

EFFECTIVE CHILD ATTORNEY PRACTICE

by Anne Tyler Gueinzus

Once a child enters foster care, her day-to-day life has changed drastically. Her living and sleeping spaces are completely new. She may have to attend a brand new school in the middle of the school year because she is now a "foster care kid." Her siblings may be separated from her and in new placements themselves. She has met numerous adults who repeatedly ask her the same questions over and over again and she has no idea what will happen next.

Once a child enters foster care based upon abuse and neglect concerns in Minnesota, if she is over 10 years old, she should receive a court appointed attorney to represent her in her foster care proceedings.¹ This attorney should inform her of her legal rights, explain what will happen at her upcoming court hearings and counsel her.

In Minnesota "[t]he paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child."² One of the purposes of Minnesota's juvenile court laws is "to provide judicial procedures which protect the welfare of the child."³ Another purpose is "to ensure that, when placement is pursuant to court order, the court order removing the child or continuing the child in foster care contains an individualized determination that placement is in the best interests of the child that coincides with the actual removal of the child."⁴

As attorneys for foster care children, we are to ensure that the judicial procedures in Minnesota protect the welfare of our clients. We do this by letting the court know who our clients are and by ensuring their substantive and procedural rights are protected and followed. We show the court what our clients look like by having them at court so the judge can put a face to the case. We tell the judge what our clients excel at, what they are afraid of and what they would like to see happen in their lives.

ATTORNEY STANDARDS OF PRACTICE & CLIENT PARTICIPATION

Many believe that in order for court proceedings to be effective, foster care children need a more meaningful participation in their own court proceedings.⁵ CLC endorses this belief that the child's participation is critical to help the court understand and address on an individualized basis the significant issues affecting those children whose lives and circumstances appear before them. Thus, we encourage our clients to participate at their court hearings and we request their attendance by court order, if necessary, if proper arrangements for their attendance have not occurred.

¹ See Minn. Stat. § 260C.163, subd. 3 (2010).

² Minn. Stat. § 260C.001, subd. 2 (a) (2010).

³ Id. at (b)(2).

⁴ Minn. Stat. § 260C.001, subd. 2 (b) (5) (2010).

⁵ See Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care* at 18 (2004).

CLC's policy and practice adhere to the American Bar Association (ABA) Standards of Practice for Lawyers Who Represent Children in Abuse & Neglect Cases (hereinafter referred to as "ABA Standards") approved by the ABA House of Delegates on February 5, 1996. An attorney representing a child client has the same duties and responsibilities as an attorney representing an adult client. In fact, the child's attorney is an attorney "who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality and competent representation to the child as is due an adult client." ABA Standards at A-1.

Further, the ABA Standards note the following basic attorney obligations:

B-1. Basic Obligations. The child's attorney should:

1. Obtain copies of all pleadings and relevant notices;
2. Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
3. Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
4. Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
5. Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyers role, and what to expect in the legal process;
6. Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
7. Identify appropriate family and professional resources for the child.⁶

To ensure these obligations are being met, we provide our volunteer attorneys with a copy of the client's case file upon the attorney's acceptance of the case, and throughout the case we provide on-going case strategy, relevant legal authority, and consultation and support to the volunteer attorney. CLC is analogous to a large law firm in which all CLC attorneys, staff and volunteer, are covered by the same attorney/client privilege. In this representation model, our volunteers are afforded the opportunity to freely discuss with CLC staff any questions or concerns that may arise during the course of the volunteer's representation.

CLIENT MEETINGS

As part of your professional commitment to your child clients, you must remain in regular client contact, at least monthly, and send CLC all case related correspondence and documents, court activity summaries and relevant case developments.

When you meet with your client, discuss with them in a confidential setting the following matters:

1. Current placement (do you like this placement, what do like about it, what don't you like about it, what do you think would help make it better, who all lives here, how do you get along with her/him, why);
2. Sibling and family contact (when was your last sibling visit, how did it go, when was your last parent visit, how did it go, what type of contact do you have with your parents/siblings, how often, would you like more contact, less contact);
3. General health, dental and mental health concerns (when was your last physical exam, when was your last dental exam, do you like your therapist, was there a therapist you met before that you liked, who was that, what medication do you take, how does it make you feel);

⁶ ABA Standards at B-1.

