documents available including but not limited to petitions, other court filings DCF social studies and evaluations, police and other law enforcement reports where applicable, and educational records. Counsel should also consult with the child's caregiver or DCF social worker.

- 3) To the extent possible, counsel should obtain the following types of information from the client at the initial interview:
 - a) what the client's goals are for the outcome of the case;
 - b) if the client feels safe in their current placement;
 - c) The names of family members or other interested adults who can be a placement resource for the client;
 - d) The names of family members or other interested individuals who the client wants as a visiting resource;
 - e) the current school placement of the child and whether the DCF action resulted in a change of schools for the client;
 - f) if the child is in the custody of the Department and Children and Families, whether the child wishes to remain in their school of origin; and,
 - g) any extracurricular, athletic or other activities the child is engaged with or interested in.
- 4) When the client is non verbal counsel should conduct an initial visit with the client and should interview the child's primary caregiver, DCF social worker and other relevant family or caregivers.
- 5) At a minimum, except in extraordinary circumstances, counsel shall meet or consult with the child client at least once each quarter while the case remains pending, the child remains committed to the custody of the Department of Children and Families, during any period of protective supervision, or subsequent to the termination of parental rights if the child has not been adopted.
- 6) Counsel shall meet or consult with the child client each time the placement is changed.
- 7) Counsel shall, prior to every hearing, investigate and take necessary legal action regarding the child's medical, mental health, social, education, and overall well-being.
- 8) As applicable, counsel should convey the following types of information to the client:
 - a) an explanation of the attorney-client privilege and the role of counsel;
 - b) a general procedural overview of the likely progression of the case, including temporary placement, long term placement, possible return to parents, and interacting with DCF, where applicable and appropriate;
 - c) where appropriate, the procedures that will be followed in setting the conditions for the child to return home;
 - d) an explanation of their rights with regard to school placement, visitation with family, including siblings, and other rights they may have in the care and custody of the Department of Children and Families;
 - e) the importance of maintaining contact with counsel and the need to notify counsel of any change of address or status;

- f) the names and contact information of counsel and staff assisting with the case;
- g) when counsel will see the client next;
- h) realistic answers, where possible, to the client's questions; and,
- i) any arrangements that will be made or attempted for the satisfaction of the client's needs, including medical or mental health attention and contact with family.

GUIDELINE 3.5 TRIAL PREPARATION AND PRACTICE FOR COUNSEL FOR THE MINOR CHILD

- 1) In preparation for evidentiary hearings and trials, counsel for the child shall discuss and determine the case strategy with the child in a developmentally appropriate manner.
- 2) Counsel for the child shall conduct independent investigation of the child's situation, including obtaining medical, educational, mental health and other records pertaining to the child.
- 3) Counsel for the child should be prepared to present the case from the child's perspective, in support of the child's position. This includes:
 - a) Identifying, securing and preparing expert witnesses when needed.
 - b) When permissible, interviewing opposing counsel's experts.
 - c) Preparing all appropriate motions and evidentiary objections.
 - d) Presenting and cross-examining witnesses.
 - e) Determining whether the child should testify and preparing the child to testify.
 - f) Request the opportunity to make opening and closing arguments.
 - g) Make appropriate objections to preserve appellate rights for the client.
- 4) Prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the child.
- 5) In the event that the child's position is consistent with the parents or the Department of Children and Families, counsel for the child may work collaboratively with the attorneys for those parties to plan the case. The attorney for the child should never allow counsel for the parent or the Department of Children and Families to speak on behalf of the child's stated position.

REPRESENTING THE RESPONDENT PARENT IN A CHILD WELFARE MATTER

GUIDELINE 3.6 ROLE OF COUNSEL FOR THE RESPONDENT PARENT

- 1) Counsel for the parent in a child welfare case shall be an advocate for the client's wishes, interests, rights and goals. In a manner appropriate to the client's age and situation, the lawyer shall elicit the client's wishes and advise the client as to options.
- 2) Counsel shall diligently and zealously protect and advance the client's interests, rights and goals in the proceedings and should empower the client to direct the representation and make informed decisions.
- 3) Counsel for the parent should protect the parent's rights to information and decision making while the child is in foster care. This may include filing motions and obtaining orders from the court prescribing who is to make medical and educational decisions while the child is in care.

