

MASSACHUSETTS

<p>Structure, organization, and delivery of Child Representation State-by-state, county-by-county, etc.</p>	<p>The Committee for Public Counsel Services of the Public Defender Agency of Massachusetts is a statewide office that organizes and certifies child representatives. In order to receive court appointments to represent children or parents in child welfare proceedings, attorneys must be employed or certified by the Committee for Public Counsel Services’s Child and Family Law Division (“CAFL”).</p> <p>Lawyers in CPCS’s Children and Family Law Division (CAFL) represent children and parents in cases in which the Department of Children and Families (DCF) removes children from their homes because of claims of neglect or abuse. These cases are called care and protection (C&P) cases or termination of parental rights cases. ... Most CAFL lawyers are private attorneys. Others are CPCS staff members, who work in partnership with CPCS staff social workers. What We Do, Children and Family Law Division.</p>
<p>Funding Child Representation</p>	<p>Child representatives are paid by the Committee for Public Counsel Services of the Public Defender Agency of Massachusetts. See Committee for Public Counsel Services, Assigned Counsel Manual, Policies & Procedures: Governing Billing & Compensation, Rules 17-19, 24-33.</p> <p>CPCS sets an annual cap of billable hours per fiscal year. Effective in FY 2012, attorneys who have been licensed to practice law for less than two years, as of July 1st, will be limited to 1500 hours per year. All other CPCS certified attorneys may bill up to 1650 hours per year. Attorneys will not be paid for any time billed in excess of the annual limit of billable hours. Committee for Public Counsel Services, Assigned Counsel Manual, Policies & Procedures: Governing Billing & Compensation, Rule 17.</p>
<p>1. General Duties: Timely appointment, mandatory or discretionary, attorney or lay person, represent child’s interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</p>	<p>CAFL has detailed practice standards that delineate the role of counsel in care and protection matters. The care and protection statute is also supplemented by the Massachusetts Trial Court’s Uniform Rules for Permanency Hearings.</p> <p>Appointment of Counsel is mandatory in all care and protection cases. MGL ch. 119, § 29</p> <p>Role of Counsel: Client-Directed Lawyer</p> <p>(a) The role of counsel in these cases is to be an advocate for the client. Counsel shall diligently and zealously protect and advance the client’s interests, rights and goals in the proceedings. This involves explaining the nature of all legal and administrative proceedings to the extent possible given the client’s age and ability, determining the client’s position and goals, and vigorously advocating such position and goals. The role of counsel is also to ensure that the client is afforded due process and other rights and that the client’s interests are protected.</p> <p>(b) The role of counsel also is to be an advisor and counselor. This involves explaining the likelihood of achieving the client’s goals and, where appropriate, identifying alternatives for the client’s consideration. In addition, counsel should explain the risks, if any, inherent in the client’s position.</p> <p>(c) Counsel has an obligation to make available sufficient time, resources, knowledge and experience to afford competent representation to the client.</p> <p>(d) Counsel for a child owes the same duties of undivided loyalty, confidentiality, zealous advocacy and competent</p>

representation to the child as is due an adult client, consistent with the Massachusetts Rules of Professional Conduct. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 1.6 Rule 1.1.](#)

Child's counsel should determine if the child has the capacity to make an adequately considered decision on matters related to the representation. If so, the lawyer must advocate for the client's wishes.

If the child is unable to verbalize a preference, the lawyer shall make a substituted judgment determination, assessing "what the child would decide if he or she were capable of making an adequately reasoned decision, and represent the child in accordance with that determination." The lawyer may make this determination on his or her own, or request the assistance of a guardian ad litem.

If the child is able to verbalize a preference, the lawyer determines that the child lacks capacity to make a reasoned decision, and the lawyer determines that pursuing the child's wishes will not put the child at risk of substantial harm, then the lawyer shall advocate for the client's wishes.

