



EFFECTIVE REPRESENTATION OF CHILDREN

Friday, June 12, 2009

Athena Plaza
Portland, Oregon

4 CLE Credits





Child Centered Solutions would like to thank the following individuals and organizations that have made this event possible through their generous assistance:

The Henry Lea Hillman, Jr. Foundation

Child Centered Solutions Members Circle Sponsors

Justice \$2,500+

Stahancyk, Kent, Johnson & Hook PC

Barrister \$1,000 - \$2,499

Gevurtz Menashe

Schulte, Anderson, Downes, Aronson & Bittner, PC

Supporter \$250 - \$499

Brindle McCaslin & Lee PC

Hoffman Hart & Wagner LLP

Kennedy, Watts, Arellano & Ricks LLP

David Cakarnis, Bridge City Legal

John Croy, AVP Media

Helen Hirschbiel

Alyssa Knudsen

Nicole Miller

Greg Mistell, Fleur de Lis Bakery

The Party Place

Crystal Reeves

Charlene Sabin, MD

Dianna Santa

Stahancyk, Kent, Johnson & Hook PC

Tazo Tea Company

THANK YOU!



**Effective Representation of Children
June 12, 2009
Portland, Oregon**

AGENDA

12:30 – 1:30 Child Abuse Reporting

- I. Attorney's Statutory and Ethical Obligations about Reporting Abuse
- II. Signs and Symptoms of Child Abuse
- III. Hypothetical Exercises

1:30 – 2:30 Representing Children

- I. Role of Child's Attorney
- II. Appointment
- III. Steps in Your Investigation

2:30 – 2:45 BREAK

2:45 – 4:00 Representing Children (continued)

- IV. Meeting with Child Client
- V. Effective Witnesses and How to Get Them
- VI. Leveraging Your Role for Settlement
- VII. Pretrial and Trial
- VIII. Dealing with Pro Se Parents
- IX. Non-Legal Issues

4:00 – 4:30 Hypothetical Exercises



TABLE OF CONTENTS

Section 1	Child Abuse Reporting By Lawyers – Helen Hierschbiel Mandatory Abuse Reporting, 2009 – Charlene Sabin, MD Child Abuse Reporting Hypotheticals
Section 2	Representing Children in Custody and Parenting Time Cases – Leslie Abraham and Jennifer Gilmore
Section 3	Child Interview Packet Motion to Appoint Child's Attorney Order of Appointment of Attorney for Minor Child Child Client Intro Letter Intro Letter – Parties' Attorneys Intro Letter – Pro Se Parents Cover Letter – Counseling Release Cover Letter – Educational Release Cover Letter – General Release Authorization to Release Educational Records Authorization to Disclose Protected Health Information Parent Personal Data Form Appendix: ORS 107.425; ORPC Ethical Rules; 174 Or. App. 37; In re Thomason



CHILD ABUSE REPORTING BY LAWYERS



Helen M. Hirschbiel
June 12, 2009

Mandatory Reporting Background

- All 50 states have mandatory reporting laws.
- Lawyers are specifically designated as mandatory reporters in 4 states, including Oregon since 1971.
- In 18 states, all persons are mandatory reporters, including Idaho.
- In Washington, "any adult with whom a child resides" is a mandatory reporter, but not lawyers specifically. RCW 26.44.030

Reporting Duty—ORS 419B.010

- Reasonable Cause to Believe
- Abuse Has Occurred
- Contact with Child or Abuser
- Must Immediately Report
- UNLESS....

Exceptions to Duty

- Information learned from official report
- Privileged information
 - ORS 40.225 (OEC 503)
- Information gained during representation AND detrimental to the client
 - Reconciles reporting obligation w/duties under Oregon RPC 1.6 and 1.2(a)

Confidentiality v. Reporting

- Lawyers **must** preserve client confidences
 - Oregon RPC 1.6 and 1.0(f)
- Lawyer **may** reveal confidences if:
 - Client consents
 - Required by other law
 - Client intends to commit future crime
 - To prevent reasonably certain death or substantial bodily harm

What are "Confidences"

- Information subject to the attorney-client privilege
- Other information gained during the course of the representation that
 - Client has asked you to keep secret
 - Disclosure would be embarrassing
 - Disclosure would be likely to be detrimental to client

What is Reasonable Cause?

- No statutory definition/no case law
- Reasonable suspicion v. probable cause
- *Berger v. SOSCF*, 195 Or App 587 (2004) ("whether the evidence creates a reasonable suspicion of child abuse, not whether abuse in fact occurred or even probably occurred.")
- Good faith determination based on facts reporter reasonably believes are true

What is Contact?



- No statutory definition/no caselaw
- Direct vs. indirect contact
- Oregon Attorney General Op.No. 5543 (board members' receipt of information about abuse from the organization did not trigger reporting obligation because acquisition of information was too indirect—no contact)
- Contact does not need to be linked to abuse

Consequences of Failing to Report

- Class A violation punishable by fine
- Failure to perform duties of office
- Tort liability—
 - Failure to protect from foreseeable harm?
 - Negligence per se?
 - Other?
- Ethics Violation—in most cases no



Immunity

- Civil and criminal immunity if:
 - Good faith report AND
 - Reasonable grounds for report
- *McDonald v. State*, 71 Or App 751 (1984)
- *Franson v. Radich*, 84 Or App 715 (1986)

Reporting Duty Review

Child Abuse Reporting

contact abuse reasonable Cause

AND NOT privileged or detrimental

Mandatory Abuse Reporting, 2009

Charlene Sabin MD
Behavioral Pediatrics

Types of Abuse: Threat of harm

- Threat of harm, the largest single category
 - Unsafe situation, guns, drugs
 - Extremely unsanitary situation
 - Domestic violence
 - Known sex offender in the home
 - Parents unable to provide basic needs

Types of abuse :Domestic Violence

- A new category of abuse " Threat of Harm due to Domestic violence"
- Defined as a pattern of assaultive and/or coercive behaviors including physical, sexual and emotional abuses.
- DHS guide:
http://egove.oregon.gov/DHS/children/abuse/cps/dom_violence.shtml

Domestic Violence

- Exposure to domestic violence is considered emotional abuse due to living in a threatening environment
- Children can get hurt physically during instances of domestic violence also
- Exposure to domestic violence is considered a criminal offense of both parents, grounds for removal of the child, failure to protect.

Types of Abuse : Neglect

- Neglect
 - Not providing physical, medical needs
 - Not providing emotional needs
 - Being left unsupervised
 - Young children supervising younger children

Signs and symptoms of neglect

- Children don't want to leave school
- Constantly tired
- Seem to need affection, attention, reassurance even from those they don't know
- Child not growing or developing normally

Types of abuse :Physical abuse

- An injury that doesn't fit the explanation given
- A non accidental injury
- Evidence of injury , ranging from bruising to death
- Corporal punishment is not abuse unless it causes injury

Signs and symptoms of physical abuse

- Bruises, welts, burns , cuts
- Injuries in various stages of healing
- Injury may have a particular shape, known as a pattern injury, of the article used, such as an electric cord or belt buckle.



Type of physical abuse: Shaking a Child

- Shaking a child up to the age of 3 or even older can cause death or long term neurologic damage
- There are specific medical findings in shaken child syndrome, not visible often

Types of abuse: Sexual abuse

- Any sexual contact in which a child is used to sexually stimulate another person
- Range of possible activities from rape to fondling to child pornography
- No usual symptoms, children have difficulty reporting

Family Risks for Sexual Abuse

- Parental history of sexual abuse, either parent
- Step parent in the family
- Non offending parent is not at home as much
- Poor emotional, physical and communication boundaries

Sexual Abuse Allegations

- The history of sexual abuse allegations has historically gone through many phases
- Medical evaluation of sexual abuse has pitfalls and limitations
- Interviewing about sexual abuse is a very technical area

Unresolved Allegations

- Young children
- Custody and visitation disputes
- Never married parents
- Difficult technical area, never ask your client to interview the child
- Your client may not want to report

Types of abuse: Emotional abuse

- Very difficult to detect or prove
- Co-exists with neglect, physical abuse, sexual abuse, domestic violence, threat of harm
- Symptoms are subtle, with depression, anxiety symptoms in children

Oregon Statistics, 2007

- Reports of abuse: 60,746
- Known victims: 12, 043
- About half of victims are under the age of 6
- Over the last year reports have increased 7 %, child population increase is 5%

Death Statistics, 2007

- Deaths from abuse and/or neglect : 17
- 15 of those children were under the age of 5
- Complications with drug and alcohol involvement and failure to protect
- Only 2 of those families were known to DHS prior to the death
- Nationally, abuse is the leading cause of death in children from ages 1-12 months

Family Situation Risk Factors

- Stress, including legal difficulties
- Financial stress
- Drug and alcohol abuse, largest single family problem reported
- Unemployment
- Housing problems
- Parental history of abuse
- Developmental needs of the child

Drug and alcohol abuse

- Across all types of reported child abuse, nearly 39% of families have issues with drug and alcohol abuse. (in 2005 it was 47%)
- Our approach to addiction as a society swings between treatment and punishment. The treatment resources are inadequate.

Statements related to abuse

- "I just can't stand this kid"
- " This kid is driving me crazy"
- "Where can I take this child?"
- "This kid was making me loose it."

Behavioral indications of abuse

Angry or acting out behaviors
Acting abusively towards other children
Withdrawn behavior
Running away
Eating disorders
Substance abuse
These are all non specific indications, cannot report based on these indications

Why Report?

- Economic reasons
- Early reporting and treatment may prevent later placements in foster care , residential treatment, juvenile and adult incarceration
- Societal health reasons
- Abusive situations or high risk situations can be treated, secondary prevention can happen
- It may be in your client's interests

Reporting in your client's interests

- To document abuse of a child by a spouse or a partner of a spouse in a domestic relations divorce matter
- To document prior abuse in a juvenile matter
- To suggest abuse as a mitigator
- To manage the process with DHS
- To avoid removal of the child to foster care

Reporting not in your client's interest ?

- Your client will appear to be stirring up allegations
- Your client may appear non protective of the child
- Should you report anyway?
- Do you have to report anyway?

Why report: Economic issues

- \$17,500 a year to place a child in foster care
- \$38,000 - \$47,000 a year to place abused or neglected juveniles with the Oregon Youth Authority.
- Many adult inmates were abused children
- Your legal obligation to report

How to report

- When in doubt call the statewide number 800 854 3508x 2402
- Multnomah County 503 731 3100
- Clackamas County 503 657 2112
- Washington County 503 681 6917
- You can report anonymously

What happens after a report?

