

| Maryland | Legal Authority |
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| | GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE |
| <p>1. General Duties: <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>- (d) Representation of child. --</p> <p>(1) A child who is the subject of a CINA petition shall be represented by counsel.</p> <p>(2) Unless the court finds that it would not be in the best interests of the child, the court shall:</p> <p>(i) Appoint an attorney with whom the Department of Human Resources has contracted to provide those services, in accordance with the terms of the contract; and</p> <p>(ii) If another attorney has previously been appointed, strike the appearance of that attorney.</p> <p>MD CTS & JUD PRO § 3-813.</p> <p>(e) In addition to, but not instead of, the appointment of an attorney under this section, the court, in any action, may appoint an individual provided by a Court-Appointed Special Advocate Program created under § 3-830 of this subtitle. MD CTS & JUD PRO § 3-813.</p> <p>- There is a Court-Appointed Special Advocate Program.</p> <p>The purpose of the Program is to provide volunteers whose primary purpose is to ensure the provision of appropriate service and case planning consistent with the best interests of a child who is the subject of:</p> <p>A CINA proceeding. . . ;</p> <p>. MD CTS & JUD PRO § 3-830(b)(1) & (2).</p> <p>- (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.</p> <p>(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.</p> <p>(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests. Md. Lawyers' Rules of Prof. Conduct 1.14.</p> |

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| | <p>- The attorney should determine whether the child has considered judgment as defined in Guideline B1 [see below]. If the child has considered judgment, the attorney should so state in open court and should advocate a position consistent with the child's wishes in the matter. If the attorney determines that the child lacks considered judgment, the attorney should so inform the court. The attorney should then advocate a position consistent with the best interests of the child as defined in Guideline B2. MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline A.¹</p> <p>- When an attorney representing a child determines that the child does not have considered judgment, the attorney should advocate for services and safety measures that the attorney believes to be in the child's best interests, taking into consideration the placement that is the least restrictive alternative. The attorney may advocate a position different from the child's wishes if the attorney finds that the child does not have considered judgment at that time. The attorney should make clear to the court that the attorney is adopting the best interest standard for that particular proceeding and state the reasons for adopting the best interest standard as well as the reasons for any change from a previously adopted standard of representation. Even if the attorney advocates a position different from the child's wishes, the attorney should ensure that the child's position is made a part of the record. MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline B2.</p> |
| <p>2. Out of Court - Actions to be Taken: <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p> | <p>- The attorney should advocate the position of a child unless the attorney reasonably concludes that the child is unable to express a reasoned choice about issues that are relevant to the particular purpose for which the attorney is representing the child. If the child has the ability to express a reasoned choice, the child is regarded as having considered judgment.</p> <p>a. To determine whether the child has considered judgment, the attorney should focus on the child's decision-making process, rather than the child's decision. The attorney should determine whether the child can understand the risks and benefits of the child's legal position and whether the child can reasonably communicate the child's wishes. The attorney should consider the following factors when determining whether the child has considered judgment:</p> <p>(1) the child's developmental stage:</p> <p>(a) cognitive ability,</p> <p>(b) socialization, and</p> <p>(c) emotional and mental development;</p> <p>(2) the child's expression of a relevant position:</p> |

¹ These *Guidelines* are included as an appendix to the Maryland Rules of Professional Conduct with respect to the comment to Rule 1.14.

(a) ability to communicate with the attorney, and
 (b) ability to articulate reasons for the legal position; and
 (3) relevant and available reports such as reports from social workers, psychiatrists, psychologists, and schools.

b. A child may be capable of considered judgment even though the child has a significant cognitive or emotional disability.

c. At every interview with the child, the attorney should assess whether the child has considered judgment regarding each relevant issue. In making a determination regarding considered judgment, the attorney may seek guidance from professionals, family members, school officials, and other concerned persons. The attorney should also determine if any evaluations are needed and advocate them when appropriate. At no time shall the attorney compromise the attorney-client privilege.

d. An attorney should be sensitive to cultural, racial, ethnic, or economic differences between the attorney and the child because such differences may inappropriately influence the attorney's assessment of whether the child has considered judgment. [MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline B1.](#)

- The attorney should meet in the community with the child at each key stage of the representation to conduct a meaningful interview. The attorney should meet the child in preparation for a hearing, regardless of the child's age or disability, in an environment that will facilitate reasonable attorney-client communications. The attorney is encouraged to meet with the child in multiple environments, including the child's school, placement, each subsequent placement, or home.