If the child is able to verbalize a preference, the lawyer determines that the child lacks capacity to make a reasoned decision, and the lawyer determines that pursuing the child's wishes would put the child at risk of substantial harm, then the lawyer may do one of the following:

- 1) advocate for the child's expressed wishes;
- 2) inform the court of the child's expressed wishes, make a substituted judgment determination, and advocate for the substituted judgment position;
- 3) advocate for the child's expressed wishes but ask the court to appoint a GAL/investigator for an independent investigation and report; or
- 4) inform the court of the child's expressed wishes and ask the court to appoint a GAL/next friend to direct the lawyer's representation. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 1.6.](#)

A Guardian Ad Litem may be appointed in addition to counsel to play one of several roles in a care and protection case. Among these include investigator (to provide an independent report and recommendation to the court); next friend (to direct counsel's representation when counsel is unsure what position to take, as per Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 1.6); holder of confidentiality/privilege (to make an independent, unreviewable and fully binding determination of whether or not to waive the child's therapist-client privilege or confidentiality for the purpose of the litigation); Rogers GAL (to provide an independent investigation and report as to a child's need for antipsychotic medication, if this has been recommended by the agency); education advocate (to advocate for the child's special education rights and report to the court on the same).

The following persons shall have and shall be informed of the right to counsel, and the court shall appoint counsel for all such persons if the person is not able to retain counsel: (i) an adult who is under the responsibility of the department under

	<p>clause (1) of subsection (a) of section 23; (ii) a child who is before the court under clauses (1) and (3) of said subsection (a) of said section 23, sections 24 to 27, inclusive, or section 29B; (iii) a child in a custody proceeding where the department or a licensed placement agency is a party; and (iv) any young adult to whom subsection (f) of section 23 applies. Mass. Gen. Laws Ann. ch. 119, § 29.</p>
<p>2. Out of Court - Actions to be Taken: Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</p>	<p>The CAFL Performance Standards contain detailed requirements covering all key aspects of representation in care and protection matters.</p> <p>Communications with Client. In all cases counsel must maintain sufficient contact with the client to establish and maintain an attorney-client relationship that will enable counsel to keep abreast of the client’s interests and needs and of the client’s position in the action.</p> <p>At a minimum, counsel shall meet with a child client on a quarterly basis, except under extraordinary circumstances. Irrespective of a child client’s age, counsel shall meet with the child client at his or her placement promptly upon receiving notice of the assignment. Counsel shall meet with the child thereafter as necessary to provide competent representation to the client, to be informed of the child’s wishes and circumstances, to inform and advise the client about the proceedings, as appropriate, and to maintain an ongoing attorney-client relationship with the child. Counsel shall explain the result of all court hearings and administrative proceedings to the client. Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 1.5.</p> <p>Protection of Confidentiality, Privileged Communications, and Attorney Work Product</p> <p>Consistent with the client's interests and goals, counsel shall seek to protect from disclosure communications and other information concerning the client that are protected by applicable laws of confidentiality and privilege, including attorney work product. Counsel shall explain fully to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. If counsel for a child determines that the child is unable to make an adequately considered decision with respect to waiver, counsel must act with respect to waiver in a manner consistent with and in furtherance of the client's position in the overall litigation. Counsel may request the appointment of a guardian ad litem for the limited purpose of making decisions regarding waiver. Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 1.7.</p> <p>Investigate: Duties of Counsel Meet with Client; review of DCF records (child’s counsel is entitled to the records as per 110 CMR 12.09(1).); review court records, including any court investigator, guardian ad litem, family service or probation officer reports; review other records, such as social service, medical, psychiatric, psychological, substance abuse, law enforcement, CORI and school records, as well as records of other court proceedings, as appropriate, and take the necessary steps to obtain such records; interview, where appropriate, those individuals with information concerning the family, such as parents, relatives, caretakers, neighbors, DSS social workers and other social service personnel, school personnel, day care providers, medical providers, treatment providers, former counsel, probation officers, family service officers as well as those individuals who are suggested by the client or identified through investigation or discovery as potential witnesses; contact opposing counsel to gather information about the case and the positions of the other parties; and attend all service planning, treatment and placement meetings, school-based meetings; administrative reviews and hearings and other proceedings involving the client. Committee for Public Counsel Services: Performance Standards Governing the</p>

[Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 3.1.](#)

Conduct Formal Discovery.

At a minimum, counsel's strategy should include consideration of the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admissions, and motions for mental or physical examination of a party.

