

MASSACHUSETTS	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE
<p><b>1. General Duties:</b>  <i>Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</i></p>	<p>Massachusetts's child welfare proceedings are entitled "care and protection" proceedings under <a href="#">MGL ch. 119, § 24</a>. In order to receive court appointments to represent children or parents in these proceedings, attorneys must be certified by the Committee for Public Counsel Services's Child and Family Law Division ("CAFL"). CAFL has detailed practice standards that delineate the role of counsel in care and protection matters. The care and protection statute is also supplemented by the Massachusetts Trial Court's <a href="#">Uniform Rules for Permanency Hearings</a>.</p> <p>- Appointment of Counsel is mandatory in all care and protection cases. <a href="#">MGL ch. 119, § 29</a></p> <p>- Role of Counsel: Client-Directed Lawyer</p> <p>(a) The role of counsel in these cases is to be an advocate for the client. Counsel shall diligently and zealously protect and advance the client's interests, rights and goals in the proceedings. This involves explaining the nature of all legal and administrative proceedings to the extent possible given the client's age and ability, determining the client's position and goals, and vigorously advocating such position and goals. The role of counsel is also to ensure that the client is afforded due process and other rights and that the client's interests are protected.</p> <p>(b) The role of counsel also is to be an advisor and counselor. This involves explaining the likelihood of achieving the client's goals and, where appropriate, identifying alternatives for the client's consideration. In addition, counsel should explain the risks, if any, inherent in the client's position.</p> <p>(c) Counsel has an obligation to make available sufficient time, resources, knowledge and experience to afford competent representation to the client.</p> <p>(d) Counsel for a child owes the same duties of undivided loyalty, confidentiality, zealous advocacy and competent representation to the child as is due an adult client, consistent with the Massachusetts Rules of Professional Conduct. <a href="#">Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 1.6 Rule 1.1.</a></p> <p>- Child's counsel should determine if the child has the capacity to make an adequately considered decision on matters related to the representation. If so, the lawyer must advocate for the client's wishes.</p> <p>If the child is unable to verbalize a preference, the lawyer shall make a substituted judgment determination, assessing "what the child would decide if he or she were capable of making an adequately reasoned decision, and represent the child in accordance with that determination." The lawyer may make this determination on his or her own, or request the assistance of a guardian ad litem.</p>

	<p>If the child is able to verbalize a preference, the lawyer determines that the child lacks capacity to make a reasoned decision, and the lawyer determines that pursuing the child's wishes will not put the child at risk of substantial harm, then the lawyer shall advocate for the client's wishes.</p> <p>If the child is able to verbalize a preference, the lawyer determines that the child lacks capacity to make a reasoned decision, and the lawyer determines that pursuing the child's wishes would put the child at risk of substantial harm, then the lawyer may do one of the following: 1) advocate for the child's expressed wishes; 2) inform the court of the child's expressed wishes, make a substituted judgment determination, and advocate for the substituted judgment position; 3) advocate for the child's expressed wishes but ask the court to appoint a GAL/investigator for an independent investigation and report; or 4) inform the court of the child's expressed wishes and ask the court to appoint a GAL/next friend to direct the lawyer's representation. <a href="#">Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 1.6</a></p> <p>-A Guardian Ad Litem may be appointed in addition to counsel to play one of several roles in a care and protection case. Among these include investigator (to provide an independent report and recommendation to the court); next friend (to direct counsel's representation when counsel is unsure what position to take, as per <a href="#">Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 1.6</a>); holder of confidentiality/privilege (to make an independent, unreviewable and fully binding determination of whether or not to waive the child's therapist-client privilege or confidentiality for the purpose of the litigation); Rogers GAL (to provide an independent investigation and report as to a child's need for antipsychotic medication, if this has been recommended by the agency); education advocate (to advocate for the child's special education rights and report to the court on the same).</p>
<p><b>2. Out of Court - Actions to be Taken:</b> <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special</i></p>	<p>The CAFL Performance Standards contain detailed requirements covering all key aspects of representation in care and protection matters. For further detail, refer to <a href="#">the Standards</a>.</p> <p>- Communications with Client.</p> <p>In all cases counsel must maintain sufficient contact with the client to establish and maintain an attorney-client relationship that will enable counsel to keep abreast of the client's interests and needs and of the client's position in the action.</p>