When face-to-face contact with a child is not reasonably possible or not necessary, the attorney still should have meaningful contact with the child. These situations may include: (a) a child placed out-of-state; (b) a teenager with whom the attorney has established a sufficient attorney-client relationship; or (c) a child under the age of three at the shelter care proceeding. The attorney, however, should have face-to-face contact with the child prior to the adjudication hearing.

When a communication with the child requires a sign or spoken language interpreter, the attorney should try to use the services of a court-related interpreter or other qualified interpreter other than the child's family, friends, or social workers. [MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline C1.](#)

- After conducting one or more interviews with a child and giving reasonable consideration to the child's age and cognitive and emotional development, the attorney should determine, at a minimum:

a. whether the child has considered judgment;

- b. whether the presence of the child at the proceedings will be waived, i.e., whether the child wants or needs to be present at the hearing or whether the child will be harmed by appearing in court;
- c. the child's position on the agency's petition, court report(s), and other relevant issues, including the permanency plan and placement;
- d. the child's position on evidence that may be offered at the hearing, including evidence that may be offered on behalf of the child;
- e. the child's legal position at the hearing;
- f. whether there is a conflict of interest that requires the attorney to move to withdraw from representing one or all of the clients as, for example, when the attorney represents siblings;
- g. whether the child should be called as a witness, after considering such factors as (1) the child's age, (2) the child's cognitive and emotional development, (3) the child's need or desire to testify, (4) the likelihood of emotional trauma or repercussions to the child, (5) the necessity of the child's direct testimony, and (6) the availability of other evidence, hearsay exceptions, proffers, or stipulations that can substitute for direct testimony; and
- h. if the child will be called as a witness, the setting of the child's testimony; for example, whether the child should testify in open court, open chambers, closed chambers, or another location.

[MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline C2.](#)

- The attorney should have meaningful contact with the child at least every six months, even if a court hearing is not scheduled. The attorney should seek to obtain notice of emergencies and significant events involving the child between court hearings. Upon receiving notice of such an event (for example, a change of placement), the attorney should interview or observe the child within a reasonable time. As necessary or appropriate to the representation, the attorney should attend treatment, placement, and administrative hearings, and other proceedings, as well as school case conferences or staffing conferences concerning the child. [MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline C3.](#)

- The child's attorney should conduct a thorough and independent investigation as necessary or appropriate to the representation. This investigation may include the following:
- a. obtaining and reviewing the child's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;
 - b. interviewing or observing the child before all court hearings and when apprised of emergencies or significant events affecting the child;
 - c. interviewing school personnel and other professionals and potential witnesses;
 - d. interviewing the child's caretaker(s), with the permission of their attorney when necessary, concerning the type

of services the child currently receives and the type of services the child needs; and
e. reviewing all relevant evidence.

At each stage of the investigation, the attorney should be familiar with the child's position. [MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline D1.](#)

- For a non-verbal child who does not have considered judgment, the attorney should observe that child in the child's environment and conduct a thorough investigation. The investigation should include, at a minimum, contact with the child's caretaker, teacher, physician, and caseworker to obtain information about the status of the child. [MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline D2.](#)

- After a petition is filed under this subtitle, the court may order the local department or another qualified agency to make or arrange for a study concerning the child, the child's family, the child's environment, and other matters relevant to the disposition of the case... The report of a study under this section is admissible as evidence at a disposition hearing but not at an adjudicatory hearing. The attorney for each party has the right to receive the report at least 5 days before its presentation to the court, to challenge or impeach its findings and to present appropriate evidence with respect to it. [MD CTS & JUD PRO § 3-816\(a\) & \(c\)\(1\)-\(2\).](#)

- If the parents or legal guardian refuse to meet with the caseworker to develop an agreement, or cannot reach an agreement concerning reunification efforts, the caseworker shall notify:

- (1) The parents and the parents' attorney, or the legal guardian and the legal guardian's attorney, and the child's attorney in writing that the permanency plan of reunification shall be changed; and
- (2) All parties of the new permanency plan within 30 days after the first notice is sent. [COMAR 07.02.11.15\(D\).](#)

- The parent, education guardian, parent surrogate, foster parent, court-appointed attorney, or court-appointed special advocate acting on behalf of the child in State-supervised care may provide notice to a receiving school regarding the enrollment or imminent enrollment of the child in State-supervised care. [MD Code, Education § 8-503\(b\).](#)

- (1) All court records under this subtitle pertaining to a child shall be confidential and their contents may not be divulged, by subpoena or otherwise, except by order of the court on good cause shown.
- (2) This subsection does not prohibit review of a court record by:
- (i) Personnel of the court;
 - (ii) A party;