4. School (what are your grades, what classes do you like, why, have you taken any standard tests, what were the results, what are your plans after high school, what extracurricular activities do you enjoy, what activities do you think you would enjoy, any problems with people at school, who, what bothers you about school, would you like some help with your math/reading etc); and
5. Permanency (where would you like to live permanently, why, any family members you lived with in the past, who, any family friends you have stayed with, who).

In addition to regular status meetings with your client, " changes in placement, school suspensions, in-patient hospitalizations, and other similar changes warrant meeting again with your client." ⁷ It is through these consistent client contacts that you will be able to better understand your client's circumstances and her case, counsel her regarding possible alternatives and seek creative solutions tailored to your client's individualized circumstances. ⁸

When you meet with your client prior to an upcoming court hearing, review the social worker and Guardian ad Litem court reports with your client to ensure the reports are accurate. If a report is inaccurate, request that the report be amended on the record at the hearing so that the errors are corrected and do not become part of your client's court file.

COURT ATTENDANCE & PARTICIPATION

As the child's attorney, you must attend all court hearings for your client. If you are unable to attend a scheduled hearing, you must attempt to secure coverage within your own firm or outside the firm with other CLC-trained attorneys or seek to reschedule the hearing just as you would for your adult clients. After a court hearing, discuss with your client what just happened at the hearing so your client understands the proceeding and you can answer any questions she may have. If, despite your client's right to appear and participate at her court hearings, your client did not attend the hearing, summarize the hearing for her. Again, if your client wanted to attend her court proceeding and proper arrangements for her attendance were not made, request the court to order your client's attendance or participation by telephone for her next hearing.

It is also important to attend relevant meetings and other proceedings which significantly affect your client. These meetings and proceedings include Individualized Education Plan (IEP) school meetings, private foster care placement quarterly staffings, residential treatment facility quarterly staffings and delinquency disposition hearings, if possible. If you are unable to attend one of these meetings, ensure that you receive any documents generated from the meeting or proceeding and that you have followed up with your client as to what occurred at the meeting.

CONCLUSION

To do our jobs as child advocates, we must advocate for our clients both in and out of the courtroom on such substantive issues as their placement, education, health, permanency and independent living/transition plans. To do this effectively, we must talk with the relevant players on the case. These individuals include the case workers, foster parents, teachers and other school personnel, health and mental health professionals, relatives and other caretakers. We must also review relevant case documents and records. As an attorney for the child, we are entitled to access " to records, responsible social services agency files, and reports which

⁷ ABA Standards Commentary at C-1.

⁸ Id.

form the basis of any recommendation made to the court."⁹ Thus, we are entitled to those assessments or incident records of our client's behavior or specific needs that are used for any placement recommendation or course of action for our client's cases. If you are not provided access to these relevant documents, seek their production or release by court order.

Children in foster care have a variety of substantive and procedural rights.¹⁰ As child advocates we protect our client's rights and interests through court appearances, filing appropriate motions, responses or objections, and seeking appropriate services and placements for our clients. As child advocates, we must also remind the court of who exactly our clients are and that "[t]he role of the judiciary is to pay attention to meeting the needs of the youth in each case and not the needs of the agency."¹¹

⁹ Minn. Stat. §260C.171, subd. 3 (2010).

¹⁰ Erik S. Pitchal, *Where are the Children? Increasing Youth Participation in Dependency Proceedings*, 12 UC Davis Journal of Juvenile Law & Policy 23-24 (2008). Listing the following well-established rights for foster care youth: "the right to caseworkers who are adequately trained and supervised and who have a manageable caseload; the right to live in foster homes and other placements that have been adequately screened so as to ensure that children will be safe there; the right to live in a placement where the caretaker has been provided relevant information about the child's medical history and who is well matched to the child's needs (as opposed to random placements); the right to live with adult relatives as opposed to strangers, the right to be placed with siblings, the right to services to support the foster placement and avoid disruptions and multiple moves among different placements; the right to timely and appropriate permanency planning; the right to appropriate and necessary mental health, medical, and education services; and, for teenage mothers in foster care, the right to be placed with her own children, absent a finding of unfitness against the minor parent." Citing *Kenny A. ex.rel. Winn v. Perdue*, 218 F.R.D. 277, 286 (N.D. Ga. 2003).

¹¹ *Id.* at 25.