GUIDELINE 3.7 CONDUCT OF THE CASE, COUNSEL FOR THE RESPONDENT PARENT

- 1) Counsel for the parent should attend all hearings, including case status conferences and administrative proceedings.
- 2) Representation of multiple parents in a single matter is discouraged. If multiple clients are to be represented in a single matter, consultation should include explanation of the implications of the common representation and the advantages and risks involved.
- 3) Counsel for the parent should consult with other counsel who may be representing the client in related matters such as any criminal, protection from abuse, private custody or administrative proceedings to ensure that the client's interests are protected.
- 4) Counsel should actively engage in case planning, including attending major case meetings, such as initial treatment planning meetings and Administrative Case Reviews of treatment plans.
- 5) Counsel should advocate for an effective visiting plan and counsel the parent on the importance of regular contact with the child.
- 6) Counsel attorney should, when consistent with the client's goals, participate in settlement negotiations and should advocate the use of mediation where appropriate.

GUIDELINE 3.8 THE ATTORNEY CLIENT RELATIONSHIP, COUNSEL FOR THE RESPONDENT PARENT

- 1) Counsel for the parent must provide the parent client with contact information in writing and establish a message system that allows regular attorney-client contact.
- 2) Counsel for the parent should preserve client confidences and should not knowingly disclose confidential information obtained during the course of representation, unless authorized to do so by the client or the court or as otherwise permitted by law or the Rules of Professional Responsibility
- 3) Counsel for the parent should have open lines of communication with other attorney(s) who may be representing the client in related matters such as any 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.

GUIDELINE 3.9 COMMUNICATION WITH THE PARENT CLIENT

- 1) Counsel should abide by Section 3.2 of these Guidelines.
- 2) Counsel for the for the parent should regularly inquire as to the client's goals for the case, counsel the client as to what outcomes are realistic and work with the client to develop alternatives.
- 3) If reunification is a desired outcome, counsel for the parent should help the client create a plan to meet the steps set out by the court.
- 4) The parent's attorney must counsel the client about all legal matters related to the case and provide comprehensive counsel on the advantages and disadvantages of different options. This shall include:
 - a) The specific allegations against the client;
 - b) the client's rights in the pending proceeding;
 - c) the service plan, including the specific steps the client is responsible to follow; and,
 - d) the potential consequences of failing to obey court orders or cooperate with service plans.
- 5) Counsel for the parent should speak to the client prior to each court appearance or administrative hearing. The attorney should meet or speak with the client every six weeks between court events to monitor compliance with court orders.
- 6) Counsel for the parent should provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited

GUIDELINE 3.10 TRIAL PREPARATION, COUNSEL FOR THE RESPONDENT

PARENT

- 1) Counsel should conduct a thorough independent investigation prior to trial, including investigation of potential witnesses, physical evidence and the current status of the respondent parent's home;
- 2) Counsel should obtain the assistance of independent experts where necessary. Expert expenses must be pre approved by the Office of the Chief Public Defender using the Prior Authorization process;
- 3) During investigation and trial preparation, counsel should develop and continually consult with the parent client and reassess the theory of the case.
- 4) Counsel should file appropriate pre-trial motions and memoranda or briefs in a timely fashion, as necessary to protect the defendant's rights after consideration of the statutes, caselaw and constitutional provisions.
- 5) Counsel should request a continuance if he/she determines that he/she is not prepared for trial but should not unnecessarily delay the trial, as the parent client's efforts for reunification may be prejudiced by the passage of time;
- 6) Counsel should be prepared to present and cross examine all witnesses
- 7) Counsel should be familiar with and prepared to address legal and evidentiary issues that can reasonably be anticipated to arise in the trial.
- 8) Counsel should prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the client.
- 9) Counsel should continuously endeavor to establish a proper record for appellate review.
- 10) In preparation for evidentiary hearings and trials, counsel for the parent shall discuss and determine the case strategy with the client.
- 11) Counsel for the parent shall conduct independent investigation of the parent and the child's situation, including obtaining medical, educational, mental health and other records pertaining to the parent, the child and other appropriate persons.
- 12) Counsel for the parent should be prepared to present the case in support of the client's position. This includes:
 - a. Identifying, securing and preparing expert witnesses when needed.
 - b. When permissible, interviewing opposing counsel's experts.
 - c. Preparing all appropriate motions and evidentiary objections.
 - d. Presenting and cross-examining witnesses.
 - e. Determining whether the client should testify and preparing the client to testify.