- The response is individualized to the family and the situation
- Usually the family or child will be interviewed
- A range of services is available, including public health nurses, respite care, parenting classes, therapeutic interventions
- Foster care is reserved for more emergent or repeated situations

Child Abuse 101

Medical vocabulary is not always self explanatory

Abuse reports cannot always be taken at face value without some medical interpretation

Consultation with physicians may be helpful

Medical interpretation of the history can be subjective

References

- Medical Dictionary
- Pub Med research online
- <http://www.ncbi.nlm.nih.gov/entrez/query.fcgi>
- Oregon Interviewing Guidelines
- Diagnostic and Statistical Manual, DSM



CHILD ABUSE REPORTING HYPOTHETICALS

1. You are representing a single/divorced mother with two young children who is cohabitating with her male domestic partner, Shawn. Your client's ex-husband is asking for modification of the prior decree, asking for custody or more extended parenting time, citing that the children are not getting along with Shawn. In the course of talking with your client, you learn that she feels intimidated by Shawn. You ask about domestic violence, and learn that Shawn has pushed her a few times. Your client wants to minimize the behavior and excuses it as "he was just having a hard time at work." Should you have asked about domestic violence? Are you required to report the domestic violence to DHS? What advice do you give your client?
2. You are representing the father in the above matter. Your client comes to you and says that one of the children, age 5, said that mommy was crying because Shawn pushed her. You further learn that this conversation occurred after your client and his new wife asked the child if mommy and Shawn ever get in arguments and if Shawn ever hurts mommy. Must you report the matter to DHS?
3. You go to Lowes on a beautiful and unusually sunny, warm Saturday in June. It is 75° outside. As you are walking through the parking lot to the store, you notice a parked car with a child sitting in a car seat in the back. You step closer and see that the windows are cracked; the child looks to be about a year old and is asleep. You look around and don't see any adult in the vicinity who appears to be heading for the vehicle. Are you required to report?
4. You are at an outdoor summer concert with your best friends, Matt and Debbie, and their two kids, ages 7 and 9. You are enjoying the sun, the music and a glass of wine. The kids are playing with their friends nearby. A couple of hours later, the music has ended and you gather your stuff to leave. Matt and Debbie are laughing and talking loudly and nearly fall over when they try to stand. As they get up, you notice the three empty bottles of wine next to them and you are concerned that they are seriously intoxicated. You offer to drive them home, but they refuse. You use your best persuasive techniques to try to convince them that they really shouldn't drive and you even try taking their keys from them, but they turn hostile on you, lock themselves and their kids in the car, and take off. Are you required to report?

5. Your legal secretary Sue has been living with her boyfriend Joe for the past 6 months. She has two children, ages 14 months and 4 years old. While standing by the water cooler one morning, Sue tells you that the other night Joe had another of his "little temper tantrums." He was upset about her dog chewing up his shoe. Joe started screaming and threw his shoe at the dog, narrowly missing her 4-year-old who was sitting by the dog. Sue was standing in the doorway to the room, holding and rocking her 14-month-old who had started crying. Joe then stormed out of the room, pushing Sue roughly aside and knocking her down. She says that it seems like these outbursts are getting more frequent and more violent.

You know from past conversations with Sue that Joe's ex at one time got a restraining order against him. When you express concern that Joe may be a danger to Sue and/or her children, Sue downplays the incident, saying that she just lost her balance trying to get out of Joe's way and that neither she nor her daughter were hurt. She says that Joe is just under a lot of stress and his ex didn't know how to support him when things got rough for him at work. She is sure that Joe would never hurt her or the children; she just wishes that Joe wouldn't get so upset over little things at home. It scares the kids. Are you required to report?

6. You represent mother in a divorce. She has a 6-year old son, whom she is trying to get primary custody of. Sister calls you and says that your client's boyfriend recently used his belt to spank the boy, leaving a welt on his bottom. Are you required to report?

7. Your 10-year-old daughter wants to bring a friend home for a sleepover. You spoke with the friend's mother and she warned you that her daughter experiences intermittent bed-wetting. Even so, you both agree that she can spend the night. When the friend arrives, you see that she has a black eye. You ask how she got her black eye, and she says that she fell while riding her bike the day before. You don't see any other scratches or bruises on her hands, elbows or knees. Your daughter has told you that her friend's dad is mean and yells a lot. Are you required to report?

8. Your teen daughter is having a sleep-over. One of her friends tells you how much she likes being at your house because it is "safe" and she doesn't have to worry about her stepfather "coming on" to her and trying to touch her when her mom isn't home. Are you required to report?

9. You have a long term friendship with a woman who had a car accident two years ago. During recovery, she began taking oxycontin for

pain and now you suspect she is hooked. She lost her job, had to sell her home in Lake Oswego and moved into a 2 bedroom apartment in Gresham with her four kids, ages 5, 7, 9 and 12. You have been trying to call her for the last two weeks, but she hasn't returned your calls and today her phone is disconnected. You decide to stop by her apartment after work and find the kids home alone. The 12-year-old tells you the electricity has been off for a week. They don't have anything to eat for dinner and don't know where their mother is or when she will return. Are you required to report?

10. You read in the paper about a couple that recently gave birth to a baby with a severe birth defect. Doctors have determined that the baby might not live more than six months, even with the use of extraordinary medical measures. The parents decide to withhold life support from their baby, including food and water. From the picture in the paper you recognize the parents as your neighbors. Are you required to report?

11. You are representing mother in a divorce. They have two children, but father has agreed that mother should be the primary custodian, as long as he gets reasonable visitation. During a meeting with mother, she brought in her 10 year old son. You notice extensive bruising encircling his wrists and arms. Mother tells you that son got the bruises during his last weekend visit with father. Son says he got the bruises while wrestling with his 8 year old brother. Mother says that their pediatrician says the bruises don't match son's explanation. Are you required to report?

12. You have a neighbor, Debbie, who asks you to babysit her four-year-old daughter, Beth, overnight. When Debbie drops off Beth, she brings a bottle of aspirin, explaining that her boyfriend had accidentally kicked Beth while wrestling with their dog on the floor, injuring the side of Beth's face. As the evening progresses, however, the bruising and swelling on Beth's face become more pronounced and you notice she has a large scrape behind her ear. When you question Beth about what happened, she says the boyfriend kicked her, demonstrating with a forward kicking motion, like one would kick a ball. Are you required to report?

13. You are in a store at the mall. You see a mother with a small child who appears to be about 3 years old. The child is wandering around the store in and out of the clothes racks. Mother is having a hard time keeping track of him. She catches up with him and grabs him by the wrist. He collapses on the ground and starts screaming and kicking. Mother drags him up by the arm and over to the stroller. She tries to get him into the stroller, but he resists. Finally, losing patience, she slaps the boy in the face and manages to

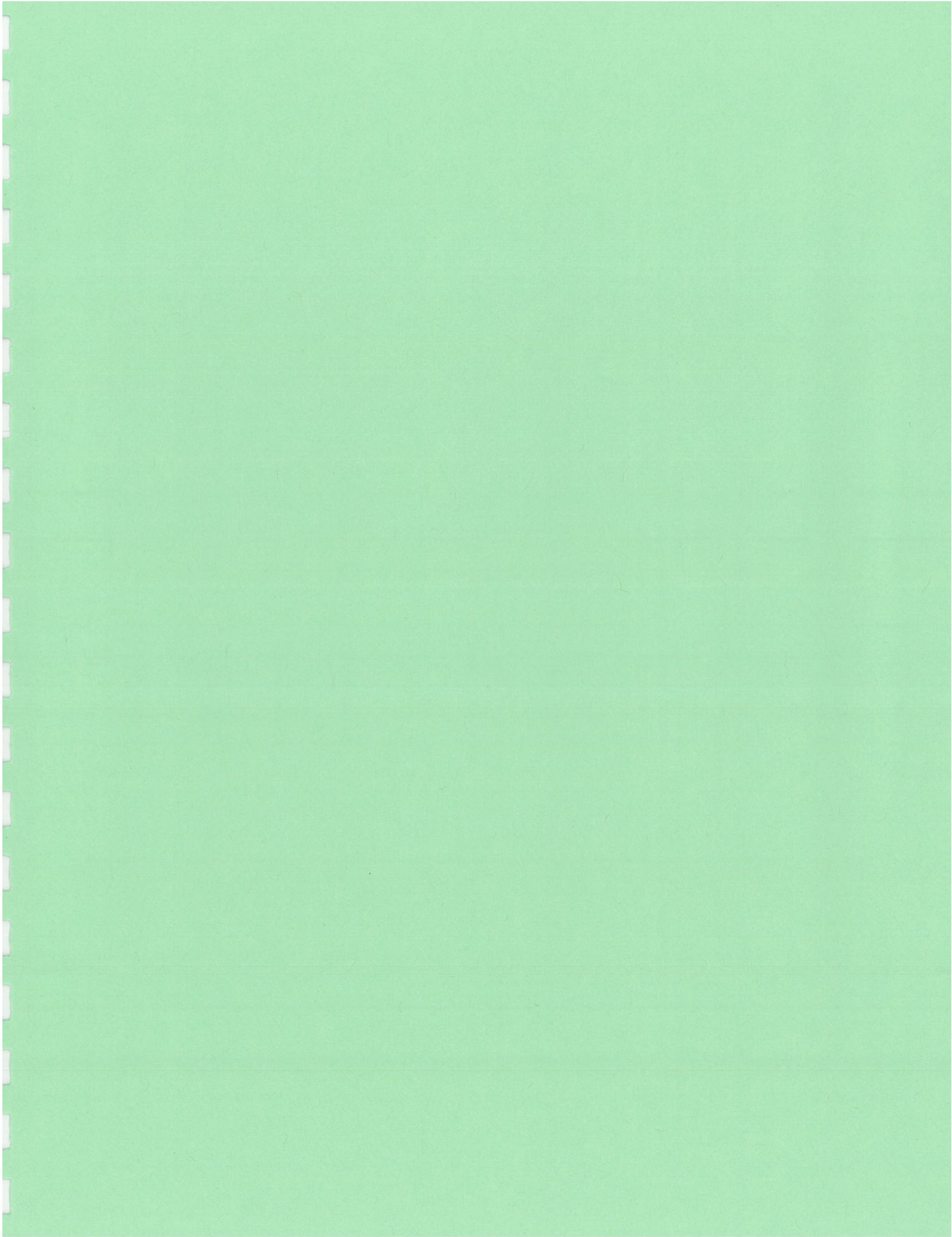
wrestle him into the stroller. The mother walks quickly out of the store and into the mall. Are you required to report?

