

Section One

Pro Bono Work with

Children's Law Center of Minnesota



INFORM
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CHILDREN'S LAW CENTER OF MINNESOTA

450 Syndicate St. N., Ste. 315, St. Paul, MN 55104* 651.644.4438* www.clcmmn.org

Executive Summary

Children's Law Center (CLC) was established in 1995 to increase the effectiveness of child advocacy in Minnesota. CLC works to stabilize and protect foster and at-risk youth in three ways:

1. **Direct Representation** - CLC is the only private organization in Minnesota that provides direct pro bono legal representation exclusively to children. Along with a team of over 250 volunteer attorneys, CLC ensures that foster children receive the services to which they are entitled, including those related to shelter, clothing, educational stability, physical and mental health care; adoption searches, sibling contact agreements and much more.

For many CLC clients, their attorney is the most stable adult in their lives, offering trust and confidentiality that is otherwise unavailable. Both Hennepin and Ramsey County courts appoint CLC to represent their counties' foster children. CLC provides each child with a trained volunteer attorney who is supported by CLC staff and a social worker. This enables young foster children to understand their options, empowers them to voice their opinions, and provides them with an advocate to explain what is happening throughout the course of their representation.

2. **Systemic Reform** - CLC actively participates in local coalitions and youth focused groups to advocate for systemic changes and improvements to better serve at-risk and foster care youth. As the only organization with specific legal expertise on children's rights, many coalitions look to CLC to research issues that have been identified in their direct work with young people. To this end, CLC has been successful in policy and law changes on the state and county levels.
3. **Education** - CLC has developed an informational "Know Your Rights" pamphlet, available at schools, shelters, and community organizations that work with at-risk youth. Topics include, but are not limited to housing, employment, voting rights, and consumer and credit card information. CLC also presents informational training sessions to Shelter staff, law enforcement, school administrators, teachers and counselors and other populations that work with at-risk youth.

Most children are surrounded by a support system of parents, siblings, extended family, church communities, and others. CLC is committed to ensuring that at-risk youth have a parallel community of support. With this in place, children are more stable and less likely to be in precarious home situations. It is our experience that, when foster youth are safe and live in a supportive environment, they can succeed - an expectation that can be met. To that end, CLC will continue to provide services to improve the stability of our most vulnerable population, and advocate for systemic reform on their behalf.

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REPRESENTATION PROJECTS

Children's Law Center of Minnesota's (CLC) representation projects use a multidisciplinary social worker/volunteer attorney team to provide representation. Our practice of using this same team throughout the case provides the children continuity and helps build trust.

Foster Child Advocacy Project (FCAP)

CLC first began representing children through the Foster Child Advocacy Project (FCAP) in Ramsey County. Instituted in 1997, FCAP gives youth in foster care a voice in judicial proceedings by providing legal representation on a variety of issues, including Child in Need of Protection or Services (CHIPS) and Termination of Parental Rights (TPR) petitions, case plan development, court reviews, permanency planning, and transition to independent living.

Under Minnesota law, children have a long established right to participate in CHIPS and TPR proceedings concerning them and the right to counsel in connection with such a proceeding. In 1995, the public defender's office was only able to represent 6% of such eligible children in Ramsey County, and often not on a consistent basis. It was because of this gap in legal services for children that CLC initiated FCAP.

FCAP has demonstrated that giving youth a voice in abuse and neglect proceedings can increase the youth's confidence in the outcome and that advocacy for services can have positive outcomes. The child's lawyer may also be the most stable figure in the child's life amidst the turnover of County social workers, foster parents, and sometimes disappointing reunification efforts with parents.

State Wards: The Forgotten Children Project

CLC launched the State Wards Project in 1999. This project provides volunteer lawyers to advocate for the rights of Hennepin County state wards. State wards are "legal orphans" since their parents' rights have been terminated by the court and they have not yet been adopted.