- f. Request the opportunity to make opening and closing arguments.
 - g. Make appropriate objections to preserve appellate rights for the client.
- 13) Counsel for the parent should prepare proposed findings of fact, conclusions of law and orders when they will be used in the court's decision or may otherwise benefit the parent.
- 14) Counsel for the parent should work with the client to prepare alternative disposition plans. This should include identifying family or other caregivers acceptable to the parent.

GUIDELINE 3.11 DISCOVERY, COUNSEL FOR THE RESPONDENT PARENT

- 1) To the extent possible, counsel should obtain all material in the possession of the Department of Children and Families including but not limited case notes, expert reports, reports from any service providers involved with the case, witness statements, and other relevant material that may be in the possession of the Department of Children and Families.
- 2) Counsel should gather and review the following records when available:
 - a) social service records
 - b) court records
 - c) medical records
 - d) school records
 - e) evaluations of all types
 - f) housing records
 - g) employment records
- 3) Counsel should independently obtain records from service providers and other potential witnesses. Counsel for the parent should not rely solely on the information provided by the Department of Children and Families.
- 4) The attorney should, consistent with the client's interests and goals, and where appropriate, take all necessary steps to preserve and protect the client's rights by opposing discovery requests of other parties, including, but not limited to so called "Romance" motions for court ordered access to certain records protected by state or federal law, including, but not limited to, health records, drug, alcohol, psychological, psychiatric and HIV records.
- 5) In a case involving an OTC, particular care should be taken to explain to the client the potential benefits and detriments of contesting the OTC, and also to explain the long-term effects that sustaining the OTC will have on the disposition of neglect or abuse allegations, on DCF case planning, and on the ASFA time frames for permanency planning.
- 6) If a termination of parental rights petition is filed while the attorney is representing the parent in the underlying neglect proceeding, the attorney should ensure that

the client knows to re-apply for counsel prior to, or on, the TPR plea date, as the TPR is considered a new proceeding.

- 7) The decision whether or not to testify is the client's. Counsel should discuss the risks and benefits of testifying with the client and should thoroughly prepare the client for testimony prior to trial.

GUIDELINE 3.12 SPECIAL ISSUES FOR COUNSEL REPRESENTING PARENTS

(A) THE MISSING OR UNCOOPERATIVE PARENT CLIENT

- 1) Counsel for the parent must diligent steps to locate and communicate with a missing parent, including speaking with the client's family, the caseworker, the foster care provider and other service providers and decide representation strategies based on that communication.
- 2) If counsel for the parent attorney is unable to find and communicate with the client after initial consultation, the attorney should assess what action would best serve the client's interests. This decision must be made on a case-by-case basis.
- 3) Counsel for the parent may decide to take a position consistent with the client's last clearly articulated position, if the attorney has clear information to determine what the client's position is.
- 4) Counsel for the parent may decline to participate in the court proceedings in the absence of the client, because that may better protect the client's right to vacate orders made in the client's absence.

(B) THE INCARCERATED PARENT CLIENT

- 1) Counsel for the parent must be aware of the reasons for the incarceration. If the incarceration is a result of an act against the child or another child in the family, the child welfare agency may request an order from the court that reasonable efforts toward reunification are not necessary and attempt to fast-track the case toward other permanency goals.
- 2) Counsel for the parent must understand the implications of the American Safe Families Act (ASFA) for an incarcerated parent and should counsel the client as to any effects incarceration has on DCF's obligations.
- 3) Counsel for the parent should help the client identify potential kinship placements or other placement resources for the child.
- 4) Counsel for the incarcerated parent should advocate with the Department of Corrections or other agencies for reasonable efforts to be made for the client, and assist the parent and the agency caseworker in accessing services.