Counsel shall, consistent with the client's interests and goals, and where appropriate, take all necessary steps to preserve and protect the client's rights through opposition to the discovery requests of other parties. This includes, but is not limited to, invoking applicable privileges and rights to confidentiality, raising objections on the basis of relevance, and seeking appropriate limitations on the discovery requested. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 3.2.](#)

Obtain Services for the Client and His or Her Family.

The attorney shall negotiate with DCF for the development of a service plan that meets the client's interests and needs and advances the client's goals in the litigation. In the event that DCF's proposed service plan does not meet the interests or needs of the client, counsel may, as appropriate, challenge the service plan through available administrative and judicial means. As necessary, counsel should investigate the availability of services or benefits provided by other public or private agencies or organizations and seek such services for the client. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.1.](#)

Communicate with the Court Investigator/Guardian ad Litem.

Counsel shall contact the court investigator/guardian ad litem as soon as practicable to inform him or her of the attorney's role and of the client's position; if appropriate, revoke all authorizations for the release of confidential information and oppose motions seeking access to such information.; and assist the court investigator/guardian ad litem in obtaining information that supports the client's position. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.4.](#)

File Pleadings. Prior to trial, counsel shall, as necessary, file petitions, motions, responses or objections to protect the client's rights and interests and to advance the client's position in the case. Relief requested may include, inter alia, temporary custody orders; orders concerning visitation; rulings that DSS has abused its discretion; court-ordered evaluations; funds for experts or other services necessary for representation permitted under the Indigent Court Costs Act; restraining orders; contempt for non-compliance with a court order; protective orders concerning the client's privileges and right to confidentiality; appointment of guardians ad litem; or dismissal of petitions or motions. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.5.](#)

Counsel shall retain an expert where reasonably necessary to assist counsel in preparing or presenting the case. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.7.](#)

	<p>Counsel should participate in settlement negotiations to seek the best result possible for the client consistent with the client's interests and directions to counsel. Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 7.</p>
<p>3. In Court – Active Participation in Hearings: Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</p>	<p>Right to Hearing. Counsel shall assert and protect the client's right to temporary custody (including 72-hour) hearings. The trial court may, due to scheduling difficulties, inform counsel of the need to postpone a temporary custody or 72-hour hearing. If such a continuance is inconsistent with the client's interests or goals, counsel should object to any such postponement. If necessary, counsel should consider pursuing the client's right to a timely hearing by taking an interlocutory appeal.</p> <p>Requesting continuances: In some instances, counsel may not receive notification of his or her assignment in time into other needed areas, and undertake certain obligations postdisposition. to prepare adequately to represent the client at a temporary custody hearing or to summons witnesses or documents. Should this occur, counsel should advise the client of counsel's need for additional time to prepare and, if the client consents, object to proceeding with the hearing and seek a short continuance, provided that the benefit of a continuance outweighs the prejudice of not going forward. Counsel may also need to request a continuance or reserve the client's right to a hearing if the client is unavailable due to illness or some other reason. Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 2.1.</p> <p>Preparation for Hearing. In preparation for the temporary custody (including 72-hour) hearing, (a) counsel shall: conduct an initial interview with his or her client, determine the client's position, advise the client as to the merits of the case, and develop a strategy for preparing for and conducting the hearing; (and review all pleadings filed in the case, any reports of suspected abuse or neglect which led DCF to petition the court for legal custody, and all documents to be submitted as evidence at the hearing. Additionally, counsel shall, if applicable and to the extent practicable: review other portions of the client's DCF file, any pleadings filed in other child welfare cases involving the client, and any other relevant records; if consistent with the client's interests and goals, identify relatives, family friends, or other persons who are potential placement or custody options, and take such steps as may be necessary to offer such persons to DSS and/or to the court for placement or custody determinations; and if consistent with the client's interests and goals, identify and interview potential witnesses, prepare such witnesses for the hearing, and subpoena documents and/or witnesses to appear at court for the hearing. Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 2.2.</p> <p>Conduct of Hearing. To the extent consistent with the client's interests and goals as determined pursuant to these Performance Standards, counsel shall, at the temporary custody (including 72-hour) hearing: file any and all appropriate motions and legal memoranda; present and cross examine witnesses, and provide evidence in support of the client's position; make any and all appropriate evidentiary objections and offers of proof, so as to preserve the record on appeal; and take any and all other necessary and appropriate actions to advocate for the client's interests and goals. Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 2.3.</p>