Until the law changed in 1997, state wards were not entitled to court-appointed counsel. Many of these state wards want to be adopted, but spend their childhood languishing in multiple foster care placements. Now, volunteer lawyers inform state ward clients about their rights and options, including their post-guardianship right to tuition waiver at state colleges and universities. CLC lawyers give state wards a voice in court proceedings on issues such as foster care placement, long-term foster care, sibling visitation, adoption, and services for independent living skills.

Guardianship Pilot Project

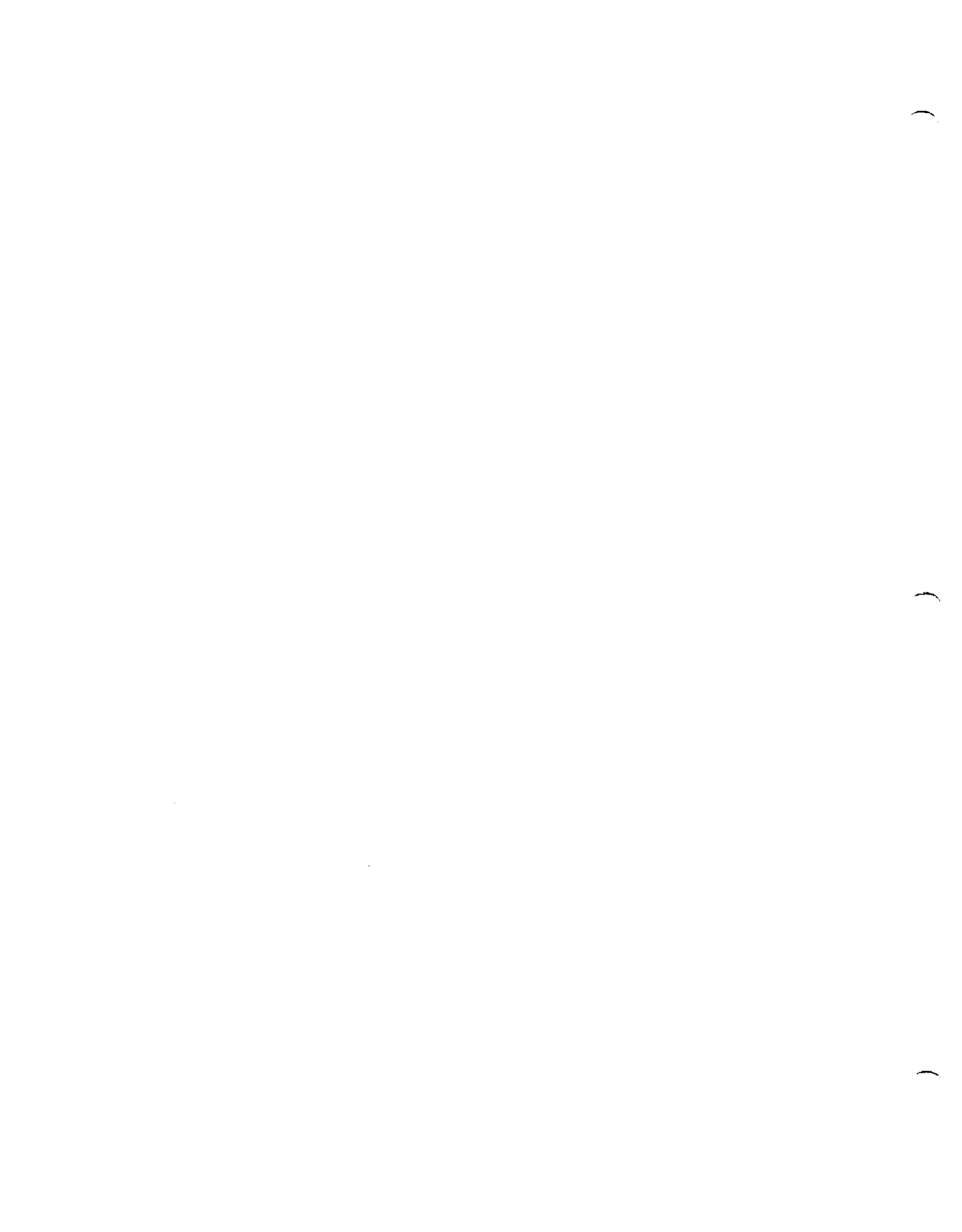
The Ramsey County Guardianship Project started in late 2004. Like the State Wards Project in Hennepin County, CLC provides representation to Ramsey County state wards for the range of issues they face - issues as fundamental as sibling separation, contact agreements (allowing children to retain contact with family members or others who have played a critical role in their development), and independent living plans that will help them transition to independent living when they become 18 and are still in the foster care system.