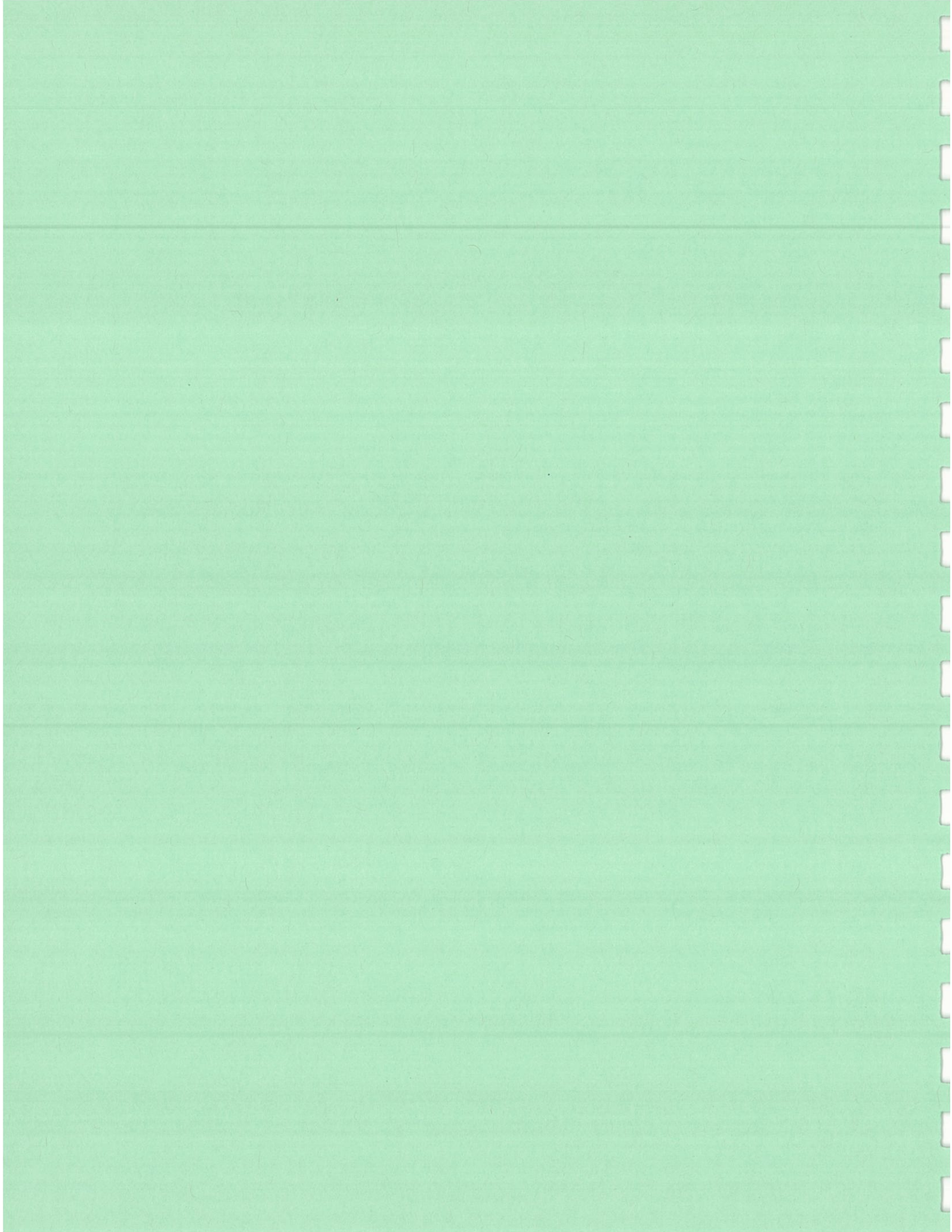
14. You are a long-time friend of John, who is involved in modification of support for his two children, ages 14 (Sid) and 11 (Sam). Sam has some developmental issues and is occasionally difficult to control.

Over beer one evening, John tells you that Sid says his Mom's new boyfriend has slapped Sam, twisted his arm, pulled his hair and dragged him to his room on more than one occasion, in the course of discipline.

Are you required to report?

15. Your neighbor tells you she is concerned about the 4-year-old who lives in the house next door. She frequently sees him playing outside alone, dirty and dressed inappropriately. If he sees your neighbor, he will come over and ask for something to eat. Based on activity she observes, she believes the boy's parents are involved in illegal drug activity. You have also seen a lot of people coming from and going to your neighbor's house. Are you required to report?





**REPRESENTING CHILDREN
IN CUSTODY AND
PARENTING TIME CASES**

**Leslie Abraham
Child Centered Solutions**

Topics we will cover:

- I. ROLE OF CHILD'S ATTORNEY**
- II. APPOINTMENT**
- III. STEPS IN YOUR INVESTIGATION**
- IV. MEETING WITH CHILD CLIENT**
- V. EFFECTIVE WITNESSES AND
HOW TO GET THEM**

Topics we will cover:

- VI. LEVERAGING YOUR ROLE FOR
SETTLEMENT**
- VII. PRETRIAL AND TRIAL**
- VIII. DEALING WITH PRO SE
PARENTS**
- IX. NON-LEGAL ISSUES**

I. ROLE OF CHILD'S ATTORNEY

OR laws and rules re: child's attorney

- ORS 107.425(6):
 - *Gives court authority to appoint child's lawyer.*
 - *BUT does not define the role.*

OR laws and rules re: child's attorney

- ORPC 1.1 - Competence:
 - *"[R]equires the legal knowledge, skill, thoroughness and preparation reasonably necessary...."*

Role of Child's Attorney

OR laws and rules re: child's attorney

• ORPC 1.2 - Scope of Representation:

• "A lawyer shall abide by a client's decisions concerning the objectives of representation and... consult with the client as to the means by which they are to be pursued."

Role of Child's Attorney

OR laws and rules re: child's attorney

• ORPC 1.14(a):

• "When a client's capacity to make adequately considered decisions is diminished, whether because of minority, mental impairment or some other reason, the lawyer shall as far as reasonably possible maintain a normal client-lawyer relationship with the client."

Role of Child's Attorney

OR laws and rules re: child's attorney

• *Marriage of Thomason*, 174 Or App 37, 23 P3d 395 (2001):

• *Child's attorney can be appointed ONLY when there is a pending action.*

Parental Rights

That's it.

State of California

Guidelines/standards re: lawyers representing children in custody cases - very similar to each other:

- National Conference of Commissioners on Uniform State Laws
- American Bar Association Section of Family Law
- National Association of Counsel for Children

Role of Child's Attorney

Defines two separate roles:

- Child's attorney: provides legal counsel and owes same duties of loyalty, confidentiality and competent representation as due an adult.
- Best interests attorney: provides legal representation for the purpose of protecting a child's best interests without being bound by the child's directives or objectives.

Role of Child Welfare

Currently Oregon has not adopted any of these guidelines or standards of practice.

Role of Child Welfare

CCS's model for representing children:

CCS = children's attorneys, not Best Interests attorneys (does not exist under OR law)

BUT

CCS ≠ NOT mouthpieces (attorneys must be counselors to clients as well)

Role of Child Welfare

CCS's model for representing children:

And ALWAYS think about the best interests of your child client.

II. APPOINTMENT OF CHILD'S ATTORNEY

ORS 107.425(6): Counsel for Children

- Court **MUST** appoint when a child requests an attorney
- Court **MAY** appoint at the request of one of the parties
- Court **MAY** also appoint on its own motion
- **ONLY** through court appointment!

Appointment procedure:

- Multnomah Co.: Children's Representation Project = roster of attorneys who represent children
- Washington Co.: similar process
- Columbia Co.: similar process
- Deschutes Co.: Judge Sullivan

Sample Order of Appointments in your materials:

- Attorney's authority (ex. Records and ROIs, scheduling, client contact)
- Duties of the parties
- Attorney's fees if applicable

III. STEPS IN YOUR INVESTIGATION

Steps in Your Investigation

1. Receive and review the case file.

- Order of appointment?
- All pleadings and court documents?
- What other info do you need?
- Chronology of events.

Steps in Initial Contact

2. Contact client and parties.

- Introduction letter/call to attorneys.
 - *Explain role of child's attorney*
 - *Provide copy of order of appt*
 - *Background information*
 - *Permission to contact child client via parent to schedule appointment*

Steps in Initial Contact

2. Contact client and parties.

- Introduction letter/call to pro se parents.
 - *Schedule appointment with child client*
 - *Schedule appointment with parent*
 - *Parent Data Form (see sample)*

Steps in Your Role as Attorney

3. Meet with child client - top priority.

- Explain role, including confidentiality.
- If representing siblings - conflict?
- If client is older - signatures on ROIs.
- Consider services needed by child and/or family.
- More discussion in next section!

Step 4: Meet with parents separately

4. Meet with parents separately.

- Explain role and answer questions.
- Determine legal position.
- Obtain additional info on child client.

Step 4: Meet with parents separately

4. Meet with parents separately.

- Limit amount of parent "venting."
- Redirect conversation back onto children when it turns negative.
 - *Focus on what is best for child*
 - *Focus on parents' strengths*
 - *Avoid finger-pointing*
 - *Is compromise possible?*

Step 4: Meet with parents separately

4. Meet with parents separately.

- Obtain signed ROIs for the following (according to process):
 - *Medical records*
 - *Counseling records*
 - *Educational records*
 - *DHS records*
 - *CARES evaluation reports*

Steps in Your Case

4. Meet with parents separately.

- Make sure ROI includes permission to contact the professionals:
 - *Pediatrician and medical staff*
 - *Counselor*
 - *Teachers and school personnel (including school counselor)*
 - *DHS caseworker*

Steps in Your Case

5. Send out signed ROIs.

- ****Did you get client's signature (if older child)?**
- Include cover letter and order of appointment.
- Follow up with professionals as needed after reviewing records.

Steps in Your Case

6. Contact custody evaluator, if any.

- If no evaluator on the case, should there be one?
- Get permission from other attorneys to contact evaluator directly.
- Provide witnesses for evaluator to contact on behalf of child.
- Maintain contact with evaluator.

IV. MEETING WITH CHILD CLIENT

Meeting with Child

Goals of meeting with your client:

- Introduce yourself as the child's advocate and explain what that means.
- *Explain who you are and what you will do for the child and family.*
- *You are NOT a criminal lawyer (child has not done anything wrong)*
- *Confidentiality and any limits (ex. Mandatory reporting)*

Meeting with Child

Goals of meeting with your client:

- Explain the legal/custody process.
- *Explain, explain, explain.*
- *Lots of kids don't know what a judge is, what court is, etc.*
- *Avoid legal jargon.*

Meeting with a child

Remember, for a child...

- Court = place to play basketball
- Charges = what you do with a credit card
- Hearing = what you do with your ears
- Parties = where you get presents and cake
- Swear = like cursing

Meeting with a child

Goals of meeting with your client:

- Answer your client's questions.
 - *Be age-appropriate.*
 - *Don't make promises you can't keep.*

Meeting with a child

Goals of meeting with your client:

- Information-gathering interviews to learn more about:
 - *Concerns leading to your appointment*
 - *All relevant legal issues*
 - *Other non-legal issues*

**Effective child interview =
information-gathering process**

- Not a one-time event - do a series of interviews.
- Interview using child-centered techniques.
- Identify other sources of information and guidance.