Visitation. At each stage of the proceeding, counsel shall assert the client's rights to, or interests in, parent-child, sibling or other visitation. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.2.](#)

Custody and Placement. At each stage of the proceeding, counsel shall zealously advocate for placement or custodial options consistent with the client's goals and objectives, and should be prepared to present placement alternatives with family members or friends. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.3.](#)

PERMANENCY HEARINGS Counsel shall assert and protect the client's right to a hearing on the permanency plan In the event that the court denies or improperly limits the client's right to a permanency hearing, counsel should consider pursuit of any available avenues for relief, including but not limited to interlocutory appeal, or appeal under G.L. c. 119, § 29B. Counsel should ensure that the appellate record is preserved by making detailed and specific offers of proof through, among other methods, affidavits or oral or written proffers. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 5.1.](#)

Preparation for Hearing In preparation for the permanency hearing, consistent with the client's interests and goals, counsel shall: obtain and review the permanency plan for the child filed by the petitioner, and determine the extent to which the plan is consistent with the client's position; if the proposed plan is inconsistent with the client's position, file a timely objection; conduct any necessary discovery; determine what evidence to present; prepare for the direct and cross examinations of witnesses; and take all necessary and appropriate steps to ensure the availability and presentation of evidence at the hearing, including but not limited to the issuance of subpoenas and the filing of motions. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 5.2.](#)

Conduct of Hearing During the hearing, counsel shall act as a zealous advocate. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 5.3.](#)

Trial preparation standards can be found here: [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 6.](#)

Collateral Representation Counsel may represent the child at DCF fair hearings that directly affect the resolution of an open court case for which the lawyer was appointed. (Counsel can bill CAFL for this work and no special permission is needed.) Prior authorization is required to bill for representation of the client in other ancillary proceedings that directly affect the resolution of the appointed case, such as divorce, custody, guardianship, or paternity matters. [Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 1.3\(e\).](#)

<p>4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders</p>	<p>On any petition filed in any court under this section, the department or the parents, person having legal custody, probation officer or guardian of a child or the counsel or guardian ad litem for a child may petition the court not more than once every 6 months for a review and redetermination of the current needs of such child whose case has come before the court.... Mass. Gen. Laws Ann. ch. 119, § 26(5)(c).</p> <p>...At the permanency hearing the court shall determine the permanent plan for the child. In making such determination the court shall consult with the child, in an age-appropriate manner, the proposed permanency plan for the child. Such consultation may be through a report by the Department Social Worker, the Child's attorney or a guardian ad litem whose has discussed with the child the proposed permanent plan. A child age 16 and over may attend the permanency hearing review. The Department shall use reasonable efforts to achieve the permanency plan determined by the court. The Department may concurrently use reasonable efforts to achieve an alternative permanent plan if the permanent plan determined by the court is reunification with the family and the goal established through the Department's permanency planning conference is other than reunification. 110 CMR 6.11.</p>
<p>5. Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>Interlocutory Appeals</p> <p>(a) Petition to Single Justice. Trial counsel shall, where appropriate, seek interlocutory relief from an order of the trial court by filing a petition to a single justice or through other appellate means. Counsel shall provide CAFL administrative staff with a copy of the petition and any supporting memoranda. . . .</p> <p>(b) Appeal of Single Justice Order. Trial counsel shall, where appropriate, appeal an adverse order by the single justice to the full appellate court. In the event counsel elects to appeal an order of a single justice, or if the single justice reports his or her decision to the full appellate court, counsel shall promptly (i) contact CAFL for the assignment of certified appellate counsel to work on the appeal, and (ii) provide CAFL with copies of all papers filed in the appellate court that were not already provided under section (a) above. Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 4.6.</p> <p>POST-JUDGMENT REPRESENTATION</p> <p>Counsel shall inform the client of the court's decision and act in accordance with Standard 1.5. Counsel shall discuss with the client his or her post-judgment and appellate options regarding an adverse decision from the court. Counsel shall continue to represent the client in accordance with Standard 1.3. Committee for Public Counsel Services: Performance Standards Governing the Representation of Children & Parents in Child Welfare Proceedings, Chapter 4, Rule 8.</p> <p>Appellate counsel shall comply in all respects with the Massachusetts Rules of Appellate Procedure. Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter V, Rule 1(d).</p> <p>2. Role and Duties of Appellate Counsel.</p> <p>(a) Diligence, Zeal and Loyalty. The role of appellate counsel is to diligently and zealously defend and protect the client's rights and interests through the appellate process on all matters within the scope of counsel's assignment. It is counsel's duty to give the client undivided loyalty free of any conflicts of interest and to maintain the confidentiality of all client communications. Counsel's commitment to these duties and obligations must remain unaffected by the client's indigent</p>