CLC PROGRAM EXPECTATIONS FOR VOLUNTEER ATTORNEYS

1. The volunteer attorney will complete a volunteer training program.
2. The volunteer will commit to working with the child client for the "long haul."
3. The volunteer attorney will remain in contact with the client, preferably monthly, and at minimum quarterly.
4. The volunteer attorney will provide the client with high quality and ethical representation (See *ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases, Basic Obligations* and CLC's *Steps to Representation*.)
5. The volunteer attorney will attend all court hearings for the child and if unable to attend a hearing, will seek in-firm coverage by other CLC trained attorneys.
6. The volunteer attorney will send CLC copies of each hearing's court activity sheet and all case-related correspondence and documentation not received from CLC.
7. The volunteer attorney will respond to Interim Case Reviews and other requests for information about the case sent by CLC.
8. The volunteer attorney will consult with CLC before a decision is made to close a case.

CLC COMMITMENT TO VOLUNTEER ATTORNEYS

1. CLC will provide training to the volunteer attorney.
2. CLC will provide malpractice insurance for the volunteer attorney's CLC cases.
3. Staff attorneys will consult with the volunteer attorney on legal strategies to address substantive and procedural issues.
4. Consistent with CLC's multi-disciplinary representation model, CLC's staff social worker will provide guidance and information about social service resources, and will help the volunteer attorney assess the child's developmental and educational needs.