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| | <ul style="list-style-type: none"> (iii) Counsel for a party; (iv) A Court–Appointed Special Advocate for the child; . . . MD CTS & JUD PRO § 3-827(a). |
| 3. In Court - Active Participation in Hearings: <i>Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</i> | <ul style="list-style-type: none"> - a. If the child has considered judgment, the attorney should develop a position and strategy concerning every relevant aspect of the proceedings. When developing the child's legal position, the attorney should ensure that the child is given advice and guidance and all information necessary to make an informed decision. b. The attorney should explain to the child in a manner appropriate to the child's level of development what is expected to happen before, during, and after each hearing. c. Consistent with the child's wishes, or the best interests of a child without considered judgment, the attorney should seek to obtain appropriate services, including services for children with physical, mental, or developmental disabilities. MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline E1. - a. The attorney should attend all hearings involving the child and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child. b. The attorney should present a case and make appropriate motions, including, when appropriate, introducing independent evidence and witnesses and cross-examining witnesses. c. During all hearings, the attorney should preserve legal issues for appeal, as appropriate. d. Consistent with the wishes of a child with considered judgment, the attorney should try to ensure timely hearings and oppose unwarranted continuances or postponements. MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline E2. |
| 4. Post-Hearing: <i>Review courts order, communicate order to child, and monitor implementation of orders.</i> | <ul style="list-style-type: none"> - a. Following the hearing, if consistent with the attorney's representation of the child's position, the attorney should seek a written court order to be given to the parties, containing at a minimum: <ul style="list-style-type: none"> (1) required findings of fact and conclusions of law; (2) the date and time of the next hearing; (3) required notices; (4) actions to be taken by each party, including the agency(ies), and custodians; (5) appropriate statutory timelines; and (6) the names of the parties who were present at the hearing. MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline E3. |

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| | <p>- A (1) A periodic review of a child's status shall be held not less frequently than once every 6 months by the juvenile court, and, if not reviewed by the court, may be reviewed according to §A(2) of this regulation.</p> <p>(2) The review shall be conducted by the court, an administrative panel, or the Citizens' Review Board for Children (CRBC), as described in COMAR 07.01.06. . . .</p> <p>D. The local department shall, in preparation for the periodic review held by:</p> <p>(1) The court:</p> <p>(a) Give 10 days notice of the review, whenever possible, to the parents or legal guardian, child, foster parent or the foster parent's attorney, pre-adoptive parent, or relative caregiver; and</p> <p>(b) Document the notice in the child's case record;</p> <p>(2) The CRBC, encourage the parents, legal guardian, foster parents, pre-adoptive parents, relative caregivers, the child's attorney, the child if appropriate, and any other interested individual to attend the review; or</p> <p>(3) An administrative panel:</p> <p>(a) Invite the participation of the parents, legal guardian, foster parents, pre-adoptive parents, relative caregivers, the child's attorney, and the child if appropriate; and</p> <p>(b) Document the notice given in the child's case record.</p> <p>COMAR 07.02.11.19.</p> |
| <p>5. Appellate Advocacy: <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p> | <p>- The attorney should consider and discuss with the child the possibility and ramifications of an appeal and, when appropriate, take all steps necessary to note an appeal or participate in an appeal filed by another party. MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline E3(b).</p> |
| <p>6. Cessation of Representation: <i>Contacts post representation, if any.</i></p> | <p><i>No explicit provisions of law.</i></p> |
| | <p>Organizational and Administrative Supports for the Child Representative</p> |
| <p>7. General Representation Rules: <i>Administrative structure is clear for appointment, support and accountability of the CR.</i></p> | <p>-By statute, the Department of Human Resources is responsible for administering legal services for children in CINA cases. MD CTS & JUD PRO § 3-813. DHR's Maryland Legal Services Program (MLSP) is the division in charge of selecting, paying, and monitoring these attorneys. MLSP has contracted with various non-profit organizations and law firms throughout the state to provide this service. See http://dhr.maryland.gov/legal/contract.php.</p> |