status, the client's background or the nature of the case.

(b) Representation at Trial and Appellate Levels.

(i) Private Counsel. Private counsel who has represented a parent or child at the trial level and is certified or permitted to take appellate assignments may represent the client on appeal only if that client is an appellee for appellate purposes. In extraordinary circumstances, the CAFL Director of Appellate Panel may permit private counsel, upon written request, to continue to represent a client on appeal who is an appellant for appellate purposes.

(ii) Staff Counsel. Staff appellate counsel may represent a parent or child on appeal who was represented at the trial level by staff trial counsel, regardless of whether the client is an appellee or an appellant. However, if the client is an appellant and asks to be represented by private appellate counsel on appeal or raises the issue of ineffective assistance of counsel, staff counsel will contact the CAFL Director of Appellate Panel, who will assign the case to private counsel. In addition, if staff appellate counsel is assigned to represent an appellant and determines, based on his or her independent review of the record, that staff trial counsel may have ineffectively assisted the client, staff appellate counsel shall contact the CAFL Director of Appellate Panel, who will assign the case to private counsel.

(iii) Children's Change of Position. If private or staff counsel continues to represent a child client on appeal and the child changes his or her position from that advanced at trial, counsel shall contact the relevant Director. If impending deadlines render the assignment of successor counsel impracticable and the relevant Director permits counsel to continue to represent the child client, then the representation shall continue. Otherwise, counsel shall withdraw and the CAFL Director of Appellate Panel shall assign new counsel for the child client. [Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter V, Rule 2.](#)

Duties of Appellate Counsel: - Immediately upon receipt of the notice of assignment, appellate counsel shall:

(a) file an appearance in the appropriate court;

(b) communicate with the client, if appropriate for the client's age, to inform the client of the assignment;

(c) communicate with trial counsel to inform him or her of the assignment, provide him or her with copies of appellate counsel's appearance and request information and materials necessary for the appeal; and

(d) determine whether a stay of the judgment or decree of the trial court should be sought pending appeal. In the event a stay should be sought, counsel shall immediately seek one in accordance with Mass. R. App. P. 6. [Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter V, Rule 3.](#)

5. Initial Meeting with Client. Appellate counsel shall make all reasonable efforts to meet with the parent or child client within one week after receipt of the assignment. At such initial meeting, appellate counsel shall determine the client's position and goals in the appeal. Appellate counsel shall independently determine his or her client's position and goals on appeal as set forth in Trial Standards 1.6 and 1.7, and should be aware of the potential for conflicts as set forth in Trial Standard 1.4. Appellate counsel is not bound by a substituted judgment determination of the client's position and goals made by trial counsel. Appellate counsel shall, however, consult trial counsel in this regard in an effort to jointly determine the client's position on appeal. If appellate counsel and trial counsel cannot agree on a substituted judgment position on behalf of the client, they shall together contact and consult the relevant Director. If a private attorney represents the client at trial and a staff attorney represents the client on appeal, or if a staff attorney represents the client at trial and a private attorney represents the client on appeal, together they may contact either Director. The requirement for meeting the client

