

# Washington State Office of Public Defense Parent's Representation Program

## **Parents Representation Program Standards for Attorneys**

2012

“Change is possible when parents get the support they need”



## **Mission Statement**

As an independent judicial branch agency, the Office of Public Defense’s mission is to implement the constitutional and statutory guarantees of counsel and to ensure effective and efficient delivery of indigent defense services funded by the state of Washington. The OPD administers all state funded public defense programs including representation of indigent parents who qualify for appointed counsel in dependency and termination cases, as provided in RCW 13.34.090 and 13.34.092.

## **Vision**

The OPD Parents Representation Program seeks to provide high quality, effective representation to indigent parents involved in dependency and termination of parental rights proceedings. As both a counselor at law and advocate, the attorney strives to inform and advise the parent, protect the parents’ legal rights, including the rights to family autonomy, remedial services and visitation and ardently pursue the case goals and outcomes as identified by the parent.

*“The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.”*

*Supreme Court of the United States, Santosky v. Kramer, 455 U.S. 745 (1982).*

## **Description of the OPD Parents Representation Program**

The OPD Parents Representation Program contracts with private attorneys, law firms and public defender agencies in program counties, to provide defense services to indigent parents involved in dependency and termination of parental rights proceedings. Contract parent representation attorneys are not employees of the OPD or the state of Washington and the OPD does not direct an attorney’s actions, conduct or case strategies, as long as the attorney’s conduct is consistent with the terms of the contract, court rules, state law and professional rules and standards. The OPD sets manageable caseload limits, implements professional standards of practice and provides access to expert services, independent social workers and case support services, so that program attorneys can better assist their clients. The OPD Parents Representation Program is established in 25 counties.

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# **1 General Duties**

## **1.1 Role of Parent's Counsel**

The paramount obligation of dependency counsel is to provide effective and quality representation to indigent parents at all stages of the dependency process. Counsel shall advocate for the client's goals and empower the client to direct the representation and make informed decisions based on thorough legal counseling. 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. As a general rule, unless inconsistent with the client's goals, counsel shall strive to work collaboratively to resolve matters.

## **1.2 Education, Training & Experience**

Counsel must acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies, and rules. 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 Division of Children and Family Services and both public and private organizations within the child welfare system. Counsel should participate in trainings offered by OPD and other available child welfare oriented agencies to continue to be current in the latest developments in child welfare law and research.

## **1.3 Continuity of Representation**

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.

## **1.4 Caseloads**

The OPD caseload standard is 80 active cases at any given time, for a full time parents' representation attorney. A program attorney should assure that adequate time is dedicated to each case and that professional time spent on parent representation cases is commensurate with the percent of a full time caseload. If counsel works for the Parent Representation Program on a part-time basis, counsel must ensure that other cases do not interfere with counsel's obligation and commitment to Parent Representation Program cases.

## **2 Relationship with the Client**

Counsel should be aware of unique issues facing each client, such as incarceration, mental health status, poverty, domestic violence and substance abuse and take appropriate steps to assure that these issues do not interfere with effective representation.

Counsel must be alert to and avoid potential conflicts of interest or the appearance of a conflict of interest that would interfere with the competent representation of the client. Counsel shall not represent two or more individuals involved in a dependency or termination proceeding.

## **3 Client Communication**

In all cases counsel must maintain sufficient contact with the client to establish and maintain an attorney-client relationship that will enable counsel to understand the client's interests and needs, as well as the client's position on issues or questions in the case. Client communication should include the following elements-:

- Provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.
- Meet and communicate regularly with the client. Substantial in office meetings should take place between shelter care and the services conference, and well before any court proceedings. At these meetings, counsel should listen to the client's factual descriptions of the case and fully answer the client's questions. Counsel should also advise the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights and potential consequences in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans. Adhere to all laws and ethical obligations concerning confidentiality.
- 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 DSHS. 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 an essential component in any attorney client relationship, but especially so in dependency cases.

## **4 Communication with Other Professionals**

Child welfare cases require parents' counsel to communicate regularly with numerous professionals involved in the client's case. Some of these individuals are parties to the proceeding and represented by counsel, while many others are not. Counsel should communicate regularly with other parties and professionals involved in their client's case as required to obtain current information regarding the case. While dependency proceedings may at times appear informal, it is important that all counsel fully respect the attorney-client relationship and abide by the RPC's governing communication with other parties to the proceeding, and communications with third parties.

## **5 Discovery & Court Preparation**

Counsel shall conduct a thorough and independent investigation at every stage of the proceeding and when appropriate utilize OPD social worker and OPD expert services as needed. Counsel shall review the child welfare agency case file and obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and information from the caseworker and providers. 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.
- Obtain necessary authorizations for releases of information.
- Develop a case theory and strategy to follow at hearings and negotiations.
- Timely file all pleadings, motions, and briefs. Research applicable legal issues and advance legal arguments when appropriate.
- Engage in case planning and advocate for appropriate social services.
- Aggressively 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.
- Aggressively advocate for regular visitation in a family-friendly setting.
- 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.

## **6 Pre-Trial/Hearing Actions**

### **6.1 Shelter Care Hearings**

The importance of shelter care 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 aggressively 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 care hearings within 72 hours of removal, the right to present evidence and examine witnesses, the right of the client to testify, and the right to have discovery prior to the shelter care hearing.

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 and review available discovery. Counsel should prepare the client for the shelter care hearing and call witnesses where appropriate.

### **6.2 Case Conferences and Staffings**

Counsel shall attend the case conference to develop a written voluntary services plan. 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 decision making meetings and other conferences held to negotiate, develop and implement case plans.

## **7 Advocacy for 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 care hearing and shall also include out-of-court case events such as: case conferences; family team decision making meetings; and multi-disciplinary team (CPT)

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 shall 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 Hearings**

Counsel has a professional duty to diligently represent their client. This includes the following:

- Prepare and make all appropriate motions and evidentiary objections.
- Present and cross-examine witnesses, prepare and present exhibits.
- Request the opportunity to make opening and closing arguments.
- 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.
- Avoid continuances (or reduce empty adjournments) and work to reduce delays in court proceedings unless there is a strategic benefit for the client.

## **10 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.
- If the client decides to appeal, timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow 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.
- Communicate the results of the appeal and its implications to the client.

## **11 Withdrawal and Termination of Representation**

### **11.1 Withdrawal Upon Resolution of Case**

Counsel shall close case and withdraw from representation in a timely manner when a final resolution of the case has been achieved and counsel's responsibilities to the client have been completed. In general, counsel should close the case and withdraw from representation within 30 days of entry of a final order.

### **11.2 Withdrawal Prior to Resolution of Case**

If circumstances necessitate counsel's withdrawal prior to resolution of the case, counsel shall obtain a court order allowing withdrawal and substitution of attorney. Counsel must serve client and all parties with notice of intent to withdraw and date and time of motion.

If motion to withdraw is granted, counsel shall take reasonable steps to protect the client's interests and arrange for the orderly transfer of the client's file and discovery to substituting counsel.

## **12 Involvement in Child Welfare System Improvement Efforts**

In addition to the individual case responsibilities described in these standards, Parent Representation Program attorneys should also be actively involved in efforts to improve the child welfare system. Court Improvement projects, reasonable efforts symposiums, juvenile court administrative meetings, and similar activities all provide an opportunity for counsel to have a positive impact on developments within the child welfare system and protect the rights and interest of parents and families.