

**REPRESENTING CHILDREN
IN CUSTODY AND
PARENTING TIME CASES**

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Topics we will cover:

- I. ROLE OF CHILD'S ATTORNEY**
- II. APPOINTMENT**
- III. STEPS IN YOUR INVESTIGATION**
- IV. MEETING WITH CHILD CLIENT**
- V. EFFECTIVE WITNESSES AND HOW TO GET THEM**

Topics we will cover:

- VI. LEVERAGING YOUR ROLE FOR SETTLEMENT**
- VII. PRETRIAL AND TRIAL**
- VIII. DEALING WITH PRO SE PARENTS**
- IX. NON-LEGAL ISSUES**

I. ROLE OF CHILD'S ATTORNEY

Role of Child's Attorney

OR laws and rules re: child's attorney

- **ORS 107.425(6):**
 - *Gives court authority to appoint child's lawyer.*
 - *BUT does not define the role.*

Role of Child's Attorney

OR laws and rules re: child's attorney

- **ORPC 1.1 - Competence:**
 - *"[R]equires the legal knowledge, skill, thoroughness and preparation reasonably necessary...."*

Role of Child's Attorney

OR laws and rules re: child's attorney

• ORPC 1.2 - Scope of Representation:

• "A lawyer shall abide by a client's decisions concerning the objectives of representation and... consult with the client as to the means by which they are to be pursued."

Role of Child's Attorney

OR laws and rules re: child's attorney

• ORPC 1.14(a):

• "When a client's capacity to make adequately considered decisions is diminished, whether because of minority, mental impairment or some other reason, the lawyer shall as far as reasonably possible maintain a normal client-lawyer relationship with the client."

Role of Child's Attorney

OR laws and rules re: child's attorney

• Marriage of Thomason, 174 Or App 37, 23 P3d 395 (2001):

• Child's attorney can be appointed ONLY when there is a pending action.

Role of Child's Attorney

That's it.

Role of Child's Attorney

Guidelines/standards re: lawyers representing children in custody cases - very similar to each other:

- **National Conference of Commissioners on Uniform State Laws**
- **American Bar Association Section of Family Law**
- **National Association of Counsel for Children**

Role of Child's Attorney

Defines two separate roles:

- **Child's attorney: provides legal counsel and owes same duties of loyalty, confidentiality and competent representation as due an adult.**
- **Best interests attorney: provides legal representation for the purpose of protecting a child's best interests without being bound by the child's directives or objectives.**

Role of Child's Attorney

Currently Oregon has not adopted any of these guidelines or standards of practice.

Role of Child's Attorney

CCS's model for representing children:

CCS = children's attorneys, not Best Interests attorneys (does not exist under OR law)

BUT

CCS ≠ NOT mouthpieces (attorneys must be counselors to clients as well)

Role of Child's Attorney

CCS's model for representing children:

And ALWAYS think about the best interests of your child client.

II. APPOINTMENT OF CHILD'S ATTORNEY

Appointment

ORS 107.425(6): Counsel for Children

- Court **MUST** appoint when a child requests an attorney
- Court **MAY** appoint at the request of one of the parties
- Court **MAY** also appoint on its own motion
- **ONLY** through court appointment!

Appointment

Appointment procedure:

- Multnomah Co.: Children's Representation Project = roster of attorneys who represent children
- Washington Co.: similar process
- Columbia Co.: similar process
- Deschutes Co.: Judge Sullivan

Appointment

Sample Order of Appointments in your materials:

- Attorney's authority (ex. Records and ROIs, scheduling, client contact)
- Duties of the parties
- Attorney's fees if applicable

III. STEPS IN YOUR INVESTIGATION

Steps in Your Investigation

1. Receive and review the case file.

- Order of appointment?
- All pleadings and court documents?
- What other info do you need?
- Chronology of events.