<p><i>needs, negotiate settlements</i></p>	<p>At a minimum, counsel shall meet with a child client on a quarterly basis, except under extraordinary circumstances. Irrespective of a child client's age, counsel shall meet with the child client at his or her placement promptly upon receiving notice of the assignment. Counsel shall meet with the child thereafter as necessary to provide competent representation to the client, to be informed of the child's wishes and circumstances, to inform and advise the client about the proceedings, as appropriate, and to maintain an ongoing attorney-client relationship with the child. Counsel shall explain the result of all court hearings and administrative proceedings to the client.</p> <p><a href="#"><u>Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 1.5.</u></a></p> <p>- Children and Family Law Cases: Client Contact Certification A Client Contact Certification form must be completed by all attorneys when submitting their bills through the E-Bill system on all Children and Family Law cases.</p> <p>The certification should detail in-person client contact only and must include the client's name, and the date and location of the meeting.. <a href="#"><u>Committee for Public Counsel Services, Assigned Counsel Manual, Policies &amp; Procedures: Governing Billing &amp; Compensation, Chapter 5, Rule 23.</u></a></p> <p>- Protection of Confidentiality, Privileged Communications, and Attorney Work Product Consistent with the client's interests and goals, counsel shall seek to protect from disclosure communications and other information concerning the client that are protected by applicable laws of confidentiality and privilege, including attorney work product. Counsel shall explain fully to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. If counsel for a child determines that the child is unable to make an adequately considered decision with respect to waiver, counsel must act with respect to waiver in a manner consistent with and in furtherance of the client's position in the overall litigation. Counsel may request the appointment of a guardian ad litem for the limited purpose of making decisions regarding waiver. <a href="#"><u>Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 1.7.</u></a></p> <p>- Investigate: Duties of Counsel Meet with Client; review of DCF records (child's counsel is entitled to the records as per 110 CMR 12.09(1).); review court records, including any court investigator, guardian ad litem, family service or probation officer reports; review other records, such as social service, medical, psychiatric, psychological, substance abuse, law enforcement, CORI and school records, as well as records of other court proceedings, as appropriate, and take the</p>
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necessary steps to obtain such records; interview, where appropriate, those individuals with information concerning the family, such as parents, relatives, caretakers, neighbors, DSS social workers and other social service personnel, school personnel, day care providers, medical providers, treatment providers, former counsel, probation officers, family service officers as well as those individuals who are suggested by the client or identified through investigation or discovery as potential witnesses; contact opposing counsel to gather information about the case and the positions of the other parties; and attend all service planning, treatment and placement meetings, school-based meetings; administrative reviews and hearings and other proceedings involving the client.

[Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 3.1.](#)

- Conduct Formal Discovery.

At a minimum, counsel's strategy should include consideration of the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admissions, and motions for mental or physical examination of a party.

Counsel shall, consistent with the client's interests and goals, and where appropriate, take all necessary steps to preserve and protect the client's rights through opposition to the discovery requests of other parties. This includes, but is not limited to, invoking applicable privileges and rights to confidentiality, raising objections on the basis of relevance, and seeking appropriate limitations on the discovery requested. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 3.2.](#)

- Obtain Services for the Client and His or Her Family.

The attorney shall negotiate with DCF for the development of a service plan that meets the client's interests and needs and advances the client's goals in the litigation. In the event that DCF's proposed service plan does not meet the interests or needs of the client, counsel may, as appropriate, challenge the service plan through available administrative and judicial means. As necessary, counsel should investigate the availability of services or benefits provided by other public or private agencies or organizations and seek such services for the client. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.1.](#)

- Communicate with the Court Investigator/Guardian ad Litem.

Counsel shall contact the court investigator/guardian ad litem as soon as practicable to inform him or her of the

	<p>attorney's role and of the client's position; if appropriate, revoke all authorizations for the release of confidential information and oppose motions seeking access to such information.; and assist the court investigator/guardian ad litem in obtaining information that supports the client's position. <a href="#"><u>Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 4.4.</u></a></p> <p>- File Pleadings. Prior to trial, counsel shall, as necessary, file petitions, motions, responses or objections to protect the client's rights and interests and to advance the client's position in the case. Relief requested may include, inter alia, temporary custody orders; orders concerning visitation; rulings that DSS has abused its discretion; court-ordered evaluations; funds for experts or other services necessary for representation permitted under the Indigent Court Costs Act; restraining orders; contempt for non- compliance with a court order; protective orders concerning the client's privileges and right to confidentiality; appointment of guardians ad litem; or dismissal of petitions or motions. <a href="#"><u>Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 4.5.</u></a></p> <p>- Counsel shall retain an expert where reasonably necessary to assist counsel in preparing or presenting the case. <a href="#"><u>Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 4.7.</u></a></p> <p>- Counsel should participate in settlement negotiations to seek the best result possible for the client consistent with the client's interests and directions to counsel. <a href="#"><u>Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 7.</u></a></p>
<p><b>3. In Court - Active Participation in Hearings:</b> <i>Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation</i></p>	<p>- Right to Hearing. Counsel shall assert and protect the client's right to temporary custody (including 72-hour) hearings. The trial court may, due to scheduling difficulties, inform counsel of the need to postpone a temporary custody or 72-hour hearing. If such a continuance is inconsistent with the client's interests or goals, counsel should object to any such postponement. If necessary, counsel should consider pursuing the client's right to a timely hearing by taking an interlocutory appeal.</p> <p>Requesting continuances: In some instances, counsel may not receive notification of his or her assignment in time</p>

