

QIC Best Practice Model of Child Representation

The QIC Best Practice Model sets out the *duties* of the individual child representative and the important *organizational and administrative supports* required in order for the child's representative to adequately perform those duties. Language that differs from the 1996 ABA Standards is highlighted.

PART ONE

Definitions:

Child's Representative means the individual or office charged with providing legal services for a child who is the subject of judicial child welfare proceedings. The *child's representative* (CR) is to ensure that the child's interests are identified and presented to the court. The duties of the CR are as presented below. Although the CR will be providing legal representation to the child, the CR functions may be fulfilled by a team of multidisciplinary professionals, including a lawyer plus social workers, paralegals and/or lay advocates.

I. General Duties of the Child's Legal Representative

1. *Appointment*: The child's representative should be appointed and begin service prior to the first judicial proceeding. The ideal arrangement would be for the CR to be appointed sufficiently in advance of the first hearing so as to provide time for some preliminary investigation and exploration of options to protect the child with

minimum disruption of the child's world. The CR should serve until the court's child welfare authority over the child ends, including through appeals.

2. *Child's Interests*: The CR shall serve as the independent representative for the child as determined by state law. Whether the lawyer takes his or her direction from the child or makes a best interest judgment as to what the goals of the litigation should be, once the goals are determined the lawyer is expected to aggressively fulfill the duties and obligations set forth here.

Although the majority of state laws adopt a "best interests" or dual role for their child representative, some states have moved to a client directed representation for older children and best interests or substituted judgment for younger children. The QIC-ChildRep is interested in studying what difference, if any, different ways of accommodating the child's wishes makes as to case processing or case outcomes.

3. *Basic Obligations*: The CR should:
 - a) Obtain copies of all pleadings and relevant notices;
 - b) Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
 - c) 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;
 - d) Participate fully in all placement decisions; seek to disrupt the child's world as little as possible; "remove the danger, not the child"; assure that all placement decisions are made with care and deliberation; when placement is necessary help identify placement alternatives;
 - e) Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
 - f) Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
 - g) Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
 - h) Identify appropriate family and professional resources for the child
4. *Conflict Situations*: The court may appoint one lawyer to represent siblings so long as there is no conflict of interest.
5. *Determining Decision-making Capacity*: The CR should be vigilant and thoughtful about maximizing the child client's participation in determining the positions to be taken in the case. Even a lawyer acting in the role of a best interest attorney or guardian ad litem should encourage the child to participate in the decision-making process to the extent that the child is able to do so. The functional capacity to direct representation or contribute to positions taken exists on a continuum, even for

adults. (“ . . . [T]he lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” ABA Model Rules of Prof Resp, 1.14) The CR should consider whether the child client has sufficient capacity to make a decision or to have significant input with respect to a particular issue at a particular time.

6. *Client Preferences*: When it comes to accommodating a child’s wishes and preferences, perhaps the best an attorney can do is to really listen to the child, understand what is important from the child’s perspective and how decisions will impact on the child’s experience of his or her life, and act with humility when considering taking a position which significantly differs from the child’s expressed wishes. (See Duquette and Haralambie, “Representing Children and Youth,” in CHILD WELFARE LAW AND PRACTICE, 2d Edition, (2010), Duquette and Haralambie, Editors.) The CR must understand “how this client speaks, how this client sees the world, what this client values, and what shows this client respect.” (Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions p. 258 (1997))

2. Out of Court: Actions to Be Taken

1. *Meet With Child*. Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child’s age, the child’s representative should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child. Building a trusting relationship with the child is essential to successful representation. The CR can establish an appropriate tone with questions like “How can I help you? How can I be of service to you?” The child is the client and the lawyer should aggressively seek to meet the needs and interests of the child, just as the lawyer would for an adult or corporate client.
2. *Investigate*. To support the client’s position, the child’s representative should conduct thorough, continuing, and independent investigations and discovery that may include, but should not be limited to:
 - a) Reviewing the child’s social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;
 - b) Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;
 - c) Contacting lawyers for other parties and non-lawyer guardians ad litem or court-appointed special advocates (CASA) for background information;
 - d) Contacting and meeting with the parents/legal guardians/caretakers of the child, with permission of their lawyer;
 - e) Assist in identifying relatives from maternal and paternal sides of the family who might provide emotional and other support to the child and family or become a caretaker for the child.

- f) Obtaining necessary authorizations for the release of information
 - g) Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses.
 - h) Reviewing relevant photographs, video or audio tapes and other evidence; and
 - i) Attending treatment, placement administrative hearings, and other proceedings involving legal issues, and school case conferences or staffing concerning the child as needed.
3. *Advice and Counseling:* The CR and child client should work together to set the goals of the representation. Representing children involves more than investigation and advocacy. All attorneys have the duty to help a client understand their legal rights and obligations and identify the practical options. This is no less true for a child client. State law and the child's age and maturity will govern to what extent the CR accommodates the child's wishes in setting the goals of the advocacy. But in any event and consistent with the child's level of maturity and understanding, the child's representative will discuss the total circumstances with the child, strive to understand the child's world and perspective, assist the child in understanding the situation and the options available to him/her, and counsel the child as to the positions to be taken. The CR should advise the client as to the jurisdiction's rules—and limitations, if any—governing attorney-client privilege and confidentiality.
4. *File Pleadings.* The child's representative should file petitions, motions, responses or objections as necessary to represent the child. Relief requested may include, but is not limited to:
- a) A mental or physical examination of a party or the child;
 - b) A parenting, custody or visitation evaluation;
 - c) An increase, decrease, or termination of contact or visitation;
 - d) Restraining or enjoining a change of placement;
 - e) Contempt for non-compliance with a court order;
 - f) Termination of the parent-child relationship;
 - g) Child support;
 - h) A protective order concerning the child's privileged communications or tangible or intangible property;
 - i) Requesting services for child or family; and
 - j) Dismissal of petitions or motions.
5. *Request Services.* The child's representative should seek appropriate services (by court order if necessary) to access entitlements, to protect the child's interests and to implement a service plan. These services may include, but not be limited to:
- a) Family preservation-related prevention or reunification services;
 - b) Sibling and family visitation;