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| <p><i>The child's representative is independent from the court</i></p> | <p>-If the court becomes aware that an attorney is not following these Guidelines, the court may encourage compliance by taking one or more of the following steps, as appropriate:</p> <ul style="list-style-type: none"> a. alert the individual attorney that the attorney is not in compliance with the Guidelines; b. alert relevant government agencies or firms that the attorney is not complying with the Guidelines; c. alert the entity(ies) responsible for administering the contracts for children's representation that the attorney appointed to represent children is not complying with the Guidelines; and d. appoint another attorney for the child. MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline G. <p>-All vendors under contract with MLSP to provide representation to children in CINA cases must abide by the Guidelines. Foster Care Court Improvement Project, Representation, Practice and Procedure Subcommittee.</p> <p>- The Administrative Office of the Courts:</p> <ul style="list-style-type: none"> (i) Shall administer the Program [CASA]; (ii) Shall report annually to the Chief Judge of the Court of Appeals and, subject to § 2-1246 of the State Government Article, to the General Assembly regarding the operation of the Program; and (iii) May adopt rules governing the implementation and operation of the Program including funding, training, selection, and supervision of volunteers. MD CTS & JUD PRO § 3-830(b)(3). |
| <p>8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p> | <p>- Before accepting a case, a lawyer who does not have sufficient experience in providing legal representation to children in CINA and related TPR and adoption cases should participate in formal training and education related to this area of practice. The lawyer should satisfy the court and, if applicable, the entity responsible for payment of the lawyer that the lawyer has sufficient skill and experience in child advocacy. The lawyer should participate in available training and education, including in-house training. MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline F1.</p> <p>- Lawyers who seek to represent children in these proceedings are encouraged to seek training and education in such subjects as:</p> <ul style="list-style-type: none"> a. the role of child's counsel; b. assessing considered judgment; c. basic interviewing techniques; d. child development: cognitive, emotional, and mental stages; |

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| | <p>e. federal and state statutes, regulations, rules, and case law;</p> <p>f. overview of the court process and key personnel in child-related litigation;</p> <p>g. applicable guidelines and standards of representation;</p> <p>h. family dynamics and dysfunction, including substance abuse and mental illness;</p> <p>i. related issues, such as domestic violence, special education, mental health, developmental disability systems, and adult guardianships;</p> <p>j. social service agencies, child welfare programs, and medical, educational, and mental health resources for the child and family; and</p> <p>k. written materials, including related motions, court orders, pleadings, and training manuals. MD R JUV CAUSES, Title 11, Appendix: Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings, Guideline F2.</p> <p>.</p> |
| <p>9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i></p> | <p>- In any court-assigned case, the Department of Human Resources shall pay the attorney's expenses as approved by the Court. COMAR 07.01.13.05(D).</p> <p>- A. Court-Appointed Attorney Payment Procedures.</p> <p>(1) Upon completion of a child adoption or guardianship under Family Law Article, §5-323, Annotated Code of Maryland, or other proceeding under Courts and Judicial Proceedings Article, §3-813, Annotated Code of Maryland, the court-appointed attorney shall petition the court for an order directing the local department or the Department of Human Resources to pay a specified fee and costs to the attorney for services rendered to the client named in the order.</p> <p>(2) At the time that the petition is filed with the court, a copy of the petition for award of attorney fees shall be submitted to:</p> <p>(a) Director, Maryland Legal Services Program, 311 West Saratoga Street, Baltimore, MD 21201; and</p> <p>(b) The attorney who presented the case for the State.</p> <p>(3) The following information shall be stated in the order, or shall be included in the petition for award of attorney fees, or in other court documents submitted with the court order:</p> <p>(a) The case was a child adoption or guardianship proceeding under Family Law Article, §5-323, Annotated Code of Maryland, or a proceeding under Courts and Judicial Proceedings Article, §3-813, Annotated Code of Maryland;</p> <p>(b) The name of the attorney representing the child;</p> <p>(c) The identity of the local department that was a party to the case;</p> <p>(d) The hours that the attorney spent in trial and nontrial activities, separately specified; and</p> <p>(e) The court has determined that the stated fee and stated costs are reasonable and has awarded the fee and costs to</p> |

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| | <p>the attorney.</p> <p>(4) The Director may request additional supporting documentation to justify payment of the requested fee.</p> <p>(5) The attorney shall then submit to the Director at the address specified in §A(1)(a) of this regulation:</p> <p>(a) A copy of the court order;</p> <p>(b) A statement of the federal identification number or Social Security number under which the payment is to be reported to the Internal Revenue Service for tax purposes;</p> <p>(c) Any other required documentation as outlined in §A of this regulation; and</p> <p>(d) The Maryland Legal Services Program's request for payment form.</p> <p>B. The Director shall review the court order to:</p> <p>(1) Verify that the court order falls within the coverage and other provisions of this chapter;</p> <p>(2) Review items submitted to ensure compliance with other provisions of this chapter; and</p> <p>(3) Process payment to the attorney. COMAR 07.01.13.06.</p> <p><i>There is no explicit authority regarding standard pay rates</i></p> |
| <p>10. Caseload Levels: Caseloads are of a manageable size.</p> | <p><i>No explicit requirements; however, MLSP indicates that it monitors caseloads of its contract attorneys. See http://dhr.maryland.gov/legal/service.php.</i></p> |