

New Rules of Conduct Clarify Roles for Lawyers Representing Children in Abuse/Neglect Cases

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Nevada lawyers representing children in abuse and neglect cases now have rules of conduct to guide how they form relationships with their child clients and represent those youth in court. In October 2022, the Nevada Supreme Court adopted rules of conduct for attorneys who represent children in child welfare cases in ADKT 0598.¹ Those rules went into effect on January 1, 2023.²

Based on the 2011 ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings,³ the Nevada Rules of Conduct for Lawyers Representing Children in Child Welfare Cases apply to lawyers representing children in cases brought under Chapter 432B of the Nevada Revised Statutes (NRS). Chapter 432B is the main statutory source for proceedings involving children who have been removed from their parents' home by a state or county agency because of abuse or neglect. NRS 432B.420 gives those children party status, in their own right, and requires the court to appoint an attorney to represent the child. Those children can range in age from a few days old to moments short of their 18th birthday, and they possess a wide variety of personalities, skills, needs, and wishes. The vast majority have endured trauma and have a variety of unmet medical, emotional, and educational needs. The new Rules of Conduct are the foundation for quality child representation in Nevada. *See*, NV R CHILD WELFARE, Prefatory Statement.

Client-Directed Representation

The new Rules of Conduct direct children's attorneys to follow a client-directed model of representation: a model that has been followed by practicing child welfare lawyers for years in this state. When attorneys first started representing children more than 20 years ago in Las Vegas through



the Children's Attorneys Project at Legal Aid Center of Southern Nevada,⁴ those attorneys followed a client-directed model of representation based on recommendations from national organizations and experts.⁵ For example, the 1996 American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases recommended that attorneys "represent the child's expressed preferences and follow the child's direction through the court of litigation."⁶ Attorneys in northern Nevada followed the same path, also adopting a client-directed model of representation.



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However, Nevada law was silent on how children were to be represented; NRS 432B.420 provides every child in foster care with a lawyer, but it does not state how that lawyer should represent the child. NRS 432B.500 provides every child with a guardian ad litem (GAL) and requires that the GAL be someone *other* than the child’s lawyer. Since the GAL makes recommendations to the court based on the best interests of the child (*see*, NRS 432B.500(2)(g)), children’s lawyers inferred their role to be an advocate for the child’s wishes. Rule of Conduct 4(b)(1) now requires those

lawyers to advocate for the child client’s expressed wishes, even when in conflict with the child’s best interests.

The client-directed model of representation for children is a natural outgrowth of the Nevada Rules of Professional Conduct (NRPC). NRPC Rule 1.2 provides that the client shall determine the objectives of representation, with the lawyer determining how to meet those objectives. NRPC Rule 1.14 states that lawyers shall maintain a normal attorney/client relationship with clients who have diminished capacity, including those whose capacity is affected by virtue of being a minor. There are no exemptions from the Nevada Rules of Professional Conduct for lawyers representing children. When a lawyer advocates in line with a child’s expressed wishes, that lawyer is operating within Nevada’s existing rules of ethics.

Representation of Preverbal and Nonverbal Clients

The new Rules of Conduct also provide guidance on how to use a client-directed model of representation when the client cannot talk or communicate their wishes. Rule of Conduct 4(b)(2) requires the lawyer to make a “substituted judgment determination” when the child is not capable of directing representation as set forth in Rule 4(b)(1). *See*, NV R CHILD WELFARE, Rule 4. Taken directly from the 2011 ABA Model Act, a substituted judgment determination requires the lawyer to determine “what the child would decide if he or she were capable of making an adequately considered decision, and representing the child in accordance with that determination.” *See*, NV R CHILD WELFARE 4(b)(2). This rule requires the lawyer to examine the child’s legal rights, experiences, family history, and culture, and represent the child in line with those rights, while working toward a speedy resolution of the case and the use of the least restrictive or harmful alternatives available. Rule of Conduct 4(b)(2) and 4(b)(3), along with the supporting comments, direct the child’s attorney to go beyond any superficial

conclusions about the child’s needs, and encourage the lawyer to learn the child’s life story. The attorney’s advocacy is then directed by this story, leaving the attorney’s own biases behind.