- c) Child support;
 - d) Domestic violence prevention, intervention, and treatment;
 - e) Medical and mental health care;
 - f) Drug and alcohol treatment;
 - g) Parenting education;
 - h) Semi-independent and independent living services;
 - i) Long-term foster care;
 - j) Termination of parental rights action;
 - k) Adoption services;
 - l) Education;
 - m) Recreation or social services;
 - n) Housing;
 - o) Appropriate discharge plan, including services to assist the youth aging out of foster care.
6. *Child With Special Needs.* Consistent with the child's wishes, the child's representative should assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities. These services may include, but should not be limited to:
- a) Special education and related services;
 - b) Supplemental security income (SSI) to help support needed services;
 - c) Therapeutic foster or group home care; and
 - d) Residential in-patient and out-patient psychiatric treatment.
7. *Adopt a Problem-solving Approach.* The child's representative should continually search for appropriate non-adversarial resolution of the case that protects the child and meets the child's needs. The CR should adopt a problem-solving attitude and seek cooperative resolution of the case whenever possible. The CR should also initiate and participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child's representative should use suitable mediation and family conferencing resources.

3. In-Court: Active Participation in Hearings

1. *Court Appearances.* The child's representative should attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.
2. *Client Explanation.* The child's representative should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.
3. *Motions and Objections.* The child's representative should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's position at trial or during other hearings. If necessary, the child's representative

should file briefs in support of evidentiary issues. Further, during all hearings, the child's representative should preserve legal issues for appeal, as appropriate.

4. *Presentation of Evidence.* The child's representative should present and cross examine witnesses, offer exhibits, and provide independent evidence as necessary.
5. *Child at Hearing.* In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify.
6. *Expanded Scope of Representation.* The child's representative may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:
 - a) Child support;
 - b) Delinquency or status offender matters;
 - c) SSI and other public benefits;
 - d) Custody;
 - e) Guardianship;
 - f) Paternity;
 - g) Personal injury;
 - h) School/education issues, especially for a child with disabilities;
 - i) Mental health proceedings;
 - j) Termination of parental rights; and
 - k) Adoption.
7. *Obligations After Disposition:* The child's representative should seek to ensure continued representation of the child during the pendency of the court's jurisdiction over the child.

4. Post-Hearing

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

5. Appellate Advocacy

1. *Decision to 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 while the appeal is pending.

2. *Withdrawal* If the child's attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged or replaced.
3. *Participation in Appeal*. The child's attorney should participate in an appeal filed by another party unless discharged.
4. *Conclusion of Appeal*. When the decision is received, the child's attorney should explain the outcome of the case to the child.

6. Cessation of Representation

1. The child's attorney should represent the child to the end of the court's jurisdiction and then discuss the ending of the legal representation and determine what contacts, if any, the child's attorney and the child will continue to have.

PART TWO ORGANIZATIONAL AND ADMINISTRATIVE SUPPORTS FOR THE CHILD REPRESENTATIVE

7. General Representation Rules

1. Administrative structure is clear for appointment, support and accountability of the CR.
2. The child's representative should be independent from the court, court services, the parties and the state. The CR should retain full authority for independent action.

8. Lawyer Training

1. The court or administrative agency providing child representation should assure that each CR, whether a private practitioner or a part of a child welfare law office, be qualified by training or experience to fulfill the duties of the role.
2. The court or administrative agency providing child representation should provide on-going training programs on the role of a child's representative. Training programs should prepare the lawyer just beginning work in child welfare, provide continuing training, and encourage certification of experienced lawyers as specialists in the child welfare field.
3. Training should include:
 - a) Information about relevant federal and state laws and agency regulations;
 - b) Information about relevant court decisions and court rules;
 - c) Overview of the court process and key personnel in child-related litigation;
 - d) Description of applicable guidelines and standards for representation;
 - e) Focus on child development, needs, and abilities;

- f) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;
 - g) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care;
 - h) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and
 - i) Provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.
4. The court or administrative agency providing child representation, should provide individual court-appointed attorneys who are new to child representation the opportunity to practice under the guidance of a senior lawyer mentor.

9. Lawyer Compensation

1. The court or administrative agency providing child representation, should assure that child's representatives receive adequate and timely compensation throughout the term of the appointment that reflects the complexity of the case and includes both in court and out-of-court preparation, participation in case reviews and post-dispositional hearings, and appeals. The rate of payment for these legal services should be commensurate with the fees paid to equivalently experienced individual court-appointed lawyers who have similar qualifications and responsibilities.
2. The court or administrative agency providing child representation, should assure that the child's representative has access to or is provided with reimbursement for experts, investigative services, paralegals, research costs, and other services, such as copying of medical records, long distance phone calls, service of process, and transcripts of hearings as a fundamental part of providing competent representation.

10. Caseload Levels

1. The court or administrative agency providing child representation, should assure that caseloads of the child representatives are of manageable size so that the CR can adequately discharge the duties to the child client.