

# THE ETHICS OF ATTORNEY REPORTS TO COURT:

## Meaningful Inclusion of Youth Voices in the Dependency Process



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# Meaningfully Including Youth Voice in Court Reports



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# What are adult foster care alumni saying they want?

- In general, we want to be seen as a whole, complex person and we want paperwork and other communication to reflect that
  - My Voice, My Story project→ a chance to share their perspective and misinformation
  - Brainstorming session
- We want to be trusted in what we say we need. We know our situations and experiences best. But we still sometimes need to be educated about what healthy caregiving looks like and what needs (attachment and other) we deserve to have met by our current and past caregivers.
- Some people may not want to speak up or have their voice included, but we want young people to have the option to have the space to express what they feel is important
- Young people want to know who has the power to change their circumstances
- We want to be and feel empowered
- Counsel that goes beyond just the young person being safe

1. Ask what they want
2. Seek to understand why -knowing the WHY allows for more impactful advocacy
3. Respect their stated interests

**Give the young person an opportunity to share (if they want).**

**How is what's happening affecting you?**

**It's not just about WHAT a young person wants- it's  
about WHY they want it.**

## Real-life example

From the second CPS was involved with my family, all parties wanted me to work on my relationship with my bio-Mom except me. Even after I got removed, it felt like everyone was pushing me to reconcile with my bio-Mom. When my lawyer asked me about doing “mediation” after my case started, I told him “no.” I told my lawyer that I didn’t want to, and he passed the message along as a simple refusal without explaining why or giving conditions for revisiting the issue.



# Long Term Impact

What I wish my lawyer would have done was make the effort to know why I didn't want to do "mediation" with my bio Mom and make sure it was never brought up again unless I initiated it. I am also realizing now that "mediation" might not have meant what I thought it did at the time he was asking me about it. My lawyer did not explain terms to me. Without having a full understanding of what was going on or what my rights were, I didn't even know what questions I should be asking.

The long-term impact of constantly being asked to do "mediation" with my bio Mom was that I was almost conditioned to think about my Mom with every decision that I made, even when I didn't want to think about her. I constantly tried to rebuild my relationship with my bio Mom even though I knew she was toxic. All the pressure from other people almost felt like gaslighting, and I questioned what I knew to be true. I ended up reaching out to my Mom time and time again because I felt guilty that I wasn't making an effort. At one point in college, I had a mediation appointment scheduled, and she bailed. That rejection was a lot to face after being pushed to her so many times. Now that I have had time to reflect, I know that my instinct was justified. I realize now that that's not my burden- I don't have to be the one to make her feel better. And although I have forgiven her for the ways she has mistreated me, I have discovered that any sort of relationship with her is toxic for me.

**How could an attorney have handled communication with Emily in order to avoid the negative outcomes described today?**

# Meaningfully including youth voice looks different depending on the young person.

-Offer the youth an opportunity to write or share their own “youth impact statement” for review hearings. Give examples of what they could include in such a statement.

-If a youth declines to submit a statement, offer to submit their thoughts in your own report to court.

-Always respect a youth’s desire to not write down their thoughts/feelings or to have you memorialize it in a report. Explain to youth who will see a written report and provide counsel on the pros and cons (if any) of providing written reports to court.

# Bottom Line

You can meaningfully include youth voice in court reports by including information about **who the young person is and how they are experiencing the things that are happening**. What matters is that young people are fully advised of their rights to express their thoughts and feelings, either in their own words or through their attorney.

# The Judicial Perspective

Judge Helen L. Halpert (Ret.), King County Superior Court

Commissioner Michelle Ressa, Spokane County Superior Court

# Statutory Guidance

- RCW 26.09.002 provides:
- the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities.
- Does not directly apply to Title XIII proceedings. However the phrase “best interest of the child”, is used repeatedly in Title XIII. In total, 142 Washington statutes contain this phrase.

# RCW 13.34.020

- The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.

## RCW 13.34.138(3)(c)

- “The best interests of the child shall be the court’s primary consideration in the review hearing.”



## RCW 13.34.190

- Even if all the statutory requirements have been established by the Department, termination cannot proceed unless the court concludes that an order of termination is in the best interest of the child.

# Ethical Considerations

Professor Lisa Kelly, University of Washington School of Law

## Synthesizing the ethical message

- The child/youth's attorney has a duty to file a report to court unless the client directs otherwise.
- The Report to Court should be the child/youth's report to court.
- Leaving the legal interest client discussion for another day.

# Overview

## Relevant Rules:

- 1.2 Scope & Allocation of Authority
- 1.3 Diligence and Promptness
- 1.4 Communication
- 1.6 Confidentiality & 1.14 Diminished Capacity
- 3.3 Candor to the Tribunal
- 3.7 Lawyer as Witness

## Relevant Child Representation Standards:

- 1.1 General Duties
- 2. Relationship/Communication with Child
- 4.3 File Pleadings
- 6.1 Advocacy for Services

# Stated Interests Representation: The report begins with your client

## RPC 1.2(a)

- [A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by RPC 1.4, shall consult with the client as to the means by which they are to be pursued.

## Standard 1.1(6)

- The child's attorney shall follow the child's stated interest and follow the child's direction throughout the course of the litigation.

# Communicating with the Child/Youth Client

## RPC 1.4(b)

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

## Standard 1.1(1) & 2

- 1.1(1)—requires structuring of all communications with the child to account for age, developmental level, education, cultural context, disability, & language acquisition
- 2—requires advising the child about all legal matters arising in the case in a developmentally appropriate manner

## Standard 2 (4)– Frequency & Duration of Meetings

- “Depending on the child’s age and functioning, multiple meetings of short duration may be required to fully discuss the service plan, the child’s rights and potential consequences in the pending proceeding, any court orders entered regarding expectations of the child and the potential consequences of failing to obey court orders or cooperate with service plans.”

# Diligence

- RPC 1.3 “A lawyer shall act with reasonable diligence and promptness in representing a client.”
- Comment:
  - [1] “A lawyer shall pursue a matter on behalf of a client despite obstruction, opposition or personal inconvenience to the lawyer...”
  - [2] “A lawyer’s work load must be controlled so that each matter can be handled competently.”

Standard 4.3 “The child’s attorney should timely file pleadings such as...reports, declarations, ... responses or objections as necessary to advocate for the child’s stated interest.”

Standard 6.1 “Consistent with the child’s stated interest, the child’s attorney should seek appropriate ...services (by court order if necessary) to protect the child’s interests and implement a service plan.”



# Confidentiality

## RPC 1.6(a)

- “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b). “

## Standard 2(5)

- “Counsel will adhere to ...RPC 1.6, and other laws related to confidentiality and the disclosure of client information.”

# Let's Talk about "Protective Action" – RPC 1.14

- “(a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished...because of minority, the lawyer shall, as far as reasonably possible, maintain a normal attorney-client relationship.”
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical...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.”

## RPC 3.3 Candor to the Tribunal

- (a) A lawyer shall not knowingly:
  - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
  - (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by Rule 1.6; ...
  - (4) offer evidence that the lawyer knows to be false.

## RPC 3.7

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
  - (1) the testimony relates to an uncontested issue; ...
  - (3) disqualification of the lawyer would work substantial hardship on the client;

Questions?