CLC Representation Process

Case Assignment

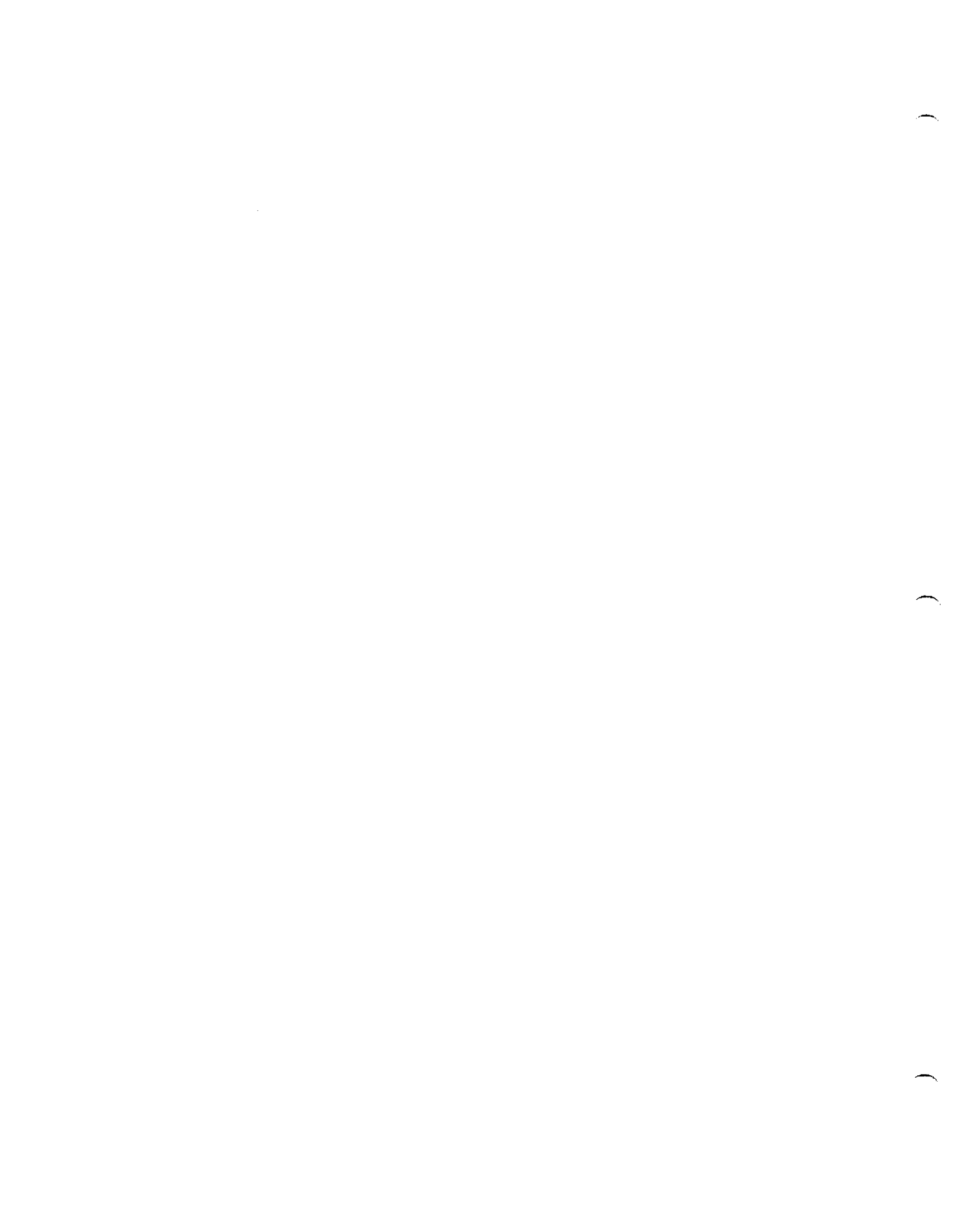
- CLC is appointed to represent clients in out-of-home placements in CHIPS proceedings & State Wards in Ramsey County, & State Wards in Hennepin County
- Volunteer attorney attends training and submits application
- Criminal and Professional Responsibility background checks are completed (can take up to a month)
- CLC attorneys & social worker match volunteer attorneys with client(s) and call or email volunteer attorney to discuss case
- Volunteer attorney runs conflict check and confirms with CLC that he/she can take the case
- CLC paralegal sends packet of representation forms, client information sheet, and file documents to volunteer attorney
- Volunteer attorney returns signed Case Acceptance Form to CLC paralegal
- Volunteer attorney contacts CLC social worker to set up appointment to meet client(s)
- Volunteer attorney executes Representation Agreement with client(s) at first meeting and returns this form to CLC paralegal

Representation

- Remain in contact with client(s) through telephone calls and in person meetings, on at least a monthly basis
- If a client moves and you have not received notice of the change in placement, contact both the social worker and county attorney to request new contact information
- Review records and request medical, mental health, and school records from the county as needed
- File pleadings, motions, and responses as necessary to represent the child's express wishes
- Request services consistent with the child's express wishes
- Attend all court hearings and return court activity sheet to CLC paralegal upon completion of hearing
- If you cannot attend a hearing, secure coverage with another CLC-trained attorney in your firm
- If the client(s) wish to attend court, make the request ahead of time to the social worker and county attorney
- After court, communicate outcomes of the hearing with the client(s)

Case Closure

- Consult with CLC prior to case closure to discuss outcomes of case and any further requests that need to be made before court jurisdiction is terminated
- A case may close due to adoption, family reunification, transfer of legal custody, or a child turning 21 and aging out of foster care, for example
- Discuss the end of legal representation with the client(s) & complete client questionnaire with client
- Send the client(s) a case closing letter
- Complete Case Closing Success Form and return it to CLC



Children's Law Center of Minnesota

Steps to Representation

Providing quality representation to child clients entails practical, as well as professional considerations. This checklist, adapted from the ABA *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, 1996, serves as a tool for attorneys who represent children. This checklist is essentially a guideline, and as such, may not apply to all cases. Please consult with CLC staff regarding the applicability of these steps to a particular case.