*into other needed areas, and undertake certain obligations post-disposition.*

to prepare adequately to represent the client at a temporary custody hearing or to summons witnesses or documents. Should this occur, counsel should advise the client of counsel's need for additional time to prepare and, if the client consents, object to proceeding with the hearing and seek a short continuance, provided that the benefit of a continuance outweighs the prejudice of not going forward. Counsel may also need to request a continuance or reserve the client's right to a hearing if the client is unavailable due to illness or some other reason.

. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 2.1.](#)

- Preparation for Hearing.

In preparation for the temporary custody (including 72-hour) hearing, (a) counsel shall:

conduct an initial interview with his or her client, determine the client's position, advise the client as to the merits of the case, and develop a strategy for preparing for and conducting the hearing;

(and

review all pleadings filed in the case, any reports of suspected abuse or neglect which led DCF to petition the court for legal custody, and all documents to be submitted as evidence at the hearing. Additionally,

counsel shall, if applicable and to the extent practicable:

review other portions of the client's DCF file, any pleadings filed in other child welfare cases involving the client, and any other relevant records;

if consistent with the client's interests and goals, identify relatives, family friends, or other persons who are potential placement or custody options, and take such steps as may be necessary to offer such persons to DSS and/or to the court for placement or custody determinations; and

if consistent with the client's interests and goals, identify and interview potential witnesses, prepare such witnesses for the hearing, and subpoena documents and/or witnesses to appear at court for the hearing.

[Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 2.2.](#)

- Conduct of Hearing.

To the extent consistent with the client's interests and goals as determined pursuant to these Performance Standards, counsel shall, at the temporary custody (including 72-hour) hearing:

file any and all appropriate motions and legal memoranda;

present and cross examine witnesses, and provide evidence in support of the client's position;

make any and all appropriate evidentiary objections and offers of proof, so as to preserve the record on appeal; and

take any and all other necessary and appropriate actions to advocate for the client's interests and goals. [Committee](#)

[for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 2.3.](#)

- Visitation.

At each stage of the proceeding, counsel shall assert the client's rights to, or interests in, parent-child, sibling or other visitation. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.2.](#)

- Custody and Placement.

At each stage of the proceeding, counsel shall zealously advocate for placement or custodial options consistent with the client's goals and objectives, and should be prepared to present placement alternatives with family members or friends. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.3.](#)

- PERMANENCY HEARINGS

Counsel shall assert and protect the client's right to a hearing on the permanency plan. In the event that the court denies or improperly limits the client's right to a permanency hearing, counsel should consider pursuit of any available avenues for relief, including but not limited to interlocutory appeal, or appeal under [G.L. c. 119, § 29B.](#) Counsel should ensure that the appellate record is preserved by making detailed and specific offers of proof through, among other methods, affidavits or oral or written proffers. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 5.1.](#)

- Preparation for Hearing

In preparation for the permanency hearing, consistent with the client's interests and goals, counsel shall: obtain and review the permanency plan for the child filed by the petitioner, and determine the extent to which the plan is consistent with the client's position; if the proposed plan is inconsistent with the client's position, file a timely objection; conduct any necessary discovery; determine what evidence to present; prepare for the direct and cross examinations of witnesses; and take all necessary and appropriate steps to ensure the availability and presentation of evidence at the hearing, including but not limited to the issuance of subpoenas and the filing of motions. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 5.2.](#)



