

# ADVOCATING FOR PREVERBAL AND NONVERBAL CHILDREN IN ABUSE/NEGLECT PROCEEDINGS

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# Yes, Babies Get Lawyers!

A child who is alleged to have been abused or neglected *shall be deemed to be a party* to any proceedings under NRS 432B.410 to 432B.590, inclusive. The *court shall appoint an attorney to represent the child*. The child must be represented by an attorney at all stages of any proceedings held pursuant to NRS 432B.410 to 432B.590, inclusive. The attorney representing the child has the same authority and rights as an attorney representing any other party to the proceedings.

NRS 432B.420(2) (emphasis added)

“Child” means a person under the age of 18 years or, if in school, until graduation from high school.

NRS 432B.040

# How do I provide legal services to a client who cannot talk?

- Identify and understand your client's legal rights within the context of the case.
- Follow a client-directed model of representation. Maintain a normal client-lawyer relationship to the extent reasonably possible.
- Make a good faith effort to determine the child's needs and wishes.
- Advocate for services and decisions in line with the child's legal rights, safety/health/environmental needs, and developmental stage.

# I. Legal Rights of Every Child

- They have a right to live in a safe and appropriate placement.
- They have a right to be placed with:
  - Siblings when possible
  - With relatives/fictive kin
  - In their own home
- They have the right to:
  - Be treated with dignity and respect
  - Be free from corporal punishment, such as spanking or hitting
  - Not be locked in any room, physically restrained or be isolated
- They have family rights too:
  - Visit with siblings, parents, and family
- They have medical and health rights:
  - Receive appropriate medical care
- They have school rights. You should be able to:
  - Attend School
  - Maintain school of origin

## II. Getting to Know Your Client

- Learn their history
- Observe the child's interactions with substitute caregivers
- Understand the parent/child relationship
- Become familiar with child's environment

# Learn the Child's History

- Has the child received immunizations and required health screenings?
- What kind of relationship does the child have with his biological parents and any other key caregivers?
- Who cared for the child in the first days, weeks, months, years of life before the child entered the child welfare system?
- What child care or educational (i.e., Early Head Start/Head Start or Pre-K) environment, if any, has the baby or preschooler experienced?
- What are the familiar comforting items in the child's life (such as toys, blankets, a "lovely", books, special cup, diaper brands, clothing item, a detergent or lotion with a specific scent, etc.)?

# Client's Interactions With Substitute Caregivers

- The advocate must be aware of and knowledgeable about their client's primary relationships.
  - Are these relationships meeting the needs of the child?
  - Does the foster parent or relative caregiver interact in a loving gentle manner with the child?
  - Are they nurturing and warm in their caregiving?

# Client's Interactions With Substitute Caregivers

- It is also important to be able to interpret basic client behaviors:
  - When the caregivers smile and speak kindly to the child, does the child smile and gurgle back?
  - Does the child talk with her caregiver and show her new skills (e.g., drawing)?

# Parent/Child Relationships

- The child-centered approach requires an attempt to see the child's perspective of his relationship with his parent.
- The more engaged the parent is with his child, especially during a time-limited interaction, the more responsive he can be to his child's needs.
- An attorney should observe visits between their clients and their parents to evaluate their relationship.

# Child's Environment

- Research shows the development of a very young child's brain is significantly impacted by the environment (family, education, community, etc.) in which the child lives.
- Advocates must visit their very young child client wherever he spends considerable time (foster home, grandparents' house, parents' home, child care centers, early education/preschools).

# Attorney-Client Visits

- Does your client have any medical needs?
  - Make sure you keep track of all medical needs and follow up after appointments to learn what services/treatment are/is recommended.
  - Need to understand early childhood development and how abuse can affect your client's development.
  - Ensure your client is screened for developmental delays and linked to necessary services

# Attorney-Client Visits

- Get to know your client
  - Visit your client as soon as possible (even in the hospital)
  - Maintain regular contact with client and their caregivers
  - Observe the child's interactions with the substitute caregivers
  - Understand the parent/child relationship
    - try to observe visits
    - speak to caregivers about the child's behaviors before and after visits
  - Learn your client's environment

# III. Representing Children Ethically

NRPC 1.1 Competence

NRPC 1.2 Scope of Representation

NRPC 1.3 Diligence

NRPC 1.6 Confidentiality

NRPC 1.7 – 1.9 Conflicts of Interest

NRPC 1.14 Diminished Capacity

NRPC 1.16 Ending Representation

# Client Directed Representation

NRPC 1.14 (a) states that: “(a)when a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

NRPC 1.2 requires a lawyer to abide by a client’s decision concerning the objectives of representation.

