

MISSISSIPPI CERTIFICATION STANDARDS FOR PERFORMANCE OF ATTORNEYS REPRESENTING PARENTS IN CHILD PROTECTION OR TERMINATION OF PARENTAL RIGHTS PROCEEDINGS IN YOUTH COURT

Preamble: Attorney's Responsibilities in Parental Representation

These standards apply to attorneys representing parents whose children are involved in child protection proceedings under the Youth Court Act or termination of parental rights proceedings. Competent, diligent, confidential, and professionally ethical parental representation is crucial in safeguarding the fundamental liberty interest of, and the due process protections afforded to, the parent in providing for the care, nurture, welfare, and education of that parent's natural or adoptive child. Thus, an attorney representing a parent in child protection or termination of parental rights proceedings shall comply with all federal and state laws, whether substantive or procedural, applicable to the representation.

A parent's constitutional right to raise his or her child is a liberty interest not only of the parent, but also of the child, that is safeguarded by the Constitution and the courts. Mississippi law presumes that parents are the natural guardians of their children, and that they are equally responsible for their care, nurture, welfare, and education. If the state seeks to interfere with the parent-child relationship, the Constitution mandates: (1) that the state prove parental unfitness as defined by state laws, and (2) that the state follow certain procedures protecting the parents' due process rights.

Attorneys who represent parents in child protective proceedings play a crucial role in safeguarding the parents' liberty interests. Similar to defense lawyers in criminal cases, parents' attorneys prevent the state from overreaching or unjustly removing children from their homes. In situations where temporary removal may be warranted, advocacy by the parents' attorneys may expedite the safe reunification of the family by ensuring the prompt delivery of appropriate services to the family and by counseling the parents about the ramifications of the choices they make.

If the parent cannot care for the child properly, the parent's lawyer may carry out the parent's wishes by arranging for another temporary or permanent legal placement, such as placement with a family member, guardianship, or adoption that will advance the entire family's interests. Additionally, the attorney is expected to comply with these performance standards for parental representation, which comport with the *Mississippi Rules of Professional Conduct*; the Constitution of the United States; the Mississippi Constitution and state law.

1. Competence

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall provide competent representation, which requires possessing the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Because parental representation involves matters with a substantial degree of legal and social complexity, and which may significantly, or even severely, impact a parent's parental rights, an attorney who represents a parent in these proceedings is expected to have expertise in this

particular field of law, or to work in consultation with an attorney who has that expertise, as deemed requisite for competent representation.

Competent representation, at a minimum, requires:

- Adhering to all relevant training and mentoring requirements before assuming representation of a parent involved in a child welfare or termination of parental rights proceeding.
- Utilizing knowledge of all relevant federal and state laws, rules, regulations, and policies necessary to analyze and assess the factual and legal elements of issues pertaining to all phases of the representation and to provide sound legal advice in resolving or addressing issues.
- Advising the parent of federal and state requirements for achieving permanency for the child in a timely manner.
- Exercising skill in all areas of procedural practice applicable to the proceedings, including that of authorized procedures for obtaining documents and information that may affect the parent's rights and interests, depositions, motions, and hearings.
- Thorough attention to details important toward reaching a favorable outcome for the parent.
- Zealously protecting and pursuing, within the bounds of the law, the parent's rights and interests.

1.1. Education, Training & Experience

Counsel must acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules including but not limited to the *Uniform Rules of Youth Court Practice* and *Youth Court Act*. Understand child development principles, particularly the importance of attachment and bonding and the effects of parental separation on young children; and have knowledge of the types of experts who can consult with attorneys and/or testify on parenting, remedial services and child welfare issues. Counsel should be familiar with the child welfare and family preservation services available in the community and the problems the services are designed to address. Counsel should also have a thorough understanding of the role and authority of the Mississippi Department of Child Protection Services (hereafter CPS or department) and both public and private organizations within the child welfare system.

To acquire and maintain the expertise requisite for competent representation, an attorney should annually engage in training and education programs on these standards and current developments in child welfare law and research. Additionally, it is imperative that the attorney recognizes and understands all federal and state laws applicable to parental rights.