	<ul style="list-style-type: none"> <li>- Conduct of Hearing During the hearing, counsel shall act as a zealous advocate. <a href="#">Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 5.3.</a></li> <li>- Trial preparation standards can be found here: <a href="#">Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 6.</a></li> <li>- Collateral Representation Counsel may represent the child at DCF fair hearings that directly affect the resolution of an open court case for which the lawyer was appointed. (Counsel can bill CAFL for this work and no special permission is needed.) Prior authorization is required to bill for representation of the client in other ancillary proceedings that directly affect the resolution of the appointed case, such as divorce, custody, guardianship, or paternity matters. <a href="#">Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare Proceedings, Chapter 4, Rule 1.3(e).</a></li> </ul>
<p>4. <b>Post-Hearing:</b> Review courts order, communicate order to child, and monitor implementation of orders.</p>	<ul style="list-style-type: none"> <li>- On any petition filed in any court under this section, the department or the parents, person having legal custody, probation officer or guardian of a child or the counsel or guardian ad litem for a child may petition the court not more than once every 6 months for a review and redetermination of the current needs of such child whose case has come before the court.... <a href="#">ALM GL ch. 119, §26(5)(c).</a></li> <li>-...At the permanency hearing the court shall determine the permanent plan for the child. In making such determination the court shall consult with the child, in an age-appropriate manner, the proposed permanency plan for the child. Such consultation may be through a report by the Department Social Worker, the Child's attorney or a guardian ad litem whose has discussed with the child the proposed permanent plan. A child age 16 and over may attend the permanency hearing review. The Department shall use reasonable efforts to achieve the permanency plan determined by the court. The Department may concurrently use reasonable efforts to achieve an alternative permanent plan if the permanent plan determined by the court is reunification with the family and the goal established through the Department's permanency planning conference is other than reunification. <a href="#">110 CMR 6.11.</a></li> </ul>



**5. Appellate Advocacy:**  
*Decision to appeal,  
withdrawal, participation  
in appeal, conclusion by  
appeal.*

- Interlocutory Appeals

(a) Petition to Single Justice. Trial counsel shall, where appropriate, seek interlocutory relief from an order of the trial court by filing a petition to a single justice or through other appellate means. Counsel shall provide CAFL administrative staff with a copy of the petition and any supporting memoranda. . . .

(b) Appeal of Single Justice Order. Trial counsel shall, where appropriate, appeal an adverse order by the single justice to the full appellate court. In the event counsel elects to appeal an order of a single justice, or if the single justice reports his or her decision to the full appellate court, counsel shall promptly (i) contact CAFL for the assignment of certified appellate counsel to work on the appeal, and (ii) provide CAFL with copies of all papers filed in the appellate court that were not already provided under section (a) above. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.6.](#)

- POST-JUDGMENT REPRESENTATION

Counsel shall inform the client of the court's decision and act in accordance with Standard 1.5. Counsel shall discuss with the client his or her post-judgment and appellate options regarding an adverse decision from the court. Counsel shall continue to represent the client in accordance with Standard 1.3. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 8.](#)

- Appellate counsel shall comply in all respects with the Massachusetts Rules of Appellate Procedure. [Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 1.](#)

- Duties of Appellate Counsel:

- Immediately upon receipt of the notice of assignment, appellate counsel shall: (a) file an appearance in the appropriate court; (b) communicate with the client, if appropriate for the client's age, to inform the client of the assignment; (c) communicate with trial counsel to inform him or her of the assignment, provide him or her with copies of appellate counsel's appearance and request information and materials necessary for the appeal; and (d) determine whether a stay of the judgment or decree of the trial court should be sought pending appeal. In the event a stay should be sought, counsel shall immediately seek one in accordance with Mass. R. App. P. 6. [Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 3.](#)