	<p>may only be waived with approval of the relevant Director.</p> <p>6. Ongoing Communications with Client. Appellate counsel shall confer with the client, if appropriate for the client’s age, and with trial counsel, if appropriate, about the issues that may be raised in the client’s appeal. Appellate counsel shall keep the client informed of all significant developments in the client’s case. Appellate counsel shall respond in a timely manner to all communications from the client, provided that such communications are of a reasonable volume and at reasonable intervals. Where the client is a child, appellate counsel shall communicate with the child to the extent necessary to maintain a normal attorney-client relationship with the child. See Trial Standards 1.5 and 1.6.</p> <p>7. Communications with Trial Counsel. Appellate counsel shall inform the client’s trial counsel of all significant developments in the case, including proposed settlement of the case, trial motions (as set forth in section 9 below), dismissal of the appeal, docketing of the appeal in the appellate court and the resolution of the appeal. Appellate counsel shall cooperate with trial counsel in furtherance of the client’s position and goals in the proceeding. See Trial Standard 7.1(d). Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter V, Rules 5-7.</p> <p>10. Issues on Appeal.</p> <p>(a) Meritorious Issues. Appellate counsel shall pursue all meritorious issues for appeal unless there are tactical reasons for not doing so and the client consents.</p> <p>(b) Ineffective Assistance/New Trial Motions. If appellate counsel determines that trial counsel provided ineffective assistance, and that such ineffective assistance should be raised as an issue on appeal, appellate counsel shall determine if a motion for new trial is necessary to preserve the issue for appeal. If such a motion is necessary, appellate counsel shall file a motion for new trial in the trial court or, if the appeal has already been docketed, seek leave of the single justice to file a motion for new trial in the trial court. Appellate counsel shall send a copy of the motion for new trial to the relevant Director.</p> <p>(c) Moffett Briefs. If the client insists that appellate counsel brief a contention that, in the judgment of appellate counsel, cannot be supported by any rational argument, appellate counsel shall (a) immediately inform and consult the relevant Director; (b) inform the client of the client’s rights with respect to such contention pursuant to Commonwealth v. Moffett, 383 Mass. 201 (1981), and Care and Protection of Valerie, 403 Mass. 317 (1988); (c) provide the client with a copy of the Moffett and Valerie opinions; and (d) if the client thereafter wishes to invoke his or her Moffett rights with respect to such contention, comply in all respects with the guidelines set forth in Moffett, 383 Mass. at 208-09 & n. 3. Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter V, Rules 10.</p>
<p>6. Cessation of Representation: Contacts post representation, if any</p>	<p>19. Conclusion of Representation. Appellate counsel’s representation of the client ends as of the earlier of (a) withdrawal of the appeal; (b) dismissal of the appeal, absent appeal from such dismissal; (c) entry of an order striking appellate counsel’s appearance, absent appeal from such order; or (d) final resolution of the appeal. If the appeal results in remand for a new trial, in whole or in part, appellate counsel shall not represent the client in the trial proceedings unless (i) the client consents; (ii) appellate counsel is certified for CAFL trial representation; (iii) trial counsel consents, or the new trial is based on trial counsel’s ineffective assistance, and trial counsel is permitted by the trial court to withdraw; and (iv) the trial court appoints appellate counsel to represent the client in the trial proceedings. The Director of Appellate Panel may, in his or her</p>