Courts should not appoint an attorney to represent a parent in these actions unless that attorney meets the criteria of these standards and has otherwise met all statutorily imposed qualifications for the representation. *See Miss. Code* § 43-21-201(3). An attorney who represents parents in these proceedings should participate in twelve (12) hours of continuing legal education on related topics approved by the Office of State Public Defender for initial certification and a minimum of six (6) hours of continuing legal education on related topics per year to maintain certification.

2. Scope of Representation

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall abide by the parent's decisions concerning the objectives of representation within the limits imposed by law and the attorney's professional obligations.

An attorney who represents a parent in proceedings involving child protection or termination of parental rights should assure the parent of the attorney's obligation to zealously protect and pursue, within the bounds of law, the parent's rights and interests.

Representational roles:

- As an advisor, an attorney provides the parent with an informed understanding of the parent's legal rights and obligations and explains their practical implications.
- As an advocate, an attorney zealously asserts the parent's interest.

Counsel shall not substitute counsel's judgment or opinions in those decisions that are the responsibility of the client. Counsel shall also protect the parent's rights including the right to services, visitation and information and decision making while the child is in foster care or other temporary placement. As a general rule, unless inconsistent with the client's goals, counsel shall strive to work collaboratively to resolve matters. It shall be made clear and unambiguous that parents' attorneys are independent of the court and accountable to their clients.

It is expected that counsel of record shall continue to represent the client from the initial court proceeding through all subsequent dependency and/or termination proceedings until resolution and the case is closed.

3. Conflict of interest

An attorney shall not represent a parent in child protection proceedings or termination of parental rights proceedings if the representation will be adversely affected, or materially limited, by obligations or responsibilities owed to another client or by the attorney's own interests, unless the risks associated with that conflict are reasonably minimal and the parent has given knowing and informed consent after being fully advised of the adverse consequences that could occur from those risks.

Consistent with Rule 1.7, MRPC, each parent should have separate counsel in most situations. However, in certain limited circumstances, an attorney may agree to represent both parents in a proceeding. Because parental representation involves rights and interests of a parent that may be adverse to those of the other parent or another party to the action, an attorney who represents a parent in these proceedings is expected to be vigilant in avoiding any actual or potential conflict of interest that could arise from representing either both parents or one parent and another party to the action.

An attorney should assure that adequate time is dedicated to each case. To maintain a manageable workload, a fulltime parents' representation attorneys should limit their caseload to between sixty (60) and one hundred (100) cases at any given time. Support staff assistance, travel time required if serving more than one county, experience level of attorney and whether the attorney is part of a multidisciplinary representation team must be considered in determining where in this range an appropriate caseload lies for an individual attorney. A part time parent's representation attorney should limit their caseload proportionately must ensure that other cases do not interfere with counsel's obligation and commitment to Parent Representation Program cases.

Avoiding a conflict of interest, at a minimum, requires:

- Assessing carefully whether dual or multiple representations could impair the attorney's obligation to zealously protect and pursue the separate and distinct rights and interests of each party.
- Considering any conflicts of interest that might arise in the course of representing dual or multiple parties to the action and the possible adverse consequences that could result should that happen.
- Considering the measures to be taken for ensuring that the confidential disclosures of each party is not compromised.
- Advising each party, preferably separately, on the risks associated with dual or multiple representations.
- Obtaining the informed consent of all parties before undertaking the dual or multiple representation, and court approval of the waiver of conflict of interest.
- Withdrawing from the dual or multiple representation case, if a conflict of interest arises that significantly impairs the attorney's ability to adequately represent the separate and distinct rights and interests of each party.

Serious consideration should be given before agreeing to represent more than one party to the action since an unforeseen need to withdraw from the representation at a later date could cause a prolonged delay in achieving the parent's goal for reunification with the child.

An attorney should never represent both parents in situations where one parent has made allegations of domestic violence or abuse against the other parent.