Effective child interview

- Build rapport.
 - *Be interested but not invasive.*
 - *Be an active listener (reflect back what you hear).*
 - *Make eye contact (and don't be upset if child does not).*

Effective child interview

- Set a few ground rules:
 - *Only truth, no stories. (Can the child tell you the difference?)*
 - *It is ok if they don't know the answer to your question. (They should say "I don't know.")*

Interviewing with Children

Effective child interview

- Set a few ground rules.
 - *You can repeat the question or ask it a different way if they don't understand.*
 - *If you repeat something child said incorrectly, child can correct you.*

Interviewing with Children

Effective child interview

- Build rapport.
 - *Silence is ok - allow child time to think and respond.*
 - *Use initial interview to build trust - ok if not much info. at first.*
 - **LISTEN.**

Interviewing with Children

Effective child interview

- Consider physicality and location.
 - *Be aware of personal space.*
 - *Consider a neutral location (ex. attorney office or school).*
 - *Changing location can encourage communication.*

Working with children

Effective child interview

- Use developmentally-appropriate techniques.
 - *Think before you speak.*
 - *Be aware of child's age, education, culture and language proficiency*
 - *Avoid legal jargon.*

Working with children

Effective child interview

- Use developmentally-appropriate techniques.
 - *Use child's names for people and things.*
 - *Avoid confusing pronouns.*
 - *Use short sentences.*
 - *Be aware of child's sense of time.*

Working with children

Effective child interview

- Use open-ended questions
 - *Use language that encourages a narrative response (ex. "Tell me..." "Explain..." "Describe for me...")*
 - *Use more specific questions with younger children as needed.*
 - *Avoid becoming too tied to your script of client questions.*

Meeting with [redacted]

Effective child interview

- **Avoid judgment.**
 - *Avoid weakening relationship with child by judging child's feelings.*
 - *Do not physically react to what child says.*
 - *Be careful not to look away.*

Meeting with [redacted]

Effective child interview

- **Avoid judgment.**
 - *Follow your client's comfort level.*
 - *Allow them not to answer (change subject and try asking in a different way later or save for next time)*
 - *Be willing to stop interview and do it another time.*

Meeting with [redacted]

**Effective child interviewing
takes time to learn - get training
and practice.**

V. EFFECTIVE WITNESSES AND HOW TO GET THEM

Effective witness = person with a strong connection to child's life

- Counselors - **MUST** get permission from client in order to testify
- DHS case workers - avoid calling to testify if possible, introduce records instead

Effective witness = person with a strong connection to child's life

- Teachers and school employees -
 - **CANNOT** testify on anything that would "damage or incriminate the student or family" (ORS 40.245)
 - **CAN** testify about other issues **AND** can submit records - be creative!

Effective witness = person with a strong connection to child's life

- Child care providers
- Relatives and neighbors - especially if they are not aligned with either party

Try introducing records instead of calling professionals to testify

- Stipulation from both parties to admission of records
- Protective orders for sensitive information before releasing to parties (ex. CARES eval, DHS records)
- Avoids "reluctant witness" problem

Child's attorney should call the unbiased, child-focused witnesses

- Ensure that any witnesses who require child's consent to testify obtain it prior to testifying

Tips for dealing with "reluctant witness" issue

- Emphasize best interests of child
- Reassure witness that he is NOT the decision-maker - only one valuable part of larger picture
- If complete, introduce records rather than witness testifying

VI. LEVERAGING YOUR ROLE FOR SETTLEMENT

Leveraging Your Role

Trial is RARELY good outcome for child

- Better for child to see parents working together.
- Avoids putting child in position of choosing between parents.
- Amicable resolution means better chance for effective co-parenting.

Leveraging Your Position

**BUT the goal is NOT to settle
just for the sake of settling.**

Leveraging Your Position

GOAL: a parenting plan that is:

- In accord with child's position and best interests

AND

- Workable for the parents

Leveraging Your Position

**Without a workable co-parenting
relationship, parents will return
to court...**

Again and again and again...

Leveraging Power

Refer the parents back to mediation

If parents are willing, try settlement conference:

- Informal settlement conference
- Judge-assisted settlement conference

VII. PRE-TRIAL AND TRIAL

Pre-trial conference

If the parties will not settle...

...Try case with same zealotness and competence due an adult.

Step 1: Minor children are not parties
BUT most judges believe children's attorneys have same power to:

- Call witnesses
- Cross-examine witnesses
- Make objections
- Introduce evidence

Step 2: Judge pet peeve: Do NOT just state child's position and leave it at that.

Support child's legal position with evidence.

Step 3: Exhibits: use child's records!

- Ask parties to stipulate to admission of child's records in advance.
- *Send proposed stipulated order to judge for signature*
- *Don't forget protective orders*

- **Multnomah Co.: children's exhibits 300-399**

- Gives judge opportunity to review records before trial.

[illegible]

- *Child's position*
- *Law and anticipated evidence*
- *Proposed parenting plan*
- *Services for children and family*

Presenting the Case

If parents are pro se...

- Many judges look to child's attorney to help keep trial "on track" and organized.
- Be prepared to:
 - *Call the case*
 - *Examine the parents*
 - *Examine the custody evaluator*

Presenting the Case

Maintain appearance of neutrality between the parties:

- Do not appear to align yourself with either party, even if your position favors one or the other.
 - *Inside courtroom: sit in middle*
 - *Outside courtroom: sit apart but remain cordial*

Presenting the Case

Child's testimony:

- Most judges do NOT want child to testify.
 - *Too emotionally traumatic for the child*
 - *Puts the child in the middle*

Pre-hearing conference

Child's testimony:

- BUT ORS 107.425(7) permits the court to take testimony or confer with the child.
- *Court can exclude the parents and others from the conference.*
- *Court must permit attorney for each party to attend.*

Pre-hearing conference

Child's testimony:

- BUT ORS 107.425(7) permits the court to take testimony or confer with the child.
- *Discuss with parties - is this really in the child's best interests?*

Pre-hearing conference

Child's testimony:

- Support child's position through witnesses and records.
- Stipulation to state child's position without child being present:
 - *Letter from child*
 - *List of items that child would like court to address*

VIII. WORKING WITH PRO SE PARENTS

Tips for working with pro se parents:

- Parent Data Forms (see sample)
- Must inform you immediately if they hire a lawyer.
- If no response within reasonable time, follow up with phone call.
- *Many parents change contact info. without informing court.*

Tips for working with pro se parents:

- Challenge = no other professional to guide the parents.
- *Help parents focus on child, not each other*
- *Be the voice of reason*
- *Refer them to needed services*

Working with pro se parents

Tips for working with pro se parents:

- Be careful of the line between legal information and legal advice
- *Refer to attorney if they have legal questions*

IX. NON-LEGAL ISSUES

Non-legal issues that impact parenting

Be aware of non-legal issues with potential to impact parenting:

- Mental illness
- Substance abuse
- Domestic violence

What do you need to know?

Be familiar with other systems in which child client may be involved:

- Juvenile Court - when is referral necessary?
- DHS system and services
- Family Court Services

What do you need to know?

Stay abreast of new research and best practices:

- Parenting plans
- Children's mental health and needs
- Changes in law
- Available services

What do you need to know?

Questions or comments?

info@childcenteredsolutions.org
OR
(503) 546-6383

HYPOTHETICALS

Hypo #1: Hearsay Rule

You represent a 10 y.o. child in a contested custody case. The judge has strongly suggested that you should present your case without having the child appear in court. The other parties will not agree to waive application of the hearsay rule.

Can you avoid bringing the child to court?

Hypo #2: Child Testimony

You represent an 8 y.o. boy in a dissolution. Your client suffers from intense shyness and has been diagnosed with anxiety due to the divorce. He has asked to speak with the judge about his preferences without his parents present.

Can you satisfy your client's request?

Hypo #3: Parental Relocation

You represent a precocious 5 y.o. child in a contested modification case where the custodial parent wishes to move out of state. Your client has asked you to help her remain in Portland.

Can you legally and ethically argue for the child's objectives?

Hypo #4: Parental Relocation

You represent a 12 y.o. girl in a custody case. Her mother has been struggling with meth addiction for the last 5 years. The parents agree that her father has no history of drug abuse. Your client has asked that you help her live primarily with her mother.

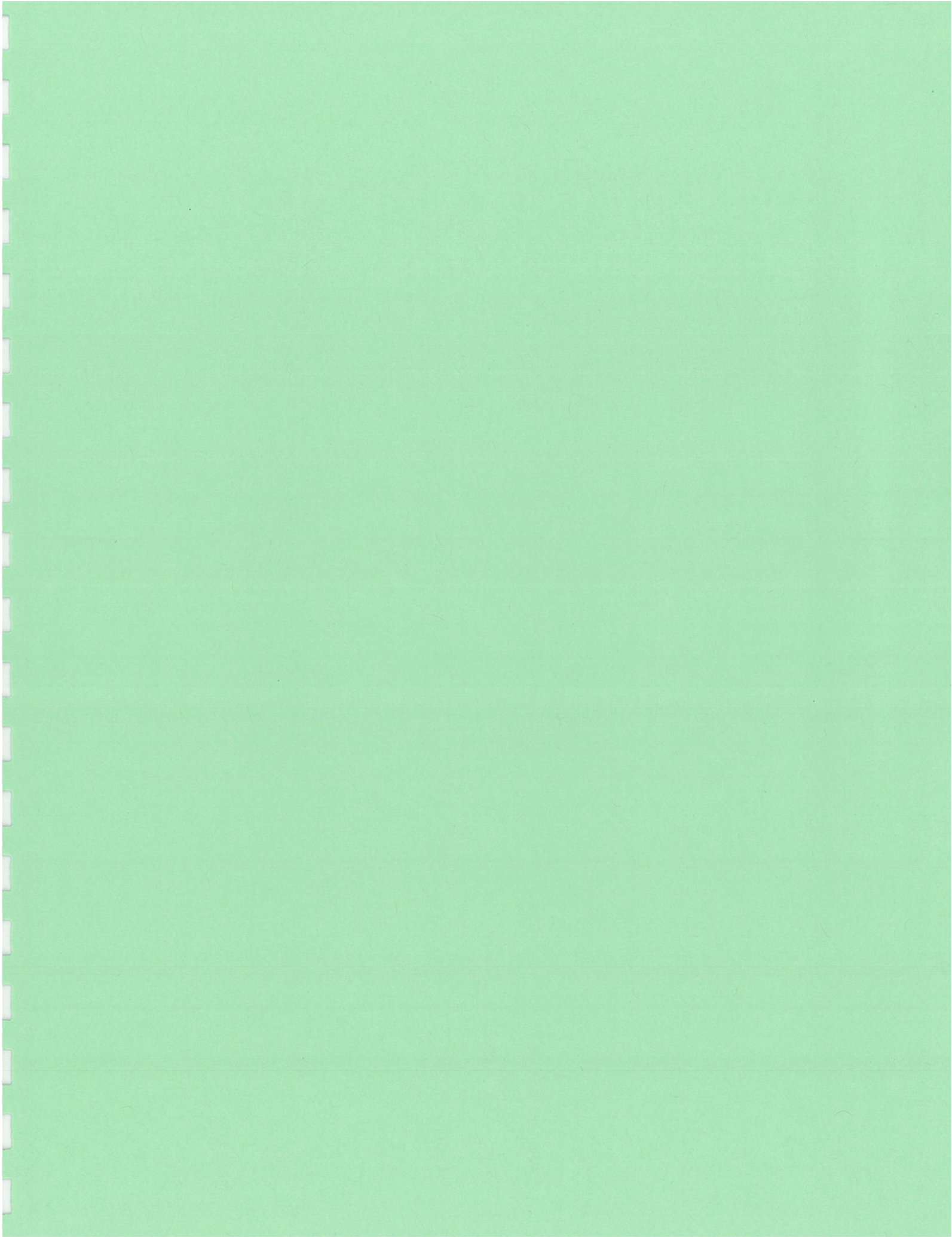
Can you legally and ethically argue for the child's objectives?