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|  | <ul style="list-style-type: none"><li>- Appellate counsel shall, as soon as practicable after the assignment, meet with the client. At such initial meeting, appellate counsel shall determine the client's position and goals in the appeal. Appellate counsel is not bound by the determinations of the client's position and goals made by trial counsel. Appellate counsel shall independently determine his or her client's position and goals on appeal as set forth in Trial Standards 1.6 and 1.7, and should be aware of the potential for conflicts as set forth in Trial Standard 1.4. <a href="#"><u>Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 4.</u></a></li><br/><li>- Appellate counsel shall confer with the client, if appropriate for the client's age, and with trial counsel, if appropriate, about the issues that may be raised in the client's appeal. Appellate counsel shall keep the client informed of all significant developments in the client's case. Appellate counsel shall respond in a timely manner to all communications from the client, provided that such communications are of a reasonable volume and at reasonable intervals. Where the client is a child, appellate counsel shall communicate with the child to the extent necessary to maintain a normal attorney-client relationship with the child. See Trial Standards 1.5 and 1.6. <a href="#"><u>Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 5.</u></a></li><br/><li>- Appellate counsel shall inform the client's trial counsel of all significant developments in the case, including proposed settlement of the case, trial motions (as set forth in section 7 below), dismissal of the appeal, docketing of the appeal in the appellate court and the resolution of the appeal. Appellate counsel shall cooperate with trial counsel in furtherance of the client's position and goals in the proceeding. See Trial Standard 7.1(d). <a href="#"><u>Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 6.</u></a></li><br/><li>- Appellate counsel shall timely file in the appropriate court all motions necessary or advisable to preserve and perfect the client's appellate rights. Appellate counsel who are not assigned to represent the client in the trial court shall not engage in motion practice in the trial court unless such motion practice relates to assembly of the record on appeal, a stay pending appeal, dismissal of an appeal, or a request for new trial or relief from judgment. Appellate counsel may, with prior authorization from the CAFL Co-Director, file and argue other motions. <a href="#"><u>Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 7.</u></a></li><br/><li>- Appellate counsel should pursue all appropriate issues for appeal. Appellate counsel should pay particular attention to whether a claim as to ineffective assistance of trial counsel may form the basis of an appeal. If the</li></ul> |
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client insists on having appellate counsel brief a contention that, in the judgment of appellate counsel, cannot be supported by a rational argument, appellate counsel shall (a) immediately inform and consult with the CAFL Co-Director and, if the Co-Director concurs, (b) inform the client of the client's rights with respect to such contention pursuant to Commonwealth v. Moffett, 383 Mass. 201, 203-09 (1981); (c) provide the client with a copy of the Moffett opinion; and (d) if the client thereafter wishes to invoke his or her Moffett rights with respect to such contention, comply in all respects with the guidelines set forth in Moffett.

See Care and Protection of Valerie, 403 Mass. 317 (1988). [Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 8.](#)

- Appellate counsel, whether representing an appellant or appellee, shall file a brief on behalf of his or her client. The brief of appellate counsel shall be of high quality and shall conform in all respects with the applicable Rules of the Massachusetts Rules of Appellate Procedure. Appellate counsel may join in the brief of another party, in part or in full, to the extent the client and such other party have an identity of issues on appeal; provided, however, that appellate counsel shall be responsible for ensuring the timely filing of any brief in which counsel has joined.

[Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 9.](#)

- Appellate counsel shall transmit to the client, if appropriate for the client's age, and the CAFL Co-Director a copy of the brief filed on the client's behalf. Appellate counsel shall also transmit to the client, if appropriate for the client's age, a copy of the brief(s) of other parties and copies of all other substantive documents pertaining to the appellate proceedings. [Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 10.](#)

- Appellate counsel shall inform the client, if appropriate for the client's age, and CAFL Co-Director of the date, time and place scheduled for oral argument of the appeal as soon as the appellate counsel receives notice thereof from the appellate court. Oral argument of the appeal on behalf of the client shall not, absent the express approval of the client and the CAFL Co-Director, be waived with respect to any case. [Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 11.](#)

- Appellate counsel shall promptly inform the client, if appropriate for the client's age, of the decision of the appellate court in the client's case and shall transmit to the client, if appropriate for the client's age, and the CAFL Co-Director a copy of the decision. [Committee for Public Counsel Services: Performance Standards, Governing](#)

	<p><a href="#">the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 12.</a></p> <p>- If the decision of the Appeals Court is adverse to the client, appellate counsel shall promptly inform the client, if appropriate for the client's age, of his or her right to make application to the Supreme Judicial Court for further appellate review of the case. If the client requests that such application be made, appellate counsel shall prepare and timely file on the client's behalf such application. <a href="#">Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 13.</a></p> <p>- Appellate counsel must obtain the approval of the client and the CPCS Chief Counsel before seeking appellate review in the federal appellate courts. Whether or not to seek the approval of the Chief Counsel for federal appellate review is reserved to counsel's discretion. Approval of the Chief Counsel is subject to his or her discretion. <a href="#">Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 14.</a></p>
<p><b>6. Cessation of Representation:</b> <i>Contacts post representation, if any.</i></p>	<p>- Scope of Representation.</p> <p>(a) Duration of representation in general. Except as provided in par. (b), an assignment at the trial level concludes upon the earliest of the following:</p> <ol style="list-style-type: none"> <li>1. The child is adopted.</li> <li>2. The only subject child, or the client, has died.</li> <li>3. Counsel has withdrawn for all purposes (not for purposes of obtaining appellate counsel).</li> <li>4. The court has stricken counsel's appearance or the appearance of the client, and no appeal has been filed regarding such action.</li> <li>5. The case is dismissed, and no appeal has been filed.</li> <li>6. The court appoints a permanent guardian for the child, and no appeal has been filed.</li> <li>7. The court grants permanent custody of the child to a person other than DCF, and no appeal has been filed.</li> <li>8. If the client is a parent, a petition to terminate the client's parental rights has been allowed, and no appeal has been filed; however, if the client requests assistance to enforce any post-termination (but not post-adoption) agreement or order, or to defend against another party's request to modify or vacate such agreement or order, counsel shall provide such service.</li> <li>9. The court enters an order not specified above that is intended by the court as a final disposition of the matter, and no appeal has been filed.</li> <li>10. An appeal of an order under 4 through 9 above reaches its conclusion. <a href="#">Committee for Public Counsel Services: Performance Standards Governing the Representation of Children &amp; Parents in Child Welfare</a></li> </ol>