For a more detailed discussion of the process of representation, please refer to the ABA *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, which is reprinted in Section Six of this Manual.

1. CASE ASSIGNMENT

- Review materials sent by CLC (Case Acceptance packet along with a copy of the Juvenile Court file and related documents).
- Complete case acceptance form and return to CLC.
- CLC files a Certificate of Representation with Juvenile Court.

2. MEETING WITH CHILD

- Locate child (call county social worker and/or foster parent).
- Arrange initial meeting, mail or bring copy of court appointment to caretaker and child.
- Execute representation agreement and secure necessary releases of information; mail copy of representation agreement to child and CLC.
- Remain in contact with child through telephone calls and meetings, preferably on a monthly basis and at least quarterly and prior to court hearings.

3. INVESTIGATION

- Contact other individuals, as needed, to receive background information (county social worker, county attorney, Guardian ad litem, tribal representative, group home staff, foster parents, school personnel, etc.) Remember that your communications with the child are covered by attorney-client privilege. Therefore, do not share client communications with these individuals, unless your client authorizes such an exchange.
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- Review Records, as appropriate, using court order and/or release of information. Such records might include: the county social service records, school records, and medical/psychological records.
- Attend treatment staffings, school case conferences, etc., as needed.

4. FILE PLEADINGS.

- File pleadings; motions; responses or objections, as necessary to represent the child.) Relief requested may concern, among other things, the following items:
 - Sibling visitation
 - Requesting or restraining a change of placement
 - Contempt for non-compliance with court order
 - Protective Order concerning the child's privileged communications/property
 - Request for services for the child
 - Dismissal of petitions or motions

6. REQUEST SERVICES.

- Consistent with the child's wishes*, the child's attorney should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. Such services may include, but not be limited to:
 - Sibling and family visitation;
 - Medical and mental health care;
 - Drug and alcohol treatment;
 - Semi-independent and independent living services;
 - Long-term foster care;
 - Adoption services;
 - Special Education and related services; and,
 - Therapeutic foster or group home care.

5. NEGOTIATE SETTLEMENTS

6. HEARINGS

- Attend all Court hearings.
- Client Explanation. The child's attorney should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.
- Motions and Objections. The child's attorney should make appropriate motions to advance the child's position at trial or during other hearings.

- **Presentation of Evidence.** The child's attorney should present and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary.
- **Child at Hearing.** Under Minnesota law, a child who is the subject of a child protection petition has the right to participate in all proceedings stemming from that petition. Generally, the child should be present at *significant* court hearings, regardless of whether the child will testify. It is very important to determine whether or not the child wants to attend the hearing. If you have a question about the advisability of the child's presence at a hearing, please consult with CLC staff.

