



CORE PRINCIPLES FOR
APPOINTED ATTORNEYS
REPRESENTING INDIGENT PARENTS
OR LEGAL GUARDIANS
IN CHILD WELFARE PROCEEDINGS

DRAFTING AND REVIEW COMMITTEE

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USER STATEMENT

The Utah Indigent Defense Commission adopted these “Core Principles for Appointed Attorneys Representing Indigent Parents or Legal Guardians in Child Welfare Proceedings” in February 2018 to provide advisory guidance to indigent defense systems, parent attorneys, and other juvenile court stakeholders. Nothing in these core principles is considered the rendering of legal advice with respect to specific cases.

UTAH INDIGENT DEFENSE COMMISSION

The Utah Indigent Defense Commission was created by legislation in 2016 to help the state ensure its indigent defense services are consistent with the United States and Utah Constitutions.

The membership of the Commission includes key leaders in state and local government, criminal defense, indigent defense services, and the courts.

The Commission works with the state, local governments, indigent defense providers, and other stakeholders to: provide guidance on standards for constitutional representation, gather data and information about local indigent defense services, award grants to improve local indigent defense services, and encourage and aid in the regionalization of indigent defense services throughout the state.

PRINCIPLE 1/ ROLE OF THE ATTORNEY

The attorney appointed to represent a parent or legal guardian in child welfare proceedings— hereinafter “the parent attorney” – works to protect a parent’s constitutional and legal rights in the care and custody of their child(ren). The role extends beyond mere attendance at scheduled court hearings and includes out-of-court support to the client, active collaboration with other stakeholders on the case, and developing a strength-based narrative of the client that guides every aspect of the case.

The parent attorney plays a critical role in the appropriate functioning of the child welfare system. Effective advocacy by the parent attorney improves system decision making, strengthens families, and results in better outcomes for subject children.¹

PRINCIPLE 2/ DUTIES TO CLIENT

The duties owed by the parent attorney to their client include:

- confidentiality;
- undivided loyalty, which includes identifying and addressing any conflicts of interest²;
- handling the matter with a sense of urgency while being sensitive to the individual needs of the client;
- regular and meaningful communication with the client, with the goal of engaging the client in the process, including mediation, and empowering the client to make informed decisions;
- frequent communication with DCFS, services providers, and other stakeholders;
- conveying to the client the critical importance of staying in contact with the parent attorney; and
- establishing, in each case, the best means of staying in contact with the client.

¹ E.g., Courtney, Mark E., and Jennifer L. Hook. 2012. "Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care." *Children and Youth Services Review* 34(7): 1337-43 (finding that enhancements in parental representation in Washington State improved permanency outcomes for children). An executive summary of the study findings is available at: <https://olis.leg.state.or.us/liz/201311/Downloads/CommitteeMeetingDocument/31635>

² The attorney should maintain a case and file management system sufficient to enable conflict checks. The parent attorney should also avoid, whenever possible, representing two or more individuals involved in the same dependency or termination proceeding absent unusual circumstances.

PRINCIPLE 3/ TRAINING AND ONGOING EDUCATION

Parental defense is an area of distinct specialization, requiring specialized training and ongoing legal education.

On an ongoing basis, the parent attorney should:

- seek training in areas of law and practice relevant to parental defense practice (see Guideline #4, below);
- seek consultation and mentorship from experienced practitioners in areas of relevant law and practice less familiar to the parent attorney; and
- seek affiliation and mutually supportive relationships with other parent attorneys.