Steps in Your Investigation

2. Contact client and parties.

- Introduction letter/call to attorneys.
 - *Explain role of child's attorney*
 - *Provide copy of order of appt*
 - *Background information*
 - *Permission to contact child client via parent to schedule appointment*

Steps in Your Investigation

2. Contact client and parties.

- Introduction letter/call to pro se parents.
 - *Schedule appointment with child client*
 - *Schedule appointment with parent*
 - *Parent Data Form (see sample)*

Steps in Your Investigation

3. Meet with child client - top priority.

- Explain role, including confidentiality.
- If representing siblings - conflict?
- If client is older - signatures on ROIs.
- Consider services needed by child and/or family.
- More discussion in next section!

Steps in Your Investigation

4. Meet with parents separately.

- Explain role and answer questions.
- Determine legal position.
- Obtain additional info on child client.

Steps in Your Investigation

4. Meet with parents separately.

- Limit amount of parent "venting."
- Redirect conversation back onto children when it turns negative.
 - *Focus on what is best for child*
 - *Focus on parents' strengths*
 - *Avoid finger-pointing*
 - *Is compromise possible?*

Steps in Your Investigation

4. Meet with parents separately.

- Obtain signed ROIs for the following (according to process):
 - *Medical records*
 - *Counseling records*
 - *Educational records*
 - *DHS records*
 - *CARES evaluation reports*

Steps in Your Investigation

4. Meet with parents separately.

- Make sure ROI includes permission to contact the professionals:
 - *Pediatrician and medical staff*
 - *Counselor*
 - *Teachers and school personnel (including school counselor)*
 - *DHS caseworker*

Steps in Your Investigation

5. Send out signed ROIs.

- ****Did you get client's signature (if older child)?**
- **Include cover letter and order of appointment.**
- **Follow up with professionals as needed after reviewing records.**

Steps in Your Investigation

6. Contact custody evaluator, if any.

- **If no evaluator on the case, should there be one?**
- **Get permission from other attorneys to contact evaluator directly.**
- **Provide witnesses for evaluator to contact on behalf of child.**
- **Maintain contact with evaluator.**

IV. MEETING WITH CHILD CLIENT

Meeting with Child Client

Goals of meeting with your client:

- Introduce yourself as the child's advocate and explain what that means.
 - *Explain who you are and what you will do for the child and family.*
 - *You are NOT a criminal lawyer (child has not done anything wrong)*
 - *Confidentiality and any limits (ex. Mandatory reporting)*

Meeting with Child Client

Goals of meeting with your client:

- Explain the legal/custody process.
 - *Explain, explain, explain.*
 - *Lots of kids don't know what a judge is, what court is, etc.*
 - *Avoid legal jargon.*

Meeting with Child Client

Remember, for a child...

- Court = place to play basketball
- Charges = what you do with a credit card
- Hearing = what you do with your ears
- Parties = where you get presents and cake
- Swear = like cursing

Meeting with Child Client

Goals of meeting with your client:

- Answer your client's questions.
 - *Be age-appropriate.*
 - *Don't make promises you can't keep.*

Meeting with Child Client

Goals of meeting with your client:

- Information-gathering interviews to learn more about:
 - *Concerns leading to your appointment*
 - *All relevant legal issues*
 - *Other non-legal issues*

Meeting with Child Client

**Effective child interview =
information-gathering process**

- Not a one-time event - do a series of interviews.
- Interview using child-centered techniques.
- Identify other sources of information and guidance.