	<p><a href="#">Proceedings, Chapter 4, Rule 1.3.</a></p> <p>- Appellate counsel's representation of the client ends as of the earlier of (a) withdrawal of the appeal, (b) dismissal of the appeal, absent appeal from such dismissal, (c) entry of an order striking appellate counsel's appearance, absent appeal from such order, or (d) final resolution of the appeal, including remand for a new trial. The CAFL Co-Director may, at his or her discretion, subsequently re-open a Notice of Assignment of Counsel that has been closed pursuant to this section. <a href="#">Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter 4, Rule 15.</a></p>
	<p><b>Organizational and Administrative Supports for the Child Representative</b></p>
<p><b>7. General</b>  <b>Representation Rules:</b>  Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</p>	<p>- <u>Children and Family Law (CAFL) Representation at the Trial Level (Care and Protection, CHINS and Termination of Parental Rights Petitions)</u></p> <p>Attorneys who wish to accept assignments from the Trial Court in care and protection, CHINS, and termination of parental rights cases must (1) apply for admission to the Children and Family Law (CAFL) trial panel; (2) successfully complete all required trainings; (3) work with a mentor assigned by CAFL; and (4) attend eight hours of CAFL-approved continuing legal education each fiscal year. Attorneys who wish to accept assignments from the Probate Court in certain guardianship of minor proceedings under the Uniform Probate Code, must meet additional requirements outlined below.</p> <p><i>a. Application Procedure</i></p> <p>Attorneys seeking certification to accept CAFL trial level assignments must submit an application for the CAFL trial panel certification program. Applications are available on the CPCS web site (<a href="http://www.publiccounsel.net">www.publiccounsel.net</a>). Preference is given to attorneys with an established practice, experience working with families, and litigation skills. Attorneys will be notified if they are accepted into the training program.</p> <p>...</p> <p><i>c. Assignment of Cases</i></p> <p>The CAFL Division provides the Juvenile, District, and Probate Courts with lists of CAFL-certified trial attorneys who wish to accept assignments in particular courts. Courts make assignments from these lists.</p> <p><i>d. Assignment Requirements</i></p>

To maintain certification, attorneys must regularly accept appointments to represent parents *and* children. Attorneys who do not satisfy this requirement may be removed from the panel at the discretion of the CAFL Trial Panel Director.

*e. Provisional Certification*

The CAFL Division assigns mentors to attorneys who satisfactorily complete the certification training. Attorneys are

provisionally certified during the period of their mentorship. Provisionally-certified attorneys must work cooperatively with their assigned mentors. Mentors will update the CAFL Trial Panel Director about the work of each of their attorneys throughout the mentoring period.

The CAFL Trial Panel Director determines when the mentorship ends. If the Trial Panel Director determines that the provisionally- certified attorney no longer requires a mentor, the attorney will be fully certified and permitted to take additional trial court assignments without mentor supervision. At any time during the provisionally-certified attorney's mentorship, the Trial Panel Director may:

i. graduate the attorney from the mentor program; ii. remove the attorney's certification to take new CAFL trial court assignments; iii. remove the attorney from the panel and have his/her cases reassigned; or iv. place caseload restrictions or impose other conditions on the attorney.

*f. Performance Requirements*

By accepting assignments in the Trial Court in CAFL cases, attorneys agree to comply with all applicable CPCS Performance Standards. The Standards are contained in Chapter 4 of this manual and are available online at [www.publiccounsel.net](http://www.publiccounsel.net). Attorneys who accept CAFL trial assignments must represent their clients at all trial proceedings. Trial counsel is responsible for appellate proceedings until the CAFL Division assigns appellate counsel and appellate counsel enters an appearance. The CAFL Trial Panel Director may, at his or her discretion and when in the interests of a client, require an attorney to file a Motion to Withdraw and request the appointment of successor counsel. [Committee for Public Counsel Services: Assigned Counsel Manual Policies and Procedures, Chapter 3: Rule V\(B\)\(1\).](#)