4. Communication with Client

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall fully and promptly inform the parent on the aspects of the case affecting the parent's rights and, to the extent permitted by law, update the parent regarding the child's safety and well-being concerning custody, care, and plans for permanency, and explain these matters in a manner that allows the parent to make informed decisions regarding the representation.

Because parental representation involves matters affecting a fundamental liberty interest, an attorney who represents a parent in these proceedings is expected to fully and promptly inform

the parent on all legal aspects of the case affecting the parent's rights so that the parent may participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

Full and prompt communications, at a minimum, requires:

- Providing contact information in writing and establish a message system that allows regular attorney-client contact.
- Regularly meeting and advising the parent on all aspects of the case.
- Reviewing with the parent the allegations in the petition, the terms and conditions of the court-approved service plan, the orders of the court, and any negotiated agreements.
- Informing the parent of the possible consequences for noncompliance with the court-approved service plan and other orders of the court.
- Apprising the parent regarding the child's safety, permanency, and wellbeing.
- Explaining to the parent the general strategies and prospects of success of any pending proceedings.

Work with the client to develop a case timeline and calendar system that informs the client of significant case events and court hearings and sets a timeframe describing when specific case requirements (such as services) should be completed.

- 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 by law, rule or court order.
- Take diligent steps to locate and communicate with a missing parent and decide representation strategies based on that communication.
- Avoid meeting the client exclusively at government facilities like the courthouse or DHS. Besides client confidentially concerns raised by meeting in a public facility, meeting in an office or more neutral location assists in the development of a more trusting relationship between the attorney and client. Trust is a hallmark of the attorney-client relationship and is essential for effective representation.

Communicating with a parent who suffers from a mental disability may present challenges in meeting these standards. In such cases, the attorney should keep the parent advised on the status of the case as deemed reasonably practicable and, if necessary, should request the court appoint a trained professional to assist the parent for purposes of the representation. For a parent who is a limited English speaking person or is hearing impaired the attorney should request the court appoint an interpreter approved by the Administrative Office of Courts to accommodate the representation. *See Miss. Code Ann.* § 13-1-301 (appointment of interpreter for hearing impaired).

5. Confidentiality

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall not reveal information relating to the representation unless the parent gives informed consent for the disclosure, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is otherwise required by law and, further, such attorney shall not reveal the confidential records of children or others that have been acquired in the course of the representation except as required by law.

Protecting the confidentiality of information, at a minimum, requires:

- Studying and fully understanding the laws governing the attorney-client privilege, the work product doctrine, the rule of confidentiality established in the *Mississippi Rules of Professional Conduct*, and the laws governing the disclosure of records involving children under the *Mississippi Youth Court Law* and the *Uniform Rules of Youth Court Practice*.
- Explaining fully and promptly to the parent the advantages and disadvantages of exercising, waiving, or partially waiving a privilege or right to confidentiality as warranted by the facts and circumstances of the case.

6. Diligence

An attorney representing a parent in child protection proceedings or termination of parental rights proceedings shall act with reasonable diligence and promptness at every stage of these proceedings toward protecting and pursuing the parent's rights and interests.

Because parental representation involves time-sensitive proceedings, an attorney who represents a parent in these proceedings is expected to act with reasonable diligence and promptness in all phases of the representation so that the parent's rights and interests are not adversely affected.

6.1 Discovery & Court Preparation

Counsel shall conduct a thorough and independent investigation at every stage of the proceeding. Counsel shall review the child welfare agency case file and obtain all necessary copies of pleadings and relevant notices filed by other parties. When needed, use formal discovery methods to obtain information.

Effective court preparation includes the following:

- Interview the client and potential witnesses such as school personnel, neighbors, relatives, foster parents, medical professionals, etc., and subpoenaing appropriate witnesses.
- Obtain necessary authorizations for releases of information.
- Research applicable legal issues and advance legal arguments when appropriate.