Meeting with Child Client

Effective child interview

- Build rapport.
 - *Be interested but not invasive.*
 - *Be an active listener (reflect back what you hear).*
 - *Make eye contact (and don't be upset if child does not).*

Meeting with Child Client

Effective child interview

- Set a few ground rules:
 - *Only truth, no stories. (Can the child tell you the difference?)*
 - *It is ok if they don't know the answer to your question. (They should say "I don't know.")*

Meeting with Child Client

Effective child interview

- Set a few ground rules.
 - *You can repeat the question or ask it a different way if they don't understand.*
 - *If you repeat something child said incorrectly, child can correct you.*

Meeting with Child Client

Effective child interview

- Build rapport.
 - *Silence is ok - allow child time to think and respond.*
 - *Use initial interview to build trust - ok if not much info. at first.*
 - **LISTEN.**

Meeting with Child Client

Effective child interview

- Consider physicality and location.
 - *Be aware of personal space.*
 - *Consider a neutral location (ex. attorney office or school).*
 - *Changing location can encourage communication.*

Meeting with Child Client

Effective child interview

- Use developmentally-appropriate techniques.
 - *Think before you speak.*
 - *Be aware of child's age, education, culture and language proficiency*
 - *Avoid legal jargon.*

Meeting with Child Client

Effective child interview

- Use developmentally-appropriate techniques.
 - *Use child's names for people and things.*
 - *Avoid confusing pronouns.*
 - *Use short sentences.*
 - *Be aware of child's sense of time.*

Meeting with Child Client

Effective child interview

- Use open-ended questions
 - *Use language that encourages a narrative response (ex. "Tell me..." "Explain..." "Describe for me...")*
 - *Use more specific questions with younger children as needed.*
 - *Avoid becoming too tied to your script of client questions.*

Meeting with Child Client

Effective child interview

- **Avoid judgment.**
 - *Avoid weakening relationship with child by judging child's feelings.*
 - *Do not physically react to what child says.*
 - *Be careful not to look away.*

Meeting with Child Client

Effective child interview

- **Avoid judgment.**
 - *Follow your client's comfort level.*
 - *Allow them not to answer (change subject and try asking in a different way later or save for next time)*
 - *Be willing to stop interview and do it another time.*

Meeting with Child Client

Effective child interviewing takes time to learn - get training and practice.

**V. EFFECTIVE WITNESSES
AND HOW TO GET THEM**

Effective Witnesses

Effective witness = person with a strong connection to child's life

- **Counselors - MUST get permission from client in order to testify**
- **DHS case workers - avoid calling to testify if possible, introduce records instead**

Effective Witnesses

Effective witness = person with a strong connection to child's life

- **Teachers and school employees -**
 - ***CANNOT testify on anything that would "damage or incriminate the student or family" (ORS 40.245)***
 - ***CAN testify about other issues AND can submit records - be creative!***

Effective Witnesses

Effective witness = person with a strong connection to child's life

- Child care providers
- Relatives and neighbors - especially if they are not aligned with either party

Effective Witnesses

Try introducing records instead of calling professionals to testify

- Stipulation from both parties to admission of records
- Protective orders for sensitive information before releasing to parties (ex. CARES eval, DHS records)
- Avoids "reluctant witness" problem

Effective Witnesses

Child's attorney should call the unbiased, child-focused witnesses

- Ensure that any witnesses who require child's consent to testify obtain it prior to testifying

Effective Witnesses

Tips for dealing with "reluctant witness" issue

- Emphasize best interests of child
- Reassure witness that he is NOT the decision-maker - only one valuable part of larger picture
- If complete, introduce records rather than witness testifying

VI. LEVERAGING YOUR ROLE FOR SETTLEMENT

Leveraging Your Role for Settlement

Trial is RARELY good outcome for child

- Better for child to see parents working together.
- Avoids putting child in position of choosing between parents.
- Amicable resolution means better chance for effective co-parenting.

Leveraging Your Role for Settlement

**BUT the goal is NOT to settle
just for the sake of settling.**

Leveraging Your Role for Settlement

GOAL: a parenting plan that is:
• **In accord with child's position and
best interests**
AND
• **Workable for the parents**

Leveraging Your Role for Settlement

**Without a workable co-parenting
relationship, parents will return
to court...**
Again and again and again...

Leveraging Your Role for Settlement

Refer the parents back to mediation

If parents are willing, try settlement conference:

- **Informal settlement conference**
- **Judge-assisted settlement conference**

VII. PRE-TRIAL AND TRIAL

Pre-trial and Trial

If the parties will not settle...