- Children & Family Law (CAFL) Representation at the Appellate Level (Care and Protection, CHINS, Termination of Parental Rights, and Guardianship Petitions)

Attorneys who wish to accept CAFL appellate assignments must (1) apply for admission to the Children and Family Law (CAFL) appellate panel; (2) successfully complete all required trainings; (3) work with a mentor

assigned by CAFL; and (4) attend eight hours of CAFL-approved continuing legal education each fiscal year.

a. Application Procedure Attorneys seeking certification to accept CAFL appellate assignments must submit an application for the CAFL appellate certification program. Applications are available on the CPCS web site ([www.publiccounsel.net](http://www.publiccounsel.net)).

Applicants must have the following minimum qualifications:

i. ii. Demonstrated proficiency in legal research and writing; and At least one of the following:

I. Two years of child welfare trial experience; II. Primary authorship of two or more appellate briefs in other subjects; III. A recent appellate clerkship, substantial editing experience for a law journal, or publication of a law journal article.

Applicants must send to the CAFL Certification Coordinator a completed application, a resume, two legal writing samples, and two references from individuals who have knowledge of the applicant's qualifications, character, integrity, thoroughness, and research and writing abilities. Attorneys will be notified if they are accepted into the training program.

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c. Assignment Requirements To maintain certification, attorneys must accept at least one CAFL appellate appointment during the fiscal year of the initial certification training. Thereafter, attorneys must accept at least one CAFL appellate appointment every three fiscal years. To maintain certification, attorneys must accept appointments to represent parents *and* children. Attorneys who do not satisfy these requirements may be removed from the panel at the discretion of the CAFL Director of Appeals.

d. Provisional Certification The CAFL Division assigns mentors to attorneys who satisfactorily complete the certification training. Attorneys are provisionally certified during the period of their mentorship. Provisionally-certified attorneys must work cooperatively with their assigned mentors. For each appellate assignment, the provisionally-certified attorney will send the mentor copies of the transcripts, exhibits and key pleadings. The mentor will review these materials to help the provisionally-certified attorney identify appellate issues and research strategy. The mentor will also edit drafts of briefs prior to submission, authorize the filing of the brief, help the provisionally-certified attorney prepare for oral argument, and help the provisionally-certified attorney address other issues related to the appeal. The CAFL Director of Appeals determines when the mentorship ends. If the Director of Appeals determines that the provisionally-certified attorney no longer requires a mentor, the attorney will be fully certified and permitted to take additional appellate assignments without mentor supervision. At any time during the provisionally-certified attorney's mentorship, the Director of Appeals may remove that attorney's



	<p>certification to take CAFL appellate assignments.</p> <p>e. Performance Requirements By accepting assignments for CAFL appeals, attorneys agree to comply with all CAFL trial and appellate level CPCS Performance Standards. The Standards are contained in Chapter 4 of this manual and are available online at <a href="http://www.publiccounsel.net">www.publiccounsel.net</a>. Attorneys must submit copies of all briefs filed to the Children and Family Law Division. If the case is closed before briefing, the attorney must notify the Children and Family Law Division of the reason the assignment is closed. The CAFL Director of Appeals may, at his or her discretion and when in interests of a client, require an attorney to file a Motion to Withdraw and/or remove an appellate assignment from an appellate attorney. <a href="#">Committee for Public Counsel Services: Assigned Counsel Manual Policies and Procedures, Chapter 3: Rule V(B)(4)</a>.</p>
<p><b>8. Lawyer Training:</b>  <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>- <u>Children and Family Law (CAFL) Representation at the Trial Level (Care and Protection, CHINS and Termination of Parental Rights Petitions)</u></p> <p>b. Training Requirements</p> <p>Initial Certification: Attorneys accepted into the training program must attend a five-day seminar, “Children and Family Law Trial Panel Certification Training Program.” Applicants with significant trial experience may apply for a waiver of the trial skills portion of the training which takes place during the last two days of training. The program is administered through Massachusetts Continuing Legal Education (MCLE) and is offered two or more times each year. Newly-certified CAFL trial panel attorneys must attend a 4- hour seminar, “Medical Treatment Decisions for Children in DCF Custody,” administered by CPCS, within two years of the completion of the Certification training. This seminar is offered once a year.</p> <p>Annual Requirements: Trial panel attorneys must complete 8 hours of CAFL-approved continuing legal education each fiscal year. The fiscal year begins on July 1 and concludes on June 30. Trial panel attorneys are required to satisfy the annual continuing education requirement beginning in the fiscal year after they successfully complete the CAFL Trial Panel Certification Training Program.</p> <p>Continuing legal education is available at CAFL-sponsored trainings throughout the Commonwealth, MCLE, the CPCS Annual Training, and other approved seminars. A list of approved seminars is available on the CPCS web site, <a href="http://www.publiccounsel.net">www.publiccounsel.net</a>. To obtain approval for attending a program that is not on the list, attorneys must submit a request for approval (including a comprehensive description of the program, its length and a syllabus describing its contents and faculty) to the CAFL Training Director. Attorneys are urged to seek approval prior to attending such programs.</p>