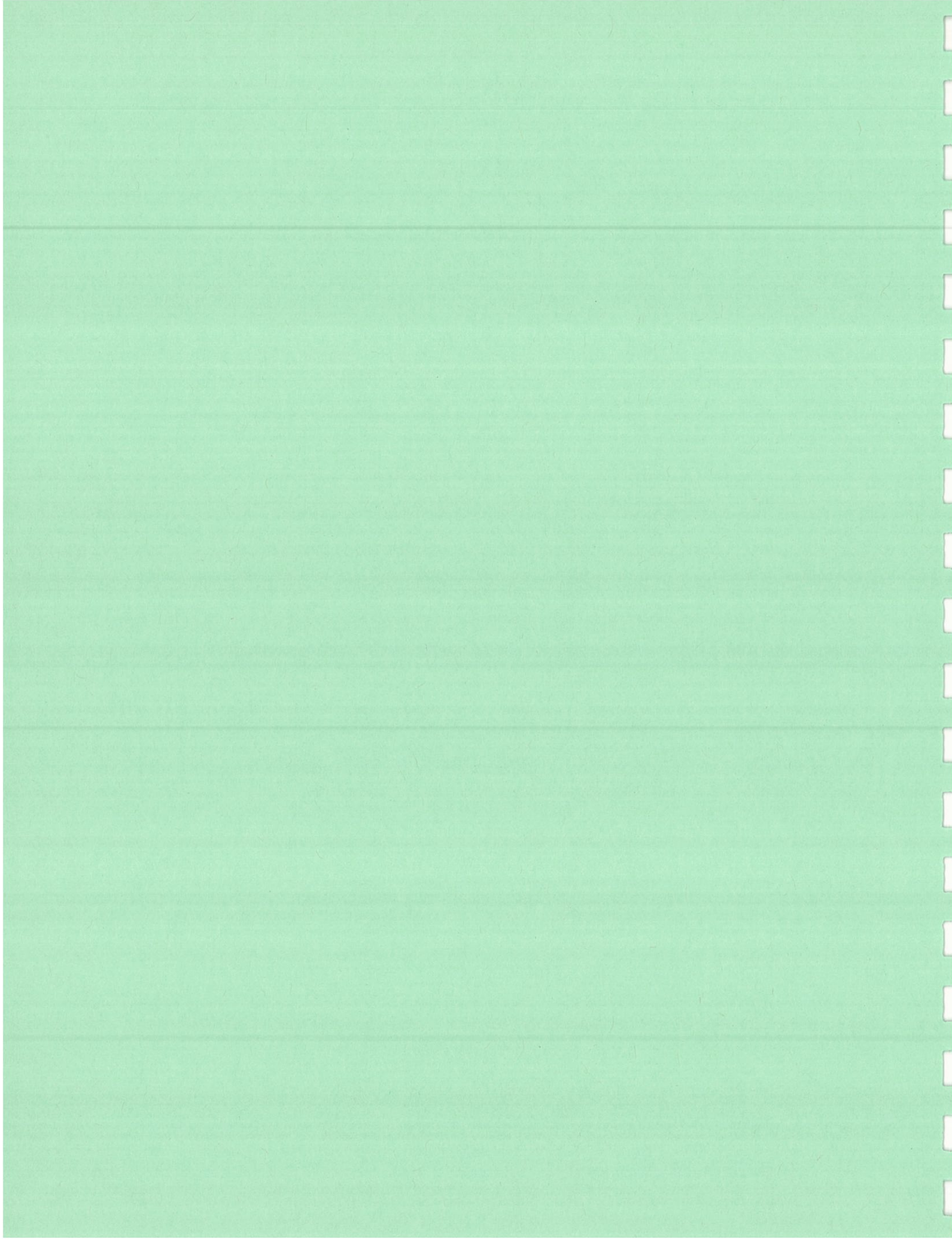
Questions or comments?

info@childcenteredsolutions.org

OR

(503) 546-6383





CHILD INTERVIEW PACKET

Date of Interview:_____ Child's Name:_____
Interviewer:_____ Location of Interview:_____

Overall Impressions/Reactions of Child:_____

Legal position of Child:_____

INTRO

What were you told about me coming here today? Who told you?

RULES:

Tell the child there will be a few rules during the interview. Tell the child that it is "ok" if they do not know the answer to the questions, and that they should say that they do not know.

Let the child know that you will repeat the question if they do not understand the question asked.

Also, tell the children that if you repeat something that is incorrect, have the child correct you.

TRUTH/LIE

Ask the child if they know the difference between a truth and a lie. Make sure that it is documented that the child is able to demonstrate how they know the difference between a truth and a lie.

If the child is unable to think of an example, provide one such as: "What if your mom filled the cookie jar with fresh chocolate chip cookies, and when she wasn't looking you ate some. Then mom noticed that some of the cookies were missing. Mom asked you "Did you take some cookies?" And you said "No, I didn't take any cookies, the cat ate the cookies." Would you be telling a truth or a lie?

Example given by the child:

RAPPORT

What grade are you in?_____ Who is your teacher?_____

What do you like best about school?

What don't you like about school?

What do you like to do for fun?

Tell me about your family.

Do you have any brothers or sisters?

Who else lives in your house?

Do you have any pets?_____ What are their names?_____

NOTES:

PARENTS

Tell me about your Mom. What is she like? What do you do together?

Tell me about your Dad. What is he like? What do you do together?

Who gets you up in the morning? _____

Who makes breakfast/dinner? _____

Who talks to your teacher about you? _____

Who picks you up when you go home sick from school (who stays with you)? _____

Who takes you to the doctor? _____

Who helps you with your homework? _____

Who tucks you in at night? _____

What is one thing you really like about your Mom?

What is one thing you really like about your Dad?

What does your Mom do that makes you happy?

What does your Mom do that makes you sad?

What does your Mom do that makes you mad?

What is does your Mom do that makes you scared?

What is one thing you would change about Mom if you could?

What is does your Dad do that makes you happy?

What is does your Dad do that makes you happy?

What is does your Dad do that makes you sad?

What is does your Dad do that makes you mad?

What is does your Dad do that makes you scared?

What is one thing you would change about Dad if you could?

SUPERVISION

Who takes care of you when your mom/dad is not with you?

Have you ever been home alone?_____ If Yes, tell me about it:

Do you have emergency phone numbers if needed?_____

NEGLECT

What is your favorite food?_____

When I go to your house and look in your kitchen what kind of food am I going to find?
(At your Mom's house? At your Dad's house?)_____

Do you take baths or showers?_____

Does anyone help you?_____

What time do you go to bed at night?_____

Where do you sleep?_____

Do you share a room with anyone?_____

Do you share a bed with anyone?_____ If yes, who?_____

NOTES:

DISCIPLINE

What are the rules at Mom's house?

What are the rules at Dad's house??

What does Mom do when you break a rule? Dad?

Does anyone spank you?_____ If so, who?_____

What does that person spank you with?_____

Where does that person spank you on your body?_____

Does that person ever leave bruises or red marks?_____

DOMESTIC VIOLENCE

How do your Mom and Dad get along?

Do they ever disagree about you? What does Mom do?

What does Dad do?

Have you ever seen anyone in your family yell bad words at each other? _____
If yes, who: _____

If yes, who and what do they say?

Have you ever seen anyone in your family hit each other?

What did you do when this was happening?

Where the police called? _____

If yes, did anyone go to jail? _____

SUBSTANCE ABUSE

Have you ever seen anyone drinking beer or alcohol? _____

If yes, who? _____ What kind do they drink? _____

Has anyone offered you beer or alcohol? _____

Do you know what drugs are? (Ask child to describe.) _____

Have you ever seen anyone using drugs? What kind? _____

Has anyone offered you drugs? _____

If yes, what happened? _____

SAFETY

Do you feel safe at home? Why or why not? _____

Do you feel safe at your daycare? _____

NOTES:

FEELINGS

What kinds of things make you happy?

What kinds of things make you sad?

What kinds of things make you mad?

What scares you?

Do you ever get lonely?

What do you like about yourself?

What would you change about yourself?

If you had 3 wishes, what would they be?

NOTES:

Child Interview Questions

1. What were told about coming here today?
2. Who told you?
3. What makes you...
Happy?
Sad?
Mad?
Scared?
4. What do you like about...
Yourself?
Your mom?
Your dad?
5. What would you change about...
Yourself?
Your mom?
Your dad?
Your family?
6. If you moved to an island and you could only take one person with you, who would you take and why?
7. Who takes you to the doctor?
8. Who plays with you?
9. What do you do for fun when you are with...
Your mom?

Your dad?

10. Who helps you with your homework?

11. What are the rules at...

Your mom's house?

Your dad's house?

12. What does your mom do when you break a rule? What does your dad do when you break a rule?

13. What does dad say about mom? What does mom say about dad?

14. If you had three wishes, what would they be?

15. What works in your family? What does not work in your family?

16. What does your mom do that makes you...

Happy?

Sad?

Mad?

Scared?

17. What does your dad do that makes you...

Happy?

Sad?

Mad?

Scared?

18. If a teacher sent a note home saying your work is poor and you might fail a class...

What would your mom do?

What would your dad do?

19. If you are having a hard time with one of your friends (being mean to you or ignoring you or treating you badly)...

What would your mom do?

What would your dad do?

20. You are with your parent and get stuck in a traffic jam on your way to an appointment and are going to be late...

What would your mom do?

What would your dad do?

21. You ask one parent for something you want and he/she says "no" so you go to the other parent and he/she says "yes." Then the first parent finds out you went to the other parent after he/she said "no."

What would your mom do?

What would your dad do?

22. You are supposed to go to the other parent's home but you are late...

You are with mom – what does your mom do?

You are with dad – what does your dad do?

23. Your mom and your dad are disagreeing over something about you...

What does your mom do?

What does your dad do?

24. You forgot that you were going to a party and needed a costume. Your friends are coming to pick you up for the party in 15 minutes...

What would your mom do?

What would your dad do?

25. You are in a store and you break something...

What would your mom do?

What would your mom do?

26. At dinner you tell your parent that you are not hungry and do not want to eat what is for dinner...

What would your mom do?

What would your dad do?

27. What is a good way to fix what is happening in your family?

28. If the judge said you were to live with your mom more, how would you feel? If the judge said you were to live with your dad more, how would you feel?

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Family Law Department

In the Matter of the Marriage of)	
%%%%%%%%%,)	Case no.
)	
Petitioner,)	MOTION TO APPOINT
)	CHILD'S ATTORNEY
and)	
%%%%%%%%%,)	
)	
Respondent.)	