- 5) Counsel for the parent should counsel the client on the importance of maintaining regular contact with the child while incarcerated and should assist the client in developing and implementing a plan for communication and visitation.
- 6) Counsel for the parent attorney should communicate with the parent's criminal defense attorney to discuss issues related to self-incrimination and concerns about ASFA and other collateral consequences of delaying the abuse and neglect case to strengthen the criminal case or vice versa.
- 7) Counsel for the parent should ensure that the incarcerated parent client is present in court. If the client does not want to be physically present, or if having the client present is not possible, counsel for the parent should arrange for the client to participate by other means, including telephone and video conferencing.
- 8) If a client does not wish to participate in the court hearing, Counsel must explain to any client that the case will proceed without the parent's presence and raise any potential consequences of that choice.

(C) CLIENTS WITH MENTAL HEALTH ISSUES

- 1) The parent's attorney should be aware of the client's mental health status and be prepared to assess whether the parent can assist with the case.
- 2) The parent's attorney should discuss concerns about a client's mental health status with the client. This should include discussion on how compliance or non compliance with treatment will impact the client's goals.
- 3) The attorney for the parent should request a competency evaluation if they believe that the client lacks the ability to understand the proceedings or assist counsel.
- 4) The attorney for the parent should determine if an independent evaluation would assist the client achieve their goals. If the client is in agreement, the attorney should request approval for such evaluation from OCPD.

GUIDELINE 3.13 POST HEARINGS

- 1) Counsel for the parent must review court orders to ensure accuracy and clarity. Counsel should provide a copy of the court orders both and shall review them verbally with the client review the orders verbally.
- 2) The attorney for the parent must take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court. This includes regular contact with the client pursuant to these Guidelines.
- 3) The attorney for the parent must discuss the possibility of appeal with the client. If the attorney for the parent feels that there are no non frivolous grounds for

appeal, the client must be informed. Counsel must adhere to the procedures set out in section 13 of these Guidelines.

GUIDELINE 3.14 APPEALS IN CHILD WELFARE MATTERS

(A) COUNSEL FOR THE PARENT

- 1) Counsel for the parent must discuss the possibility of an appeal with the client and determine if the client wishes to appeal the court's decision.
- 2) If the client wishes to appeal the court's decision, counsel for the parent must timely file the necessary post hearing motions and paperwork to preserve the client's rights to appeal.
- 3) A motion for appointment of counsel and waiver of cost and fees must be filed in each case being appealed, even if the client was appointed counsel paid for by OCPD in the trial court case.
- 4) If trial counsel for the parent feels that there are grounds for appeal they must inform OCPD-CP and or ask that appellate counsel be appointed.
- 5) Generally separate appellate counsel will be appointed for the party wishing to appeal. Trial counsel can request that OCPD-CP appoint them as appellate counsel but a specific reason must be supplied.
- 6) If the parent wishes to appeal and counsel for the parent feels that there are no non frivolous grounds for appeal counsel must file a motion for extension of time to file an appeal and assist the client to file a motion for appointment of counsel and waiver of costs and fees. Trial counsel for the parent shall immediately refer to case to OCPD-CP for assignment to an appellate review attorney
- 7) Trial counsel for the parent shall not, except in exceptional circumstances, withdraw from the underlying matter during the pendency of the appeal.

(B) COUNSEL FOR THE CHILD

- 1) Counsel for the child shall explore the necessity of an appeal, based on the wishes of the client and the viability of available appellate issues.
- 2) If the child wishes to appeal and the child's attorney determines that an appeal would be appropriate, the lawyer must contact the Office of Chief Public Defender Child Protection Unit for approved appellate counsel to be appointed. If the lawyer feels that an appeal would be frivolous, they must contact the Office of Chief Public Defender Child Protection Unit and request that appellate review counsel be appointed.

- 3) The child's attorney shall, in most circumstances, remain counsel for the child on the underlying case during the pendency of the appeal.
- 4) The child's attorney should take a position in any appeal filed by the parent, agency, or other party and participate fully in the appellate process, unless discharged.
- 5) When the decision is received, the child's attorney should explain the outcome of the case to the child.