NRCP 1.14 (b) allows the lawyer to take protective action if the client is at risk of harm and cannot act to protect themselves.

# Confidentiality

NRPC 1.6 states “a lawyer *shall not reveal information relating to representation* of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraphs (b) and (d).”

## IV. Child Centered Advocacy

- Client's needs, interests, and legal rights must be the center of all advocacy.
- Attorneys must have some knowledge of early child development and how abuse and neglect can harm development.
- Attorneys for very young children should ensure their clients are screened for developmental delays and actually linked to a service or treatment while in care.
- In Nevada, children should be referred to Early Childhood Intervention Services.

# Remember, it's a balancing act

Your client's legal rights:

- Safety
- Permanency
- Placement with relatives/fictive kin
- Relationship with biological parents
- Relationship with siblings
- Length of time in current placement
- Minimize placement disruptions

# Promote Permanency On Day One

- Use the momentum at the beginning of the case to set the pace.
- Keep parties focused on visitation, services, placement and regularly request updates.
- Revisit getting your client permanency frequently, not just around the time of a court hearing. Look at the client's needs and the parents' changes.

# Locating Fathers

- Ensure the agency is looking for fathers early in the case.
- Once located, verify that paternity has been established.
- Review efforts to allow fathers to parent their children, if no safety concerns exist.
- Make sure regular searches for the father are being conducted.

# Promote Concurrent Case Planning

- Relatives interested in becoming permanent guardians or adoptive parents should be identified for placement.
- Sibling contact may lead to fictive kin placements.
- Do not hesitate to ask for a change in the permanency goal.

# Emphasize Visits

- Consistent visits increases the likelihood of reunification.
- Promotes healthy attachments.
- Allow parent to learn about the child and continue the experience of being a parent.
- May be a critical part of a transition.

# Plan For Transitions

- Start with visits to introduce client to new caregiver, with the current caregiver present.
- Encourage the former caregiver to act as a resource for the child and the new caregivers.
- Consider a gradual approach, and minimize other disruptions to the client's routine.

# Connections With Siblings

- Presumed that it is in the best interests of a child to be placed with siblings. NRS 432B.550(5)(a)
- Right to contact and visits with their siblings if not placed together.
- Agency must develop a plan for regularly visits.
- Reduce visitation plan into an order.

# Advocate For The Health Of Your Client

- Health and development are intertwined.
- Ensure the child receives screening and assessments, care for identified concerns.
  - Screening for developmental delays: Nevada Early Intervention Services
  - Assessment for special education services: Child Find

# Advocate Holistically

- Appear on behalf of your client at all hearings and meetings.
- Advocate for interventions and services.
- Be a conduit between service providers, case managers, and the court.

# In Closing...

- Challenging, intellectually fulfilling and rewarding
  - Requires a lawyer to be proactive.
  - Requires a firm understanding of child development.
- Lawyers who commit to child-centered, informed, permanency-driven, and holistic advocacy can obtain wonderful outcomes for nonverbal and preverbal clients.

# RESOURCES

## **Nevada's Foster Youth Bill of Rights**

[http://dcfs.nv.gov/uploadedFiles/dcfsvgov/content/Programs/CWS/IL/BOR\\_Poster.pdf](http://dcfs.nv.gov/uploadedFiles/dcfsvgov/content/Programs/CWS/IL/BOR_Poster.pdf)

## **Child Development:**

American Academy of Pediatrics (NB – 21 years):

<https://brightfutures.aap.org/materials-and-tools/guidelines-and-pocket-guide/Pages/default.aspx>

**CDC's Developmental Milestones (2 mo – 5 years):**

<https://www.cdc.gov/ncbddd/actearly/milestones/index.html>