...Try case with same zealousness and competence due an adult.

Pre-trial and Trial

**Minor children are not parties
BUT most judges believe children's
attorneys have same power to:**

- Call witnesses
- Cross-examine witnesses
- Make objections
- Introduce evidence

Pre-trial and Trial

**Judge pet peeve: Do NOT just state
child's position and leave it at that.

Support child's legal position
with evidence.**

Pre-trial and Trial

Exhibits: use child's records!

- Ask parties to stipulate to admission
of child's records in advance.
 - *Send proposed stipulated order
to judge for signature*
 - *Don't forget protective orders*

Pre-trial and Trial

Exhibits:

- Numbering - contact judge's office for preferred sequence.
- *Multnomah Co.: children's exhibits 300-399*

Pre-trial and Trial

Exhibits:

- If parties have stipulated to admission:
 - *Send courtesy copies of exhibits to judge and parties in advance.*
 - *Gives judge opportunity to review records before trial.*

Pre-trial and Trial

Hearing memo:

- Always, always, always write a hearing memo!
- Be sure to include the following:
 - *Child's position*
 - *Law and anticipated evidence*
 - *Proposed parenting plan*
 - *Services for children and family*

Pre-trial and Trial

If parents are pro se...

- Many judges look to child's attorney to help keep trial "on track" and organized.
- Be prepared to:
 - *Call the case*
 - *Examine the parents*
 - *Examine the custody evaluator*

Pre-trial and Trial

Maintain appearance of neutrality between the parties:

- Do not appear to align yourself with either party, even if your position favors one or the other.
 - *Inside courtroom: sit in middle*
 - *Outside courtroom: sit apart but remain cordial*

Pre-trial and Trial

Child's testimony:

- Most judges do NOT want child to testify.
 - *Too emotionally traumatic for the child*
 - *Puts the child in the middle*

Pre-trial and Trial

Child's testimony:

- Support child's position through witnesses and records.
- Stipulation to state child's position without child being present:
- Letter from child
- List of items that child would like court to address

Pre-trial and Trial

Child's testimony:

- BUT ORS 107.425(7) permits the court to take testimony or confer with the child.
- Discuss with parties - Is this really in the child's best interests?

Pre-trial and Trial

Child's testimony:

- BUT ORS 107.425(7) permits the court to take testimony or confer with the child.
- Court can exclude the parents and others from the conference.
- Court must permit attorney for each party to attend.

VIII. WORKING WITH PRO SE PARENTS

Working with Pro Se Parents

Tips for working with pro se parents:

- Parent Data Forms (see sample)
- Must inform you immediately if they hire a lawyer.
- If no response within reasonable time, follow up with phone call.
 - *Many parents change contact info. without informing court.*

Working with Pro Se Parents

Tips for working with pro se parents:

- Challenge = no other professional to guide the parents.
 - *Help parents focus on child, not each other*
 - *Be the voice of reason*
 - *Refer them to needed services*

Working with Pro Se Parents

Tips for working with pro se parents:

- **Be careful of the line between legal information and legal advice**
 - *Refer to attorney if they have legal questions*

IX. NON-LEGAL ISSUES

Non-Legal Issues

Be aware of non-legal issues with potential to impact parenting:

- **Mental illness**
- **Substance abuse**
- **Domestic violence**

Non-Legal Issues

Be familiar with other systems in which child client may be involved:

- Juvenile Court - when is referral necessary?
- DHS system and services
- Family Court Services

Non-Legal Issues

Stay abreast of new research and best practices:

- Parenting plans
- Children's mental health and needs
- Changes in law
- Available services

Questions or comments?