COMES NOW the Petitioner, through attorney %, and moves this court, pursuant to ORS 107.425 and Multnomah County Supplementary Local Rule 8.085, for an Order for Appointment of Attorney for Minor Child for the following minor child(ren): _____.

This motion is based upon the accompanying Affidavit and the file herein.

Dated this _____ day of _____, 2008.

%
Attorney for Petitioner

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Family Law Department

In the Matter of the Marriage of)	
%%%%%%%%%)	Case no.
)	
Petitioner,)	ORDER FOR APPOINTMENT
)	OF ATTORNEY FOR MINOR
and)	CHILD
%%%%%%%%%)	
)	
Respondent.)	

THIS MATTER having come before the Court upon _____ motion for appointment of an attorney for the minor child(ren) and the files and records herein, and the Court being fully advised, now, therefore,

IT IS HEREBY ORDERED THAT:

1. Under the provisions of ORS 107.425(6) and Multnomah County Supplementary Local Rule 8.085, _____ is now appointed as attorney for the minor child(ren) of the parties.
2. Both parties shall provide any and all information including but not limited to, mental, dental, Department of Human Services, and C.A.R.E.S. records pertaining to the minor child(ren) of the parties, and each party shall sign any and all releases for obtaining any information requested.

///

3. Both parties shall encourage mutual access and communication between the attorney and the child(ren) and neither of the parties shall interfere in any way with any communications between the attorney and the minor child(ren).
4. Both parties are absolutely enjoined from discussing with the child(ren) the nature, extent or content of any communication between the attorney and the child(ren).
5. Both parties and the attorney shall cooperate in the scheduling of the time and location of appointments. However, in the unlikely event that such cooperation proves difficult, the attorney shall have the sole discretion and authority to determine the place, duration and circumstances of the interview and interactions with the child. In any event, unless otherwise agreed to by the appropriate party, the attorney shall provide at least 48 hours notice to the appropriate party of the time and place such planned interviews with the child.
6. The fees and costs of the attorney shall be paid as follows:

DATED this ____ day of _____, 2008.

Circuit Court Judge

Child Client Intro Letter

Dear _____,

My name is _____. The judge your parents are using to help them with their problems has asked me to be your lawyer. My job will be to speak for you in court, to tell the judge anything you want [him/her] to know.

In order for me to do that, we need to get to know each other so I can learn more about what is important to you. I will be contacting your [parent] to set up a time for us to meet very soon.

If you have any questions that you would like to ask me before we get together, I would be happy for you to call or email me. My telephone number is _____ and my email address is _____. I am including one of my business cards as well. Please feel free to call or email me anytime.

I look forward to meeting you in person.

Sincerely,

Attorney at Law

Intro Letter – Parties' Attorneys

(When both parents are represented, we like to send a joint intro letter to both parties' attorneys so that everyone is on the same page. This letter can be adjusted if one party is unrepresented.)

Dear _____: (parties' attorneys)

I have been appointed to represent the children of your clients, _____: _____
(DOB: _____) and _____ (DOB: _____). Please find enclosed a copy of the signed Order of Appointment.

It is important that I meet with my client(s) as soon as possible so that he/she/they can become comfortable with me as his/her/their advocate. _____, since I understand that the child/children reside primarily with your client, I ask for your assistance in arranging a time to meet with _____ at my office as soon as possible. After this initial meeting, I may also meet him/her/them at the home or elsewhere if necessary.

In addition, I would also like to meet with each parent in my office as soon as possible in order to explain my role in the case, to answer any questions and to give each parent the opportunity to explain his or her position. Please let me know if either of parent's counsel wishes to be present; otherwise, please have them contact me to schedule appointments. [Adjust language if one parent is unrepresented: Mr./Ms. _____, please let me know if you wish to be present at your client's interview; otherwise, please have your client contact me to arrange a time.]

I have received the court file from Judge _____'s office and I will contact you if I require further pleadings. I would also appreciate it if you would provide me with any additional information that you feel is pertinent to my representation of _____. Thank you in advance for your cooperation in making accessible all records and information that will help me advocate for this/these child/children.

Very often as counsel for the children, I am in a position to help parties reach full or partial settlement; I hope that will be possible in this case so that we might minimize any further negative impact on _____. I look forward to working with both of you.

Sincerely,

Attorney at Law

Encl.

Intro Letter – Pro Se Parents

(When both parents are unrepresented, we send a similar letter to both parents.)

Dear _____: (parties)

I have been appointed by Judge _____ to be the attorney for your [child/children], _____, in your custody and parenting time matter. Please find enclosed my order of appointment from the court.

It is important that I meet with _____ as soon as possible so that [he/she/they] can become comfortable with me as [his/her/their] advocate. _____, since I understand that the [child/children] live primarily with you, please contact me to arrange a time to meet with [him/her/them] at my office as soon as possible.

I would also like to meet with each of you individually to explain my role in this case, answer your questions and give you the opportunity to provide me whatever information you feel I need in order to represent your [child/children] in this matter. To help me begin the process, please fill out the enclosed "Personal Data Form" as completely as possible and return it to me prior to your appointment.

I have already received copies of the court documents for this case. If you possess any other documents you believe are relevant to my representation of _____, please provide them to me immediately at the above address. At our meeting, I may also have you sign releases allowing me to obtain any confidential information about your [child/children].

Finally, please notify me immediately if you hire an attorney at any time during this process.

Please contact me as soon as possible to schedule your appointments. I look forward to working with you to achieve a resolution in the best interests of your [child/children].

Very truly yours,

Attorney at Law

Encl.

cc:

Cover Letter – Counseling Release

Dear/To Whom It May Concern:

I was appointed by the court to represent _____ (DOB: _____) in the [custody/parenting time] matter between [his/her] parents. Please find enclosed a copy of the court order of appointment.

[Name of child] has given me permission to contact you to request [his/her] counseling records and to consult with you as needed. I have enclosed a release of information to that effect signed by _____ and [his/her] parent, _____. Kindly send the requested information to the following address:

Name
Address

If you have any questions, please feel free to contact me directly at _____ or via email at _____. Thank you for your prompt attention to this matter.

Best wishes,

Attorney at Law

Encl.

Cover Letter – Educational Release

Dear Records Custodian/To Whom It May Concern:

I have been appointed by the court to represent the child, _____ (DOB: _____) in the [custody/parenting time] matter between [his/her] parents (Name of Case, case no. _____). Please find enclosed the court order for my appointment.

_____ (name of child) has given me permission to contact you to request copies of [his/her] school records and speak with [his/her] teachers as needed. I have enclosed a release of information signed by _____ and [his/her] parent, _____. Kindly send the requested documents to the following address:

Name
Address

If you have any questions, please contact me at _____. Thank you for your prompt attention to this matter.

Best wishes,

Attorney at Law

Encl.

Cover Letter – General Release

Dear/To Whom It May Concern:

I have been appointed by the court to represent the child, _____ (DOB: _____) in the [custody/parenting time] matter between [his/her] parents. Please find enclosed the court order for my appointment.

I have enclosed a release of information signed by [name parent or names of child and legal parent, if both signed]. Kindly send the requested documents to the following address:

Name
Address

If you have any questions, please contact me at _____. Thank you for your prompt attention to this matter.

Best wishes,

Attorney at Law

Encl.

[

[

[

[

[

[

[

[

[]

103

1

1

1

1

[]

1

1

0

1

AUTHORIZATION TO RELEASE EDUCATIONAL RECORDS

According to FERPA (Family Educational Rights and Privacy Act), all institutions are required to maintain records of requests for, and disclosure of, personally identifiable information. Records of the requests, whether granted or not, shall include the names and addresses of the person(s) who requested the information and the legitimate purpose for which the information is to be used. These records of requests are considered a part of the student's educational records and are retained by the institution.

An educational institution shall obtain a signed and dated written consent from the student, or the student's legal guardian, before it discloses personally identifiable information from the student's educational records.

TO BE COMPLETED BY REQUESTOR:

Name of requestor: _____

Also include name of agency or organization, if request is made on their behalf:

Requestor's address/city/state/zip: _____

List specific information requested: Any and all educational records for the child, (DOB: _____)
, including consultation with teachers and school personnel

I hereby agree to keep the information disclosed to me confidential according to applicable legislation and regulations.

Requestor's Signature: _____ Date: _____

TO BE COMPLETED BY STUDENT:

Name of Student: _____ Date: _____

Student ID Number (Social Security Number): _____

Purpose of Disclosure: Legal representation of the child in a contested custody case

List specific information to be released: Any and all educational records for the child, (DOB: _____)
, including consultation with teachers and school personnel

Student's Signature: _____ Date: _____

Legal Guardian Signature: _____ Date: _____

AUTHORIZATION TO DISCLOSE PROTECTED HEALTH INFORMATION

I authorize: _____ (Name of person/entity disclosing information) to disclose a copy of the specific health information described below regarding: _____ (Name of individual) consisting of: (Describe information to be disclosed)

to: _____ (Name and address of recipient)

for the purpose of: (Describe each purpose of disclosure)

If the information to be disclosed contains any of the types of records or information listed below, additional laws relating to the use and disclosure of the information may apply. I understand and agree that this information will be disclosed if I place my initials in the applicable space next to the type of information.

- ☐ HIV/AIDS information
- ☐ Mental health information
- ☐ Genetic testing information
- ☐ Drug/alcohol diagnosis, treatment, or referral information.
- ☐ Hepatitis C

I understand that the information used or disclosed pursuant to this authorization may be subject to redisclosure and no longer be protected under federal law. However, I also understand that federal or state law may restrict redisclosure of HIV/AIDS information, mental health information, genetic testing information and drug/alcohol diagnosis, treatment or referral information.

I understand that I may revoke this authorization at any time by sending a letter to the person or organization listed in paragraph one, except to the extent that the person(s) and/or organization(s) named above have taken action in reliance on this authorization. If I do not sign this form or if I later revoke my authorization, the services provided to me by the person or organization listed in paragraph one will not be affected in any way.

SIGNATURE: I have read this authorization and I understand it. Unless revoked, this authorization expires _____ (insert either applicable date or event).