- Develop a case theory and strategy to follow at hearings and negotiations.
- Timely file all pleadings, motions, and briefs.
- Make timely evidentiary objections, and otherwise developing a thorough record for appellate review.
- Engage in case planning and advocate for appropriate social services.
- Engage in out-of-court advocacy, including participation in family team meetings.
- Advocate for services to remedy circumstances that led to out of home placement and that services be provided in a manner that is accessible to the client.
- Advocate for regular visitation in a family-friendly setting.
- Documenting the parent's efforts to successfully comply with the service agreement.
- With the client's permission, and when appropriate, engage in settlement negotiations and mediation to resolve the case.
- Thoroughly prepare the client and all witnesses to testify at the hearing.
- Identify, secure, prepare and qualify expert witness when needed. When permissible, interview opposing counsel's experts.

When representing a parent who is incarcerated, the attorney needs to be especially mindful of federal and state laws governing completion deadlines on reasonable efforts for reunification. See Rule 7, Uniform Rules of Youth Court Practice. As such, the attorney should advise the parent on the challenges for achieving reunification of the child with the parent, and the possible consequences for failing to comply with the terms and conditions of the court-approved service plan.

6.2 Shelter Hearings

The importance of shelter hearings should not be underestimated. Important matters are often decided at this initial hearing that can have long-term effects of the outcomes of the client's case. These issues include placement with the client, relative placement, visitation, and the early engagement of the client into voluntary services. Counsel should work to negotiate or achieve the best possible outcome for the client at this hearing.

Even though these are emergency hearings which give counsel little time to prepare, counsel should protect the due process rights of client, including the right to have shelter hearings within 48 hours of removal, the right to present evidence and examine witnesses, and the right of the client to testify.

Counsel should also recognize the opportunity to establish an excellent attorney-client relationship at the beginning of the case. Clients should be given the opportunity to talk to counsel prior to the hearing about their case. Counsel should prepare the client for the shelter care hearing and call witnesses where appropriate.

6.3 Adjudication Hearings

Counsel should take great steps to adequately prepare for the adjudication hearing, including maintaining continued contact with the client, communicating with the department and the guardians ad litem as necessary for the client's case, subpoenaing witnesses, making requests for discovery, filing motions and/or answers to petitions. Counsel shall protect the client's due process rights, make necessary objections, and take into considerations any underlying or concurrent criminal charges related to the same set of circumstances. If a child is in state custody, the adjudication hearing must take place within 30 days of the child coming into state care. If a child is temporarily placed with relatives or fictive kin, the adjudication hearing should take place within 90 days. As a matter of practice, counsel should request court dates as soon as possible to prevent any unnecessary delays.

6.4 Disposition Hearings

If a child has been adjudicated as abused or neglected in accordance with Mississippi Code Annotated 43-21-561, then the Youth Court will proceed with a disposition hearing to determine the continued placement of the children while the client works to establish and complete their service plan. This hearing may take place immediately following the adjudication hearing, unless a party requests a continuance to prepare for their participation in that hearing. If a child is in state custody, the disposition hearing must be held within 14 days of the adjudication hearing. Counsel should make an *ore tenus* motion to excuse the child if the information and evidence provided will be injurious to the child's best interest, with the child's counsel's consent.

6.5 Periodic Review Hearings

As a matter of strategy, Counsel may consider requesting review hearings prior to annual review/permanency hearings to apprise the court of the client's progress or change in circumstances since the entry of the adjudication order, including but not limited to completion of service plans and/or rectification of the issues which caused the court's initial involvement. Unless otherwise requested, review hearings are typically scheduled for a date certain within 6 months of the shelter hearing. Counsel shall utilize motion practice to advocate for increases in visitation, etc. Counsel shall protect the client's due process rights and make necessary objections during all youth court proceedings.

6.6 Annual Review/Permanency Hearings

Counsel shall engage in case conferences, family team meetings, and/or other forms of out-of-court advocacy related to determining the best interests and permanency plans for the family and/or child on an ongoing basis and well in advance of the annual review/permanency hearing.