**Info@childcenteredsolutions.org
OR
(503) 546-6383**

HYPOTHETICALS

Hypo #1: Hearsay and Evidence

You represent a 10 y.o. child in a contested custody case. The judge has strongly suggested that you should present your case without having the child appear in court. The other parties will not agree to waive application of the hearsay rule.

Can you avoid bringing the child to court?

Hypo #2: Child Testimony

You represent an 8 y.o. boy in a dissolution. Your client suffers from intense shyness and has been diagnosed with anxiety due to the divorce. He has asked to speak with the judge about his preferences without his parents present.

Can you satisfy your client's request?

Hypo #3: Form of Representation

You represent a precocious 5 y.o. child in a contested modification case where the custodial parent wishes to move out of state. Your client has asked you to help her remain in Portland.

Can you legally and ethically argue for the child's objectives?

Hypo #4: Form of Representation

You represent a 12 y.o. girl in a custody case. Her mother has been struggling with meth addiction for the last 5 years. The parents agree that her father has no history of drug abuse. Your client has asked that you help her live primarily with her mother.

Can you legally and ethically argue for the child's objectives?

Questions or comments?

info@childcenteredsolutions.org

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CHILD INTERVIEW PACKET

Date of Interview: _____ Child's Name: _____
Interviewer: _____ Location of Interview: _____

Overall Impressions/Reactions of Child: _____

Legal position of Child: _____

INTRO

What were you told about me coming here today? Who told you?

RULES:

Tell the child there will be a few rules during the interview. Tell the child that it is "ok" if they do not know the answer to the questions, and that they should say that they do not know.

Let the child know that you will repeat the question if they do not understand the question asked.

Also, tell the children that if you repeat something that is incorrect, have the child correct you.

TRUTH/LIE

Ask the child if they know the difference between a truth and a lie. Make sure that it is documented that the child is able to demonstrate how they know the difference between a truth and a lie.

If the child is unable to think of an example, provide one such as: "What if your mom filled the cookie jar with fresh chocolate chip cookies, and when she wasn't looking you ate some. Then mom noticed that some of the cookies were missing. Mom asked you "Did you take some cookies?" And you said "No, I didn't take any cookies, the cat ate the cookies." Would you be telling a truth or a lie?"

Example given by the child:

RAPPORT

What grade are you in? _____ Who is your teacher? _____

What do you like best about school?

What don't you like about school?

What do you like to do for fun?

Tell me about your family.

Do you have any brothers or sisters?

Who else lives in your house?

Do you have any pets? _____ What are their names? _____

NOTES:

PARENTS

Tell me about your Mom. What is she like? What do you do together?

Tell me about your Dad. What is he like? What do you do together?

- Who gets you up in the morning? _____
- Who makes breakfast/dinner? _____
- Who talks to your teacher about you? _____
- Who picks you up when you go home sick from school (who stays with you)? _____
- Who takes you to the doctor? _____
- Who helps you with your homework? _____
- Who tucks you in at night? _____

What is one thing you really like about your Mom?

What is one thing you really like about your Dad?

What is does your Mom do that makes you happy?

What is does your Mom do that makes you sad?

What is does your Mom do that makes you mad?

What is does your Mom do that makes you scared?

What is one thing you would change about Mom if you could?

What is does your Dad do that makes you happy?

What is does your Dad do that makes you happy?

What is does your Dad do that makes you sad?

What is does your Dad do that makes you mad?

What is does your Dad do that makes you scared?

What is one thing you would change about Dad if you could?

SUPERVISION

Who takes care of you when your mom/dad is not with you?

Have you ever been home alone? _____ If Yes, tell me about it:

Do you have emergency phone numbers if needed? _____

NEGLECT

What is your favorite food? _____

When I go to your house and look in your kitchen what kind of food am I going to find?
(At your Mom's house? At your Dad's house?) _____

Do you take baths or showers? _____

Does anyone help you? _____

What time do you go to bed at night? _____

Where do you sleep? _____

Do you share a room with anyone? _____

Do you share a bed with anyone? _____ If yes, who? _____

NOTES:

DISCIPLINE

What are the rules at Mom's house?