GUIDELINE 3.15 THE ROLE OF THE GUARDIAN AD LITEM (GAL) FOR MINOR CHILDREN IN CHILD WELFARE MATTERS

- 1) The role of the guardian ad litem is to determine and speak on behalf of the best interest of the child in the proceedings that are the subject of the guardian ad litem appointment, without being bound by the child's preferences.
- 2) The guardian ad litem shall ensure that the child is aware that he or she has an attorney and shall explain the difference in the role of the attorney and the guardian ad litem in an age and developmentally appropriate manner.
- 3) The guardian ad litem shall be respectful of the potential constitutional rights of all parties. Pursuant to Conn. Gen. Stat Sec., while acting in their professional capacity as Guardian, guardians are mandated reporters. If a guardian knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected, must make an immediate report to the Department of Children and Families. The guardian ad litem should also inform the court if the report involves a child who is subject of a pending child welfare matter.

GUIDELINE 3.16 BASIC DUTIES OF THE GUARDIAN AD LITEM (GAL) IN CHILD WELFARE MATTERS

- 1) The guardian ad litem should review the court's order of appointment and determine if there is a specific request or concern.
- 2) The guardian ad litem should be aware of other pending legal actions involving the subject child, including but not limited to pending delinquency charges, family court matters, probate matters or criminal cases where the child is a victim.
- 3) The guardian ad litem should meet with the child as soon as possible after being appointed by the court.
- 4) The guardian ad litem should independently gather and review all relevant records and should not rely solely on the representations of any party or counsel.

- 5) In conducting an independent assessment of the best interest of the child, the guardian ad litem shall, as allowed by counsel, meet with the collateral witnesses including biological parents, foster parents, family members, service providers including but not limited to teachers, medical professionals and DCF contractors.
- 6) The guardian ad litem shall advise all persons contacted, including the child and the parents, of the non confidential nature of the conversation or interview
- 7) The guardian ad litem should maintain complete and written records of all interviews and investigations.
- 8) The guardian ad litem shall participate in all court appearances, case status conferences, negotiations, discovery, pretrial conferences, and mediations and whenever possible, treatment planning conferences administrative case reviews and hearings.
- 9) If a guardian ad litem determines that there is a conflict of interest requiring withdrawal, the guardian should continue to perform as the guardian ad litem and seek permission from the court to withdraw. The guardian should request appointment of a successor guardian ad litem without revealing the details of the conflict, unless the guardian determines that it is in the child's best interests to do so.

GUIDELINE 3.17 CONFIDENTIALITY RELATING TO GUARDIANS AD LITEM IN CHILD WELFARE MATTERS

- 1) A guardian ad litem shall observe all statutes, rules and regulations concerning confidentiality.
- 2) A guardian ad litem shall not disclose information or participate in the disclosure of information relating to an appointed case to any person who is not a party to the case, except as may be specifically provided by law.
- 3) Communications made to a guardian, including those made to a guardian by a child, are not privileged and may or may not be disclosed to the parties, the court or to professionals providing services to the child or the family based on the guardian's evaluation of the best interests of the child. If the guardian is an attorney, she or he acts in the capacity of a guardian, rather than as an attorney, and information he or she receives is not subject to the client confidentiality.

GUIDELINE 3.18 CONFIDENTIALITY, GUARDIANS AD LITEM IN CHILD WELFARE MATTERS

- 1) A guardian ad litem shall observe all statutes, rules and regulations concerning confidentiality.

- 2) A guardian ad litem shall not disclose information or participate in the disclosure of information relating to an appointed case to any person who is not a party to the case, except as may be specifically provided by law.
- 3) Communications made to a guardian, including those made to a guardian by a child, are not privileged and may or may not be disclosed to the parties, the Court or to professionals providing services to the child or the family based on the guardian's evaluation of the best interests of the child. If the guardian is an attorney, she or he acts in the capacity of a guardian, rather than as an attorney, and information he or she receives is not subject to the client confidentiality.