	<p>discretion, re-open a Notice of Assignment of Counsel for private counsel that has been closed pursuant to this section. Committee for Public Counsel Services: Performance Standards, Governing the Representation of Clients in Child Welfare Appeals, Chapter V, Rule 19.</p> <p>If an attorney withdraws, it is the responsibility of the attorney to notify the court or CPCS of his/her withdrawal so that a new NAC may be issued to successor counsel. It is the responsibility of successor counsel to obtain a new NAC from the court or CPCS. Committee for Public Counsel Services, Assigned Counsel Manual, Policies & Procedures: Governing Billing & Compensation, Chapter 5, Rule 7a.</p> <p>In children and family law proceedings, a case at the trial level is considered concluded for billing purposes in the following circumstances:</p> <ol style="list-style-type: none"> 1. If you represent a parent or a child, upon the earliest of the following: <ol style="list-style-type: none"> a. The child is adopted; b. The child attains majority; c. The only subject child, or the client, has died; d. Counsel has withdrawn for all purposes (not for purposes of obtaining appellate counsel); e. Counsel’s appearance, or the appearance of the client, is struck, and no appeal has been filed regarding such action; f. The case is dismissed, and no appeal has been filed; g. The child is the subject of an allowed “permanent” (as opposed to temporary) guardianship petition, and no appeal has been filed; or h. A dispositional order granting “permanent” custody of the subject child to a parent or third party (but not DSS), and no appeal has been filed. Committee for Public Counsel Services, Assigned Counsel Manual, Policies & Procedures: Governing Billing & Compensation, Chapter 5, Rule 14(c)(1).
<p>7. General Representation Rules: Administrative structure is clear for appointment, support and accountability of the CR. The child’s representative is independent from the court</p>	<p>When an application for assistance stating the a child and family are in need of assistance is initiated the child shall be informed that he has a right to counsel at all hearings, and if said child is not able to retain counsel, the court shall appoint counsel for said child. Mass. Gen. Laws Ann. ch. 119, § 39F.</p> <p>A Notice of Assignment of Counsel (NAC) is issued by the court or by CPCS directly for each case in which CPCS provides representation. (See Chapter I of this Manual for CPCS Scope of Services.) A copy of the NAC is also provided to the client (and to CPCS if issued by the court). Each NAC includes a number that is unique to that assignment. For “C” NACs, even if your assignment information is not yet on file, you can and should submit E-Bills timely to avoid the statutory penalties for late bills. (See Section 12). Committee for Public Counsel Services, Assigned Counsel Manual, Policies & Procedures: Governing Billing & Compensation, Chapter 5, Rule 7a.</p> <p>Children and Family Law (CAFL) Representation at the Trial Level (Care and Protection, CHINS and Termination of Parental Rights Petitions)</p> <p>Attorneys who wish to accept assignments from the Trial Court in care and protection, CHINS, and termination of parental rights cases must</p> <p>(1) apply for admission to the Children and Family Law (CAFL) trial panel;</p>

(2) successfully complete all required trainings;
(3) work with a mentor assigned by CAFL; and
(4) attend eight hours of CAFL-approved continuing legal education each fiscal year. Attorneys who wish to accept assignments from the Probate Court in certain guardianship of minor proceedings under the Uniform Probate Code, must meet additional requirements outlined below.

a. Application Procedure Attorneys seeking certification to accept CAFL trial level assignments must submit an application for the CAFL trial panel certification program. Applications are available on the CPCS web site (www.publiccounsel.net). Preference is given to attorneys with an established practice, experience working with families, and litigation skills. Attorneys will be notified if they are accepted into the training program.

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c. Assignment of Cases The CAFL Division provides the Juvenile, District, and Probate Courts with lists of CAFL-certified trial attorneys who wish to accept assignments in particular courts. Courts make assignments from these lists.

d. Assignment Requirements To maintain certification, attorneys must regularly accept appointments to represent parents and children. Attorneys who do not satisfy this requirement may be removed from the panel at the discretion of the CAFL Trial Panel Director.

e. Provisional Certification The CAFL Division assigns mentors to attorneys who satisfactorily complete the certification training. Attorneys are provisionally certified during the period of their mentorship. Provisionally-certified attorneys must work cooperatively with their assigned mentors. Mentors will update the CAFL Trial Panel Director about the work of each of their attorneys throughout the mentoring period. The CAFL Trial Panel Director determines when the mentorship ends. If the Trial Panel Director determines that the provisionally- certified attorney no longer requires a mentor, the attorney will be fully certified and permitted to take additional trial court assignments without mentor supervision. At any time during the provisionally-certified attorney's mentorship, the Trial Panel Director may:

- i. graduate the attorney from the mentor program;
- ii. remove the attorney's certification to take new CAFL trial court assignments;
- iii. remove the attorney from the panel and have his/her cases reassigned; or
- iv. place caseload restrictions or impose other conditions on the attorney.

f. Performance Requirements By accepting assignments in the Trial Court in CAFL cases, attorneys agree to comply with all applicable CPCS Performance Standards. The Standards are contained in Chapter 4 of this manual and are available online at www.publiccounsel.net. Attorneys who accept CAFL trial assignments must represent their clients at all trial proceedings. Trial counsel is responsible for appellate proceedings until the CAFL Division assigns appellate counsel and appellate counsel enters an appearance. The CAFL Trial Panel Director may, at his or her discretion and when in the interests of a client, require an attorney to file a Motion to Withdraw and request the appointment of successor counsel. [Committee for Public Counsel Services: Assigned Counsel Manual Policies and Procedures, Chapter 3: Rule V\(B\)\(1\).](#)