Improving the Quality of Representation

The Nevada Rules of Professional Conduct list duties of competency, diligence, and zealous advocacy for all lawyers; the new Rules of Conduct expand on those duties for child welfare lawyers. Rule of Conduct 4(d) contains a non-exhaustive list of tasks for a child’s lawyer, including fact-finding; consulting; and collaboration with other lawyers, providers, and stakeholders; and meeting with the client in their home or prospective

residence. NV R CHILD WELFARE, Rule 4. Notably, Rule 4(d)(5) instructs the lawyer to meet with the client prior to each hearing and see the client in person every quarter. *Id.* Unlike adult clients, a child client may not know to reach out to their lawyer when they have a request; the child may not fully understand the lawyer’s role or may not have unfettered access to a phone. Even with access to a telephone, a child client may not have the ability to have a confidential conversation.

Rule 4(d)(5) bolsters that attorney/client connection by setting forth how frequent client contact should be.

Moreover, the duties listed solidify the child’s status as a party in the NRS 432B litigation. Many civil lawyers are comfortable with a two-party case: plaintiff vs. defendant or claimant vs. respondent, in which there are two opposing positions. Child welfare cases frequently begin with the same way; the child welfare agency contends the parents pose a risk of harm to their child, and the parents need service to ameliorate that risk. It can be tempting for the child’s attorney to align with one side and follow along, joining pleadings and arguments. However, the dynamics rarely remain so concrete in child welfare cases. Issues arise during the case—the court may face questions on placement of

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the child with family, visits with parents and siblings, and whether psychiatric treatment is necessary for a child. The child’s position may differ over time, as the child matures and heals from trauma. By listing out the duties in Rule 4(d), the new rules remind an attorney of their duty of zealous advocacy and reinforce the status of the child as a party, in their own right.

Rule 5, found at the end of the new Rules of Conduct, sets forth training requirements and recommendations. Rule 5(a) sets forth what training is required, and the amount depends on the lawyer’s area of practice, office structure, and level of support. Rule 5(b) suggests areas of additional training to allow children’s lawyers to represent their clients in a more holistic manner. Rule 5(c) reminds children’s lawyers to continually assess their ability to meet their clients’ needs, so that each child gets competent and zealous representation. The entire system benefits when children receive high quality representation—there is increased engagement, more tailored services for the family, and expedited services.⁷

Children need a voice in court—the court makes decisions about where a child will live, where a child will go to school, and who the child will have in their life. The person who knows the child best is *the child*. The new Nevada Rules of Conduct establish consistency and competency standards for lawyers across the state, thereby adding protection for some of Nevada’s most vulnerable citizens. Most importantly, the rules amplify the child’s voice in a court tasked to decide whether that child returns home.

ENDNOTES:

1. State Bar of Nevada, *Nevada Supreme Court Rule Changes (ADKTs)*. Retrieved May 19, 2023, from <https://nvbar.org/news-and-publications/notices/notice-of-rule-changes/>
2. This author accessed the Nevada Rules of Conduct for Lawyers Representing Children in Child Welfare Cases in *In the Matter of Rules of Conduct for Lawyers Representing Children in Child Welfare Matters*, ADKT 0598, “Order Adopting Rules of Conduct for Lawyers Representing Children in Child Welfare Matters,” No. 22-33680 and “Clean Copy of Exhibit A to order Adopting Rules of Conduct for Lawyers Representing children in Child Welfare Matters,” No. 23-05899.
3. ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings can be found at: https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf.
4. In 1999, Legal Aid Center of Southern Nevada was operating under its former name, Clark County Legal Services.
5. “Case Study: Changing Lives Through the Creation of a New Program – The Children’s Attorneys Project” by Barbara Buckley, Management Information Exchange Journal Summer 2018.
6. ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect, B-4, Retrieved May 19, 2023, from https://www.americanbar.org/content/dam/aba/administrative/child_law/repstandwhole.pdf.
7. U.S. Department of Health and Human Services, Administration for Children and Families Memo (2017).

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AMY HONODEL is the strategic initiatives manager of the Children’s Attorneys Project (CAP) at Legal Aid Center of Southern Nevada. She took her first pro bono abuse/neglect case almost 20 years ago, and that pro bono experience led her to becoming the third certified Child Welfare Law Specialist in CAP at Legal Aid Center. She is a member of the charter class of the William S. Boyd School of Law, and she has spent her entire legal career in Southern Nevada.