10. POST-HEARING

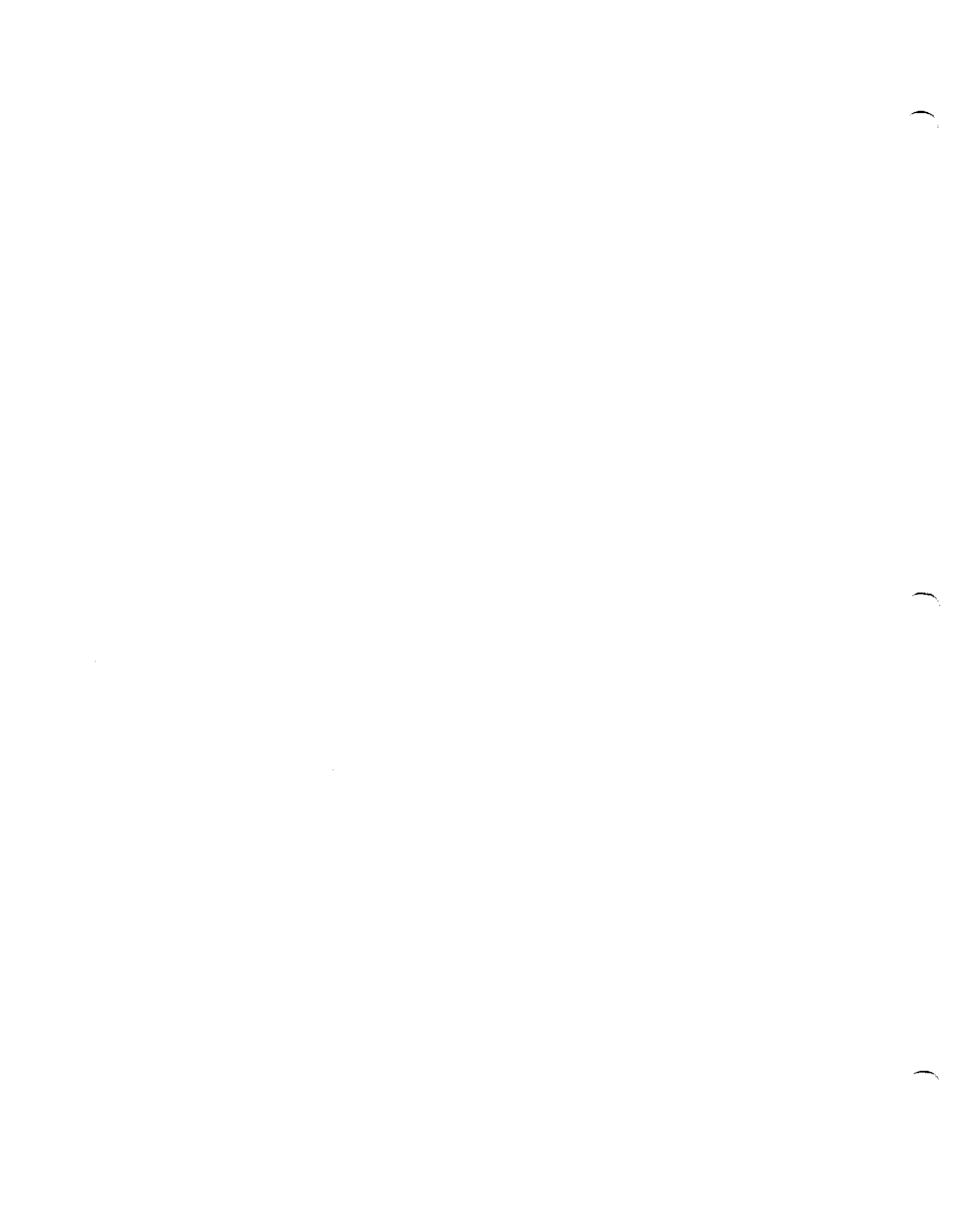
- **Review of Court's Order.** The child's attorney should review all written orders to ensure that they conform to the court's verbal orders and statutorily required findings and notices.
- **Communicate Order to Child.** The child's attorney should discuss the order and its consequences with the child.
- **Implementation.** The child's attorney should monitor the implementation of the court's orders and communicate with the responsible agency and, if necessary, to the court, any non-compliance.

11. APPEAL

- The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If after such consultation, the child wishes to appeal the order, and the appeal has merit, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal.

12. CASE CLOSURE

- **Consult CLC prior to closing a case.** CLC cases typically close once the Juvenile Court dismisses or closes the case. This may occur after family reunification, transfer of legal custody to a relative, adoption, emancipation, or a finding that the child is no longer in need of protection and services.
- The child's attorney should discuss the end of the legal representation and determine what contacts, if any, the child's attorney and the child will continue to have. A case closure letter to the child should follow this discussion.



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CLC PRACTICE POINT

No.5

June 15, 2010

EFFECTIVE CHILD ATTORNEY PRACTICE

by Anne Tyler-Guelnzius

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 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.