What are the rules at Dad's house??

What does Mom do when you break a rule? Dad?

Does anyone spank you? _____ If so, who? _____

What does that person spank you with? _____

Where does that person spank you on your body? _____

Does that person ever leave bruises or red marks? _____

DOMESTIC VIOLENCE

How do your Mom and Dad get along?

Do they ever disagree about you? What does Mom do?

What does Dad do?

Have you ever seen anyone in your family yell bad words at each other? _____
If yes, who: _____

If yes, who and what do they say?

Have you ever seen anyone in your family hit each other?

What did you do when this was happening?

Where the police called? _____

If yes, did anyone go to jail? _____

SUBSTANCE ABUSE

Have you ever seen anyone drinking beer or alcohol? _____

If yes, who? _____ What kind do they drink? _____

Has anyone offered you beer or alcohol? _____

Do you know what drugs are? (Ask child to describe.) _____

Have you ever seen anyone using drugs? What kind? _____

Has anyone offered you drugs? _____

If yes, what happened? _____

SAFETY

Do you feel safe at home? Why or why not? _____

Do you feel safe at your daycare? _____

NOTES:

FEELINGS

What kinds of things make you happy?

What kinds of things make you sad?

What kinds of things make you mad?

What scares you?

Do you ever get lonely?

What do you like about yourself?

What would you change about yourself?

If you had 3 wishes, what would they be?

NOTES:

Child Interview Questions

1. What were told about coming here today?
2. Who told you?
3. What makes you...
 - Happy?
 - Sad?
 - Mad?
 - Scared?
4. What do you like about...
 - Yourself?
 - Your mom?
 - Your dad?
5. What would you change about...
 - Yourself?
 - Your mom?
 - Your dad?
 - Your family?
6. If you moved to an island and you could only take one person with you, who would you take and why?
7. Who takes you to the doctor?
8. Who plays with you?
9. What do you do for fun when you are with...
 - Your mom?

Your dad?

10. Who helps you with your homework?

11. What are the rules at...

Your mom's house?

Your dad's house?

12. What does your mom do when you break a rule? What does your dad do when you break a rule?

13. What does dad say about mom? What does mom say about dad?

14. If you had three wishes, what would they be?

15. What works in your family? What does not work in your family?

16. What does your mom do that makes you...

Happy?

Sad?

Mad?

Scared?

17. What does your dad do that makes you...

Happy?

Sad?

Mad?

Scared?

18. If a teacher sent a note home saying your work is poor and you might fail a class...

What would your mom do?

What would your dad do?

19. If you are having a hard time with one of your friends (being mean to you or ignoring you or treating you badly)...
- What would your mom do?
- What would your dad do?
20. You are with your parent and get stuck in a traffic jam on your way to an appointment and are going to be late...
- What would your mom do?
- What would your dad do?
21. You ask one parent for something you want and he/she says "no" so you go to the other parent and he/she says "yes." Then the first parent finds out you went to the other parent after he/she said "no."
- What would your mom do?
- What would your dad do?
22. You are supposed to go to the other parent's home but you are late...
- You are with mom – what does your mom do?
- You are with dad – what does your dad do?
23. Your mom and your dad are disagreeing over something about you...
- What does your mom do?
- What does your dad do?
24. You forgot that you were going to a party and needed a costume. Your friends are coming to pick you up for the party in 15 minutes...
- What would your mom do?
- What would your dad do?

25. You are in a store and you break something...

What would your mom do?

What would your mom do?

26. At dinner you tell your parent that you are not hungry and do not want to eat what is for dinner...

What would your mom do?

What would your dad do?

27. What is a good way to fix what is happening in your family?

28. If the judge said you were to live with your mom more, how would you feel? If the judge said you were to live with your dad more, how would you feel?