By: _____ Date: _____
(Individual or personal representative)

Description of personal representative's authority:



Personal Data Form

1. Your full name: _____
2. All other names used: _____
3. Date of birth: _____ Age: _____
4. Driver's license #: _____ Do you have reliable transportation? YES NO
5. Your attorney's name (if any): _____
6. Have you completed the mandatory parenting education class required by the court? YES NO
7. Other parent's name: _____
8. Your home address: _____
9. Mailing address (if different): _____
10. Home phone: () _____ Work () _____ Other () _____
11. How long at current residence? _____ How many bedrooms? _____
12. Addresses for last FIVE years (use other sheet of paper if necessary)
Previous address: _____ How long? _____
Previous address: _____ How long? _____
12. Current employer: _____ Job title: _____
Employer address: _____ How long? _____
13. Exact work days and hours (be specific) (use other sheet of paper if necessary):

14. Previous employment: _____ City: _____ How long? _____
Previous employment: _____ City: _____ How long? _____
Previous employment: _____ City: _____ How long? _____
15. Please list all of your children (not stepchildren). **Put children of this case first:**
Name _____ DOB _____ Sex ____ Other Parent's Name _____
Name _____ DOB _____ Sex ____ Other Parent's Name _____
Name _____ DOB _____ Sex ____ Other Parent's Name _____
Name _____ DOB _____ Sex ____ Other Parent's Name _____
16. Do you have any children between 18 and 21 years old? YES NO
Do any of them live with you? YES NO Is he/she married or emancipated? YES NO
Is he/she attending school? YES NO
17. Length of relationship with other parent? _____ How long since separation occurred? _____

18. Current partner/spouse (if any):

Name: _____ How long? _____

Children? YES NO How Many? _____

19. Previous partners/spouses within the last 5 years AND any relationships that produced children
(use other sheet of paper if necessary):

Previous partner:	How long?	Separation date?	Children?	How many?
_____	_____	_____	YES NO	_____
_____	_____	_____	YES NO	_____
_____	_____	_____	YES NO	_____
_____	_____	_____	YES NO	_____
_____	_____	_____	YES NO	_____

20. Total # of adults (18+) in home, including you: _____ Total # of children (under 18) in home: _____

Please list all people living in your home (include partners/relatives, stepchildren, housemates, etc.):

Name _____	Age _____	Sex _____	Relationship _____
Name _____	Age _____	Sex _____	Relationship _____
Name _____	Age _____	Sex _____	Relationship _____
Name _____	Age _____	Sex _____	Relationship _____
Name _____	Age _____	Sex _____	Relationship _____
Name _____	Age _____	Sex _____	Relationship _____

21. Please list the children's school teachers:

Child: _____	School: _____	Teacher: _____	Phone: _____
Child: _____	School: _____	Teacher: _____	Phone: _____
Child: _____	School: _____	Teacher: _____	Phone: _____

22. Are there court orders from another county or from Juvenile Court concerning any of your children?

YES NO What children? _____ Where? _____

When? _____ Case name/number: _____

23. Has DHS or other child protective services agency been involved with your family? YES NO

What children? _____ When? _____

Where? (county, state) _____ Caseworker: _____

24. Any arrests for family/domestic violence? YES NO

25. Is there a current domestic violence restraining order? YES NO

26. Were you, your children, or the other parent a victim of family/domestic violence? YES NO

Who (please circle)? You The Children Other Parent Other: _____

27. Do your children have any physical illness that should be considered in this investigation?

YES NO If so, what? _____

Who is treating physician? _____

28. Do you have any physical illness that should be considered in this investigation?

YES NO If so, what? _____

Who is treating physician? _____

29. Does the other parent have any physical illness that should be considered in this investigation?

YES NO If so, what? _____

30. What *prescription* drugs are you taking at present? _____

Who prescribes? _____

31. Have your children ever seen a therapist or been hospitalized for mental health issues? YES NO

When? _____ With whom? _____

32. Have you ever seen a therapist or been hospitalized for mental health issues? YES NO

When? _____ With whom? _____

33. Has the other parent ever seen a therapist or been hospitalized for mental health issues? YES NO

When? _____ With whom? _____

34. What is your family history for mental health issues (includes depression, anxiety, etc.)? _____

35. What is the other parent's family history for mental health issues (includes depression, anxiety, etc.)? _____

36. Drug and alcohol history:

Present Drug Use: You use? Y N

What kind: _____

How often? Daily Weekly Monthly

At what age did you begin using drugs? _____

Past Drug Use: You? Y N

What did you use? _____

When did you stop? _____

Have you ever been arrested for drugs? Y N

Present Alcohol use: You? Y N

How many drinks a week? _____

At what age did you start? _____

Have you ever been arrested for alcohol-related charges?

Y N

When? _____ Where? _____

Present Drug Use: Other Parent use? Y N

What kind: _____

How often? Daily Weekly Monthly

At what age did s/he begin using drugs? _____

Past Drug Use: Other Parent? Y N

What did s/he use? _____

When did s/he stop? _____

Has s/he ever been arrested for drugs? Y N

Present Alcohol Use: Other Parent? Y N

How many drinks a week? _____

At what age did s/he start? _____

Has s/he ever been arrested for alcohol-related charges? Y N

When? _____ Where? _____

37. What is your family history for drug/alcohol abuse? _____

38. What is the other parent's family history for drug/alcohol abuse? _____

39. Have you ever been arrested? YES NO Dates of arrest: _____

What for? _____

40. Are you on probation/parole now? YES NO (list probation/parole officer's name/phone number)

Name: _____ Phone number: _____

41. Has the other parent ever been arrested? YES NO Dates of arrest: _____

What for? _____

42. Is the other parent on probation/parole now? YES NO (list probation/parole officer's name/phone number)

Name: _____ Phone number: _____

I have completed the above information truthfully and to the best of my knowledge.

Signature: _____ Date: _____

Printed Name: _____ Relationship _____

ORS 107.425. Investigation of parties in domestic relations suit involving children; physical, psychological, psychiatric or mental health examinations; parenting plan services; counsel for children.

(6): The court, on its own motion or on the motion of a party, may appoint counsel for the children. However, if requested to do so by one or more of the children, the court shall appoint counsel for the child or children. A reasonable fee for an attorney so appointed may be charged against one or more of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for public defense services.



symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Adopted 01/01/05

CLIENT-LAWYER RELATIONSHIP

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Adopted 01/01/05

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Adopted 01/01/05

RULE 1.3 DILIGENCE

A lawyer shall not neglect a legal matter entrusted to the lawyer.

Adopted 01/01/05

RULE 1.4 COMMUNICATION

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Adopted 01/01/05

RULE 1.5 FEES

(a) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.

(b) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(c) A lawyer shall not enter into an arrangement for, charge or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement; or

(2) a contingent fee for representing a defendant in a criminal case.

(d) A division of a fee between lawyers who are not in the same firm may be made only if:

lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent may only be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Adopted 01/01/05

Amended 12/01/06:

Paragraph (b) amended to conform to ABA Model Rule 1.13(b).

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(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.

(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.

(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.

Adopted 01/01/05

RULE 1.15-1 SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to

the rules of the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a lawyer trust account for the sole purpose of paying bank service charges or meeting minimum balance requirements on that account, but only in an amount necessary for those purposes.

(c) A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Adopted 01/01/05

Amended 11/30/05:

Paragraph (a) amended to eliminate permission to have trust account "elsewhere with the consent of the client" and to require accounts to conform to jurisdiction in which located.

Paragraph (b) amended to allow deposit of lawyer funds to meet minimum balance requirements.

RULE 1.15-2 IOLTA ACCOUNTS AND TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) A lawyer trust account for client funds that cannot earn interest in excess of the costs of generating such interest ("net interest") shall be referred to as an IOLTA (Interest on Lawyer Trust Accounts) account. IOLTA accounts shall be operated in accordance with this rule and with operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.

(b) All client funds shall be deposited in the lawyer's or law firm's IOLTA account unless a particular client's funds can earn net interest. All interest earned by funds

174 Or. App. 37; In re Thomason;

In the Matter of the Marriage of Scott L. THOMASON, Respondent, and Diane THOMASON, Appellant, and Christopher THOMASON; Gregory Thomason; and Taylor Thomason, Minor Children.

Argued and submitted September 11, 2000, reversed May 2, 2001

23 P3d 395

Reversed.

Appeal from Circuit Court, Washington County.

Gregory E. Milnes, Judge.

Timothy J. Sercombe argued the cause for appellant. With him on the reply brief were J. Richard George, Allan F. Knappenberger and Preston Gates & Ellis LLP. On the opening brief were James N. Westwood, William F. Buchanan and Miller, Nash, Wiener, Hager & Carlsen LLP.

Laura Graser argued the cause and filed the brief for respondent.

Herbert A. Trubo argued the cause for minor children. With him on the brief was Sorensen-Jolink, Trubo, Williams, McIlhenny & Williams.

Kristin Paustenbach and Ann Su filed the brief amicus curiae for Juvenile Rights Project, Inc.

Before Edmonds, Presiding Judge, and Armstrong and Kistler, Judges.

KISTLER, J.

Reversed.

KISTLER, J.

Mother appeals from the trial court's post-judgment order appointing an attorney for her children. She argues that ORS 107.425 did not authorize the court to make the appointment. We agree and reverse.

On February 28, 1994, the trial court entered a judgment dissolving mother and father's marriage and awarding mother custody of their three children. It appears that, shortly after the judgment was entered, the relationship between mother and one of the children Christopher began to deteriorate, and Christopher began to express a desire to live with father. On June 29, 1995, the trial court appointed an attorney, Susan Svetkey, to represent Christopher. Mother and father were to share equally in the cost. The court cited ORS 107.425(3) as the basis for the appointment.

In December 1995, by stipulation, the court modified the 1994 dissolution judgment and awarded custody of Christopher to father. During a hearing on the motion to modify, mother orally moved to terminate Svetkey's appointment and filed a memorandum in support of her motion. Mother argued, among other things, that ORS 107.425 did not provide authority for the court to appoint counsel because the motion to modify was no longer pending before the court. On January 3, 1996, the court denied mother's motion and entered an order stating that "Svetkey shall remain as attorney for Christopher Thomason until December 5, 1997, or further order of the court."

By its terms, the court's January 3, 1996, order continuing Svetkey's appointment expired in December 1997, and neither party moved to extend the appointment while that order remained in effect. In March 1998, father filed a motion to have Svetkey reappointed. Mother objected to the motion, and father subsequently withdrew the motion before a hearing could be held. Christopher then filed his own motion to reappoint Svetkey, which the trial court granted on April 15, 1998, without a hearing.^(fn1) Mother's attorney sent a letter to the court requesting a hearing on the matter and asking the court to postpone the decision until a hearing could be held. On April 24, the court withdrew its previous order appointing Svetkey and scheduled a hearing.

Svetkey sent a letter to the court on June 2, 1998, which stated: "I understand that the issue of my re-appointment as Christopher Thomason's lawyer has not yet been resolved and that we are awaiting a trial date." She told the court that she was enclosing a letter written by Christopher, which she was forwarding at Christopher's request. Christopher's letter was addressed to the trial judge and stated:

"I have just talked to [Svetkey] hoping to consult her about this summer[']s dates, [b]ut [I] have just come under the impression that [Svetkey] is not my la[wy]er anymore. I feel that this is a time that I really need her to work things out for this summer[']s visitation schedu[le]. I also feel that I really need [Svetkey] right now because of the fact of the upcoming summer without a visita[t]ion schedu[le] worked out. I really think that I cannot wait for a hearing that does not even have a date yet. My mother is just stalling so she can catch me off[]g[ua]rd and I feel that when [I] don't have someone like [Svetkey] to help me through these times and work things out like summer visitation. Without [Svetkey], I think I will lose contact with my mom because there will be nobody to represent me in court and to set dates for visita[t]ion. I am stuck in the middle of huge battles between my parents about me and I have nobody to turn to when I need help and without [Svetkey] I am very vulnerable to being pulled back to my mother[']s side through m[a]nipulation. If you could please ap[p]oint [Svetkey] as my attorney or at least set a court date that is very soon, I would be very happy because I really need [Svetkey] right now to work things out between my parents and me."