	<p><a href="#">Committee for Public Counsel Services: Assigned Counsel Manual Policies and Procedures, Chapter 3: Rule V(B)(1).</a></p> <p>- <a href="#">Children &amp; Family Law (CAFL) Representation at the Appellate Level (Care and Protection, CHINS, Termination of Parental Rights, and Guardianship Petitions)</a></p> <p>b. Training Requirements Initial Certification: Attorneys accepted into the program who are already certified to take trial-level CAFL appointments must attend the one-day course, “Appealing CPCS Children and Family Law Cases.” Attorneys who are not currently certified to take trial-level CAFL appointments must attend the one-day course, “Appealing CPCS Children and Family Law Cases” and the three-day substantive-law portion of the trial panel certification course. The two-day trial skills portion of the trial panel certification course is not required. The CAFL appellate panel certification training is held annually.</p> <p>Annual Requirements: Appellate panel attorneys must complete 8 hours of CAFL-approved continuing legal education each fiscal year. The fiscal year begins on July 1 and concludes on June 30. Appellate panel attorneys are required to satisfy the annual continuing education requirement beginning in the fiscal year subsequent to their completion of the CAFL Appellate Panel Certification Training Program.</p> <p>Continuing legal education is available at CAFL-sponsored trainings throughout the Commonwealth, MCLE, the CPCS Annual Training, and other approved seminars. A list of approved seminars is available on the CPCS web site, <a href="http://www.publiccounsel.net">www.publiccounsel.net</a>. To obtain approval for attending a program that is not on the list, attorneys must submit a request for approval (including a comprehensive description of the program, its length and a syllabus describing its contents and faculty) to the CAFL Training Director. Attorneys are urged to seek approval prior to attending such programs.</p>
<p><b>9. Lawyer Compensation:</b> Adequate and timely compensation, reimbursement provided expenses.</p>	<p>-Attorneys appointed in care and protection cases are paid at the rate of \$50 per hour. <a href="#">Committee for Public Counsel Services, Assigned Counsel Manual, Policies &amp; Procedures: Governing Billing &amp; Compensation, Chapter 5, Rule 33.</a></p> <p>CPCS has many complex rules and requirements regarding attorney billing, all of which can be found in <a href="#">Committee for Public Counsel Services, Assigned Counsel Manual, Policies &amp; Procedures: Governing Billing &amp; Compensation, Chapter 5.</a></p>

	<p>Notably, CPCS sets an annual cap of billable hours per fiscal year. Effective in FY2012, attorneys who have been licensed to practice law for less than two years will be limited to 1500 hours per year. All other CPCS certified attorneys may bill up to 1650 hours per year. Attorneys will not be paid for any time billed in excess of the annual limit of billable hours. <a href="#">CPCS Memo Re Legislative Changes Affecting Attorney Bill Payment Policies, dated Aug. 15, 2011.</a></p> <p>It is each attorney's responsibility to keep track of his or her billable hours. Attorneys who reach the billable hour cap prior to the end of the fiscal year shall not accept new case assignments for the remainder of the current fiscal year. Attorneys who exceed the billable hour limit will not be compensated for hours billed in excess of the annual cap. To avoid prejudice to clients, and to fulfill one's ethical responsibility to provide fully competent representation to every client, attorneys must continue to zealously advocate on behalf of all clients for whom assignments have been accepted, despite having exceeded the cap on billable hours.  <a href="#">Committee for Public Counsel Services, Assigned Counsel Manual, Policies &amp; Procedures: Governing Billing &amp; Compensation, Chapter 5, Rule 17.</a></p>
<p><b>10. Caseload Levels:</b>  <i>Caseloads are of a manageable size.</i></p>	<p>- Caseload Limits  CAFL attorneys are limited to 75 open cases at any one time.  <a href="#">Committee for Public Counsel Services, Assigned Counsel Manual, Policies &amp; Procedures: Governing Billing &amp; Compensation, Rule 16.</a></p>