PRINCIPLE 4/ AREAS OF KNOWLEDGE AND EXPERTISE

The specialized nature of parental defense practice requires adherence to and familiarity with relevant areas of law, policy, research, and practice, including:

- permanency timelines;
- federal statutes, regulations, policies, and rules, including the Indian Child Welfare Act, the Adoption and Safe Families Act, and the Family First Prevention Services Act;
- state statutes, regulations, policies, and rules, including: the Utah Rules of Juvenile Procedure, the Utah Rules of Civil Procedure, the Juvenile Court Act, the Utah Rules of Evidence, and the Utah Rules of Appellate Procedure;
- federal and state child welfare caselaw;
- court rules and local court protocols;
- child development principles and research, particularly the importance of attachment and bonding and the harms of parental separation;
- child welfare and family preservation services available in the community;
- the role and authority of DCFS and any administrative regulations, policies, or laws that govern DCFS practices; and
- working knowledge of the types of experts who can consult with attorneys and/or testify on parenting, remedial services, and other child welfare issues.

PRINCIPLE 5/ SCOPE OF REPRESENTATION

Effective representation commences in a timely manner, extends for the entire life of the case, and proceeds with reasonable continuity. The parent attorney should:

- represent the client from the initial court proceeding or shelter hearing through all subsequent dependency and/or termination proceedings until court jurisdiction is terminated;
- be present at all court hearings and avoid continuances unless there is a benefit for the client; and
- advocate for parents at mediation, Family Team Meetings, and other agency meetings that take place outside of court, whether directly or through the participation of a defense team social worker, where available.

PRINCIPLE 6/ CHALLENGING REMOVAL, ALLEGATIONS, AND TERMINATION

Effective representation requires addressing the allegations against the client. The parent attorney should:

- articulate a strength-based narrative about the client;
- develop a theory of the case and proactive case strategy;
- pursue fact development through discovery and investigation;
- pursue legal arguments through motion practice and briefing;
- present competent evidence through the use of witnesses, exhibits, and/or documentation;
- document and track all that is being done by DCFS and encouraging the client to do the same;
- evaluate “reasonable efforts” at every stage of the proceedings;
- litigate the issue of “reasonable efforts,” where appropriate; and
- use experts as defense consultants and/or witnesses, where appropriate.

PRINCIPLE 7/ AFFIRMATIVE ADVOCACY FOR PLACEMENT, SERVICES, AND PARENT TIME

Effective representation of a parent in child welfare cases generally requires representation beyond the legal and factual claims against the parent. The parent attorney should actively advocate for placement, services, and meaningful parent time. Specifically, the parent attorney should:

- advocate for kinship placements, where appropriate, if the court orders removal from the home;
- advocate for meaningful and robust parent time, which may include utilizing third-party supervised visits to increase parenting opportunities;
- engage in proactive case planning, which may include proposing alternative case plans, service providers, and parent time schedules that are most supportive of family reunification;
- challenge the services offered by DCFS when those services are not appropriate or sufficient;
- obtain referrals and services from the very beginning of the case, when possible; and
- pursue, where appropriate, motion practice and litigation directed towards improving placement options, services, and parent time.

PRINCIPLE 8/ WORKLOAD

The parent attorney should not carry a total workload that interferes with the ability to render effective assistance of counsel to each client.

PRINCIPLE 9/ APPELLATE ISSUES

The parent attorney must preserve and protect a client's right to appeal. The attorney should:

- be familiar with the rules of appellate procedure, particularly those pertaining to filing deadlines;
- preserve issues for appeal;
- counsel the client on appellate rights and guide the client through the decision making process regarding possible appeal;
- conduct a reasonable search for a missing client to obtain requisite signatures;
- timely and thoroughly file the notice and Petition on Appeal if the client elects to appeal; and
- principally author any documents filed with the Court of Appeals, including but not limited to the Petition on Appeal.³

PRINCIPLE 10/ SYSTEM ADVOCACY AND IMPROVEMENT

The parent attorney plays an important role in ensuring that the child welfare system functions fairly and avoids unnecessary state intervention in family relationships.

The parent attorney should, when possible, seek to:

- actively participate in policy development and review;
- monitor proposals to change court rules;
- participate in local or statewide committees relevant to juvenile court; and
- advocate for adequate defense resources to provide effective assistance.

³ While the use of support staff, including the use of paralegals on appeals, can be a beneficial means of managing an attorney's caseload, the primary responsibility of the appeal remains with the attorney.

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