Svetkey sent copies of the letter to father and mother's attorneys. In response, mother's attorney sent a letter to the court objecting to the request to appoint Svetkey on several grounds. Despite mother's objections, and without holding a hearing, the trial court sent a letter to Svetkey, which stated, in part:

"I received a copy of the letter from Christopher Thomason. I will appoint you to represent the Thomason children. Please prepare the appropriate order for my signature."

Mother's attorney sent a letter to the court objecting to its decision to appoint Svetkey to represent the children, arguing that the court lacked statutory authority to do so and that a hearing should have been held before the appointment. On July 6, 1998, the court entered an order appointing Svetkey as attorney for all three children. According to the parties, the only matter before the trial court at that time was Christopher's motion requesting that Svetkey be appointed to represent him. There was no pending motion to modify the underlying dissolution judgment.

Mother has appealed from the trial court's post-judgment order, arguing that ORS 107.425 did not authorize the court to appoint counsel for the children under these circumstances and, alternatively, that the court erred in not holding a hearing before making the appointment. We begin with the text of ORS 107.425,(fn2) which provided before its 1999 amendment:

"(1) Whenever a domestic relations suit * * * is filed, or whenever a habeas corpus proceeding or motion to modify an existing decree in a domestic relations suit is before the court, the court having jurisdiction may, in cases in which there are minor children involved, cause an investigation to be made as to the character, family relations, past conduct, earning ability and financial worth of the parties to the suit for the purpose of protecting the children's future interests. * * *

"(2) The court, on its own motion or on the motion of either party, may order an independent physical, psychological, psychiatric or mental health examination of either party or the children and may require either or both parties and the children to appear and to testify as witnesses during this investigation and to be interviewed, evaluated and tested by an expert. * * *

"(3) The court, on its own motion or the motion of either party, may appoint counsel for the children. However, if requested to do so by one or more of the children, the court shall appoint counsel for the child or children. A reasonable fee for an attorney so appointed may be charged against either or both of the parties or as a cost in the proceedings[.] * * *

"(4) Prior to entry of an order, the court on its own motion or upon the motion of a party may take testimony from or confer with the child or children of the marriage and may exclude from the conference the parents and other persons if the court finds that such action would be likely to be in the best interests of the child or children. * * *

Mother, father, and the children all have filed briefs on appeal, and all three parties offer different interpretations of the statute. Broadly stated, their arguments raise two issues. The first issue is whether subsection (3) can be read in isolation and apart from the introductory language in subsection (1), which would otherwise limit the instances in which a trial court can appoint counsel. If the introductory language in subsection (1) limits the court's authority to appoint counsel under subsection (3), the second issue is whether a trial court can appoint counsel at any time after a domestic relations action has been filed, even if a dissolution judgment has been entered and no motion to modify is pending before the court.

More specifically, the children argue that the subsections of the statute are not "interdependent" and that subsection (3) authorizes a court to appoint attorneys for minor children at any time and regardless of the potentially limiting language in subsection (1). Mother responds that subsection (3) cannot be read independently of subsection (1) and that the introductory language in subsection (1) limits the court's appointment authority to three situations, each of which contemplates that some proceeding is presently before the court. Father agrees that subsection (3) must be read in light of the rest of the statute, including subsection (1), but maintains that subsection (1) allows an appointment any time after a domestic relations action has been filed, without regard to whether the action has been resolved by a judgment or whether any proceeding, such as a motion to modify, is currently before the court.

We begin with the children's argument. Viewed in isolation, subsection (3) appears to give courts unlimited appointment authority. Subsection (1), on the other hand, is expressly limited to three situations: when a domestic relations action is filed, when a habeas corpus proceeding is before the court, and when a motion to modify an existing dissolution judgment is before the court. The question becomes whether those limits have any effect on subsection (3) or whether subsection (3) constitutes an unlimited grant of authority to appoint counsel for children.

1-4. When construing a statute, our first, and often only, task is to examine its text and context in order to ascertain the legislature's intent. *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610-11, 859 P2d 1143 (1993). The context of a statute "includes other provisions of the same statute[.]" *Id.* Applying that methodology, we conclude that the legislature intended ORS 107.425 to be read as a whole, as opposed to reading each subsection in isolation. The statute's use of the word "party" or "parties" in subsection (3) is unclear unless one looks to the other subsections of the statute. By itself, the term "party" leaves unanswered the question, "Party to what?" See Webster's Third New Int'l Dictionary, 1648 (unabridged ed 1993) (defining party as "one * * * constituting alone or with others one of the two sides in a proceeding"). The answer is easily found by looking above to subsection (1) and reading the statute in its entirety. Similarly, subsection (3) contains the phrase "as a cost of the proceeding," suggesting the sort of ongoing court proceedings that subsection (1) specifically enumerates. Finally, we note that the reference in subsection (3) to "the children," suggests that the term children is qualified in some other part of the statute---i.e., the reference to minor children in subsection (1)---further indicating that the statute was intended to be read as a whole. See *Osborn v. PSRB*, 325 Or. 135, 142-43, 934 P2d 391 (1997) (statute's use of the definite article "the" indicates legislature's intent to refer to a previous part of the statute). In sum, subsection (3) is too incomplete standing on its own and raises too many questions that are naturally answered by the rest of the statute for us to conclude that it was intended to be read independently of the other subsections.

Were the children's reading correct, ORS 107.425(3) would be a limitless grant of authority to appoint counsel for a child at any time---even upon the court's own motion---and to impose the costs on the child's parents. Under that interpretation, because subsection (3) is not limited, on its face, to minor children, a court would be free to appoint attorneys for adult children and then require their parents to shoulder the cost, possibly in instances where no domestic relations proceeding had ever been filed. We do not think that the legislature intended to grant such unlimited authority in light of the rest of the statute's more limited textual focus.(fn3)

An earlier version of the same statute confirms that interpretation. See *Owens v. Maass*, 323 Or. 430, 435, 918 P2d 808 (1996) (stating that prior enactments of a statute are part of a statute's context). The former version of ORS 107.425 provided in its entirety:

"(1) Whenever a domestic relations suit is filed, or whenever a habeas corpus proceeding or motion to modify an existing decree in a domestic relations suit is before the court, the court having jurisdiction may, in cases in which there are minor children involved, cause an investigation to be made as to the character, family relations, past conduct, earning ability and financial worth of the parties to the suit for the purpose of protecting the children's future interest. The court may defer the entry of a final decree until the court is satisfied that its decree in such suit will properly protect the welfare of such children. The investigative findings shall be offered as and subject to all rules of evidence.

"(2) The court, on its own motion, may:

"(a) Cite either party to the suit to appear and testify as witness during this investigation; and

"(b) Appoint counsel for the children. A reasonable fee for an attorney so appointed may be charged against either or both of the parties or as a cost in the proceedings."

Or Laws 1971, ch 280, § 3. In the 1971 version of the statute, the authority to appoint counsel for the children was contained in paragraph (2)(b) and was limited to the proceedings listed in subsection (1). The reference in paragraph (2)(a) to "during this investigation" indicates that subsection (2) was not to be read independently of subsection (1), and we doubt that paragraph (2)(b) was intended to stand on its own if the other paragraph in subsection (2) was not. The parties have brought nothing to our attention suggesting that the legislature intended to expand the court's appointment authority by means of later amendments that did little more than renumber the statute.

We turn to father's proposed interpretation of the statute. Father does not dispute that subsection (3) must be read in light of subsection (1) and that a court's authority to appoint counsel for the children is limited to some extent. However, he argues that the phrase in subsection (1), "whenever a domestic relations suit * * * is filed," allows a court to appoint counsel for children at any time after such an action is filed, even when, as is the case here, a judgment has been entered and no other matter is presently before the court.(fn4)

ORS 107.425(1) expressly limits the statute's application to three instances: (1) whenever a domestic relations action is filed; (2) whenever a habeas corpus proceeding is before the court; and (3) whenever a motion to modify an existing judgment is before the court. Father's interpretation of the first of the three instances would effectively read at least the third instance out of the statute. If, as father argues, a court's authority to appoint an attorney for the children not only starts when a domestic relations action has been filed but continues after a judgment resolving that action has been entered, there would have been no need for the legislature to specify that a court may also appoint an attorney when a motion to modify an existing dissolution judgment is before the court. Father's interpretation would render a portion of the

statute surplusage, an approach we are not inclined to follow. See *International Brotherhood v. Oregon Steel Mills, Inc.*, 168 Or. App. 101, 106, 5 P3d 1122 (2000); ORS 174.010 (indicating a preference to give effect to all statutory provisions).

We do not accept father's argument that ORS 107.425(3) authorizes the appointment of counsel regardless of the length of time that has passed since the conclusion of the action. We hold that a court's authority under ORS 107.425(3) to appoint counsel for children is instead limited to instances where a domestic relations action has been filed and is pending before the court, a habeas corpus proceeding is before the court, or a motion to modify an existing dissolution judgment is before the court.^(fn5) Because none of those proceedings was pending before the trial court at the time of the appointment, ORS 107.425 did not authorize the court to appoint Svetkey as the children's attorney.^(fn6)

Reversed.

Footnotes:

1 Father explained that he had withdrawn his motion because he thought the trial court would have discretion to deny it, whereas, in his view, if Christopher filed the motion to appoint counsel, the court was required to grant Christopher's motion under ORS 107.425.

2 The trial court expressly based the appointment on ORS 107.425. The parties have not argued that any other statute authorized the court to appoint counsel for the children.

3 We have previously held that we will not ignore a statute's plain text simply because it would "yield an absurd or unreasonable result." *Young v. State of Oregon*, 161 Or. App. 32, 37-40, 983 P2d 1044, rev den 329 Or. 447 (1999). We do not depart from that principle here. We simply note that the children's far-reaching interpretation of ORS 107.425(3) is at odds with the text and context of the rest of the statute.

4 Father also suggests that mother's failure to appeal from the January 1996 order appointing Svetkey as Christopher's attorney somehow bars her from challenging the later, separate 1998 order, at least as to Christopher. Father does not explain the legal theory that underlies that suggestion, nor is one apparent.

5 Father has not argued that any other statute authorized the court to appoint an attorney for the children in these circumstances, and we express no opinion whether some other source of authority exists that would support the trial court's order. We also note that, because we conclude that ORS 107.425(3) did not authorize the appointment, we need not decide whether the court erred in denying mother's request for a hearing before it appointed an attorney for the children.

6 The Juvenile Rights Project has filed an amicus curiae brief in which it argues that "[d]ue process demands independent counsel for children in custody decisions." No party, however, has raised that constitutional issue and the record is inadequate to resolve the issue that amicus raises for the first time on appeal. Even if we could consider the issue as an alternative basis for affirming the trial court's order, we decline to do so in this posture.

