



Washington State Office of Civil Legal Aid

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To: CRP Contract Attorneys

From: Jill Malat

Re: COVID-19 Client Representation Guidelines

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The COVID-19 Coronavirus pandemic resulted in the Governor's initial declaration and multiple amendments to that Declaration Declaring a Public Health Emergency. The vast majority of these focus on mandatory efforts to achieve social distancing to 'flatten the curve' of transmission of the virus.

In response to the urgency of the situation and need for immediate action, Chief Justice Debra Stephens issued Order No. 25700-B-602 authorizing the Presiding Judges in each court to take action necessary to protect the health and safety of court staff, court users, and the public. These include, but are not limited, to cancellation of a wide range of in-person court proceedings, expanded use of telephonic hearing protocols, and cancellation of certain types of proceedings. In a number of courts, jury trials have been cancelled accompanied by orders suspending speedy trial rights for criminal defendants during the period of the emergency.

We understand that there are currently inconsistent practices among courts around the state which may put a number of you in a very difficult position. We are concerned about the health and safety your clients but, at the same time, we are also concerned about every attorney and court personnel still going to court houses across the state .

In every judicial district and in every court, people are having to act quickly to develop new protocols and procedures to protect the safety of people working within the court system while also protecting the rights of those people subject to their courts' jurisdiction. We are issuing Guidelines below based on the best information we have, being mindful of the health and safety of the children you represent and your ethical duties to protect their health and safety -- an obligation that is particularly important during this public health emergency. It is our hope that these Guidelines will help you make appropriate decisions that protect the rights of your clients while keeping you and the public as a whole safe.

Each of you is contracted to provide standards-based representation for the children for whom you were appointed. In a normal environment such representation requires substantial face to face contact with your clients, foster parents, teachers, social workers, BHR workers, court staff,

and opposing counsel. The current public health emergency mandates flexibility in many of the expectations and protocols set out in the [Standards for Children's Representation](#) without compromising each attorney's duty to provide ethical, informed, and effective representation for each client. Consequently, we offer the following Guidelines for standards-based representation of children during the public health emergency. These Guidelines are based on the best information we have received from the [CDC](#), [Department of Health](#), and [other public health](#) authorities.

TEMPORARY GUIDELINES RE: PERSONAL CONTACT DURING THE PUBLIC HEALTH EMERGENCY

Absent an individualized and compelling ethical reason, we are asking each OCLA-contracted attorney to consider the following guidelines as temporary modifications to the general standards for representation of children.

1. Appear in hearings via teleconference. In many counties this is already the new norm. In a number of others, courts have yet to issue general orders suspending in-person hearings. In these counties, the CRP attorney should first work with the AAG to file a joint motion for teleconference. In the event that the AAG does not agree, the attorney should file and establish a record that they requested that the hearing be held via teleconference. The motion should reference the Chief Justice's order and the [AOC website](#) documenting the court-by-court action to protect court users, counsel, and the public from the risks of in-person meeting.
2. Suspend in-person contacts with your clients. While the standards premise effective representation on regular in-person engagement with children and youth clients, they are not written against the context of the current public health emergency. CRP attorneys are expected to work with AAG's, foster parents, social workers, CASA's, and others to ensure appropriate and regular contact by phone, FaceTime, or other means. This includes children and youth who are in foster care, who are in a BHR facility, who are temporarily hosted in a hotel, who are temporarily in a youth detention facility, etc. We encourage you to advise those with whom you are arranging contact to respect the integrity of the attorney-client relationship and allow the child or youth to speak with you privately. **To the extent possible, contact each of your clients as soon as possible. This is a time of heightened anxiety for everyone. Your clients need to hear from you. They may have questions, concerns, or just need information.**
3. Suspend in-person visits with foster parents, therapists, witnesses, and others who have information relevant and necessary to your ability to effectively represent your clients.
4. Adhere to DOH and CDC guidelines (referenced with links above) regarding personal hygiene and distancing practices.

We understand that these Guidelines represent a break from the norm of actions contemplated under the Standards. We understand further that there may be individualized situations where unbendable ethical duties make it impossible for you to comply. We leave it to your independent professional judgment to determine whether and, if so, under what circumstances, you will do so.

Thank you for your attention to this. Be safe, stay distant, be well, and keep doing the great work that you are doing.