Counsel shall file any necessary motions reflecting the client's wishes as to the permanency of the child and any progress or completion the client has achieved regarding the service plan. Counsel must provide legal advice and counsel the client on federal and state laws regarding the timeline of a child's journey through the child welfare system. Counsel must explain the possible outcomes and the legal ramifications that may follow, including successful reunification, continued temporary placement, durable legal custody to a relative or third party, or termination of parental rights and adoption.

Counsel should take great steps to adequately prepare for the annual review/permanency hearing, including maintaining continued contact with the client, communicating with the department and the guardians ad litem as necessary for the client's case, obtaining necessary reports and documentation of completed services, subpoenaing witnesses, making requests for discovery, filing motions and/or answers to petitions. Counsel shall protect the client's due process rights and make necessary objections during all youth court proceedings.

6.7 Case Conferences, Family Team Meetings and Staffings

Counsel shall attend the case conference to develop a written voluntary services plan, driven by the client's assessment of their individual and/or family needs. Services plans should meet the individual needs of each client and be designed to facilitate reunification. Additionally, counsel should participate in case staffings, settlement conferences, multi-disciplinary team reviews, family team meetings and other conferences held to negotiate, develop and implement case plans.

7. Advocacy for Appropriate Services

Consistent with the client's goals, counsel shall thoroughly discuss with the client the advantages of early engagement in services and advocate for timely provision of services appropriate to meet the needs of the individual client. Parents often see themselves as passive recipients of services rather than as a part of the process of determining what services are necessary to resolve the problem. Attorneys should assist them in taking a more active role in the process and representing their own views. Attorneys should help clients obtain not only services deemed necessary by the department, but also those that the family considers essential to its survival. Advocacy for services should occur at every stage of the proceeding, beginning with the initial shelter hearing and shall also include out-of-court case events such as: case conferences; family team meetings; and multi-disciplinary team staffing. Counsel should identify and address barriers that may prevent or limit the client's ability to successfully engage in services. Counsel should assure that court orders specify each party's duties and responsibilities regarding service referrals, payment for services, transportation issues and a realistic timeline for commencing and completing services. Counsel's efforts to advocate for services include the following principles:

- The department has a duty to make reasonable efforts to unify the family;
- The department must develop treatment plans for the individual needs of the client in a manner that minimizes the number of contacts the client is required to make;
- The department case worker should solicit the parent's active participation in the development of this individualized service plan;

- The court order should specify who is responsible for attaining services and by what time;

The department must coordinate within the department and with contracted service providers, to ensure that parents in dependency proceedings receive priority access to remedial services;

Remedial services include: individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities;

- The department may provide funds for remedial services if the parent is unable to pay for such services; and
- Required services must be related to the parental deficiencies or circumstances that led to the child's removal from the home.

8. Advocacy for Visitation

Counsel recognizes that parent-child contact is essential to the welfare of the child and the successful resolution of the client's case and advocates for frequent, consistent visits in the least restrictive setting possible. Counsel's advocacy efforts include the following principles:

- Visitation is the right of the family;
- Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify;
- The department must encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child;
- Visitation plans should allow for make-up visits in the event that a child is not available for a visit or when a parent, for good cause cannot attend a scheduled visit; and
- Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services and may only be limited or denied when necessary to protect the child's health, safety, or welfare.

9. Post Hearings/Appeals

Counsel is obligated to ensure that each client understands and is able to exercise their rights to appeal, discretionary review and post hearing relief.

- Review court orders to ensure accuracy and clarity and review with client.

- Take reasonable steps to ensure the client complies with court orders and to determine whether the case needs to be brought back to court.
- Consider and discuss the possibility of appeal with the client. Prior to discussion counsel must contact the Office of State Public Defender to determine availability of representation on appeal through that agency. If appellate representation is available counsel must advise client of this resource.
- If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal as required by the Rules of Appellate Procedure.
- Request an expedited appeal, when feasible, and file all necessary paperwork while the appeal is pending.
- Coordinate with appellate counsel to assure that appropriate steps are taken (such as a motion to stay) to protect the client's interests while the appeal is pending.