Children & Family Law (CAFL) Representation at the Appellate Level (Care and Protection, CHINS, Termination of Parental Rights, and Guardianship Petitions)
Attorneys who wish to accept CAFL appellate assignments must

- (1) apply for admission to the Children and Family Law (CAFL) appellate panel;
- (2) successfully complete all required trainings;
- (3) work with a mentor assigned by CAFL; and

	<p>(4) attend eight hours of CAFL-approved continuing legal education each fiscal year.</p> <p>a. Application Procedure Attorneys seeking certification to accept CAFL appellate assignments must submit an application for the CAFL appellate certification program. Applications are available on the CPCS web site (www.publiccounsel.net). Applicants must have the following minimum qualifications:</p> <p>i. Demonstrated proficiency in legal research and writing; and</p> <p>ii. At least one of the following:</p> <p>I. Two years of child welfare trial experience;</p> <p>II. Primary authorship of two or more appellate briefs in other subjects;</p> <p>III. A recent appellate clerkship, substantial editing experience for a law journal, or publication of a law journal article.</p> <p>Applicants must send to the CAFL Certification Coordinator a completed application, a resume, two legal writing samples, and two references from individuals who have knowledge of the applicant’s qualifications, character, integrity, thoroughness, and research and writing abilities. Attorneys will be notified if they are accepted into the training program.</p> <p>...</p> <p>c. Assignment Requirements To maintain certification, attorneys must accept at least one CAFL appellate appointment during the fiscal year of the initial certification training. Thereafter, attorneys must accept at least one CAFL appellate appointment every three fiscal years. To maintain certification, attorneys must accept appointments to represent parents and children. Attorneys who do not satisfy these requirements may be removed from the panel at the discretion of the CAFL Director of Appeals.</p> <p>d. Provisional Certification The CAFL Division assigns mentors to attorneys who satisfactorily complete the certification training. Attorneys are provisionally certified during the period of their mentorship. Provisionally certified attorneys must work cooperatively with their assigned mentors. For each appellate assignment, the provisionally-certified attorney will send the mentor copies of the transcripts, exhibits and key pleadings. The mentor will review these materials to help the provisionally-certified attorney identify appellate issues and research strategy. The mentor will also edit drafts of briefs prior to submission, authorize the filing of the brief, help the provisionally- certified attorney prepare for oral argument, and help the provisionally-certified attorney address other issues related to the appeal. The CAFL Director of Appeals determines when the mentorship ends. If the Director of Appeals determines that the provisionally- certified attorney no longer requires a mentor, the attorney will be fully certified and permitted to take additional appellate assignments without mentor supervision. At any time during the provisionally-certified attorney’s mentorship, the Director of Appeals may remove that attorney’s certification to take CAFL appellate assignments.</p> <p>e. Performance Requirements By accepting assignments for CAFL appeals, attorneys agree to comply with all CAFL trial and appellate level CPCS Performance Standards. The Standards are contained in Chapter 4 of this manual and are available online at www.publiccounsel.net. Attorneys must submit copies of all briefs filed to the Children and Family Law Division. If the case is closed before briefing, the attorney must notify the Children and Family Law Division of the reason the assignment is closed. The CAFL Director of Appeals may, at his or her discretion and when in interests of a client, require an attorney to file a Motion to Withdraw and/or remove an appellate assignment from an appellate attorney.</p> <p>Committee for Public Counsel Services: Assigned Counsel Manual Policies and Procedures, Chapter 3: Rule V(B)(4).</p>
<p>8. Lawyer Training: Child representative trained, on-going training provided, new</p>	<p>Children and Family Law (CAFL) Representation at the Trial Level (Care and Protection, CHINS and Termination of Parental Rights Petitions)</p> <p>b. Training Requirements Initial Certification: Attorneys accepted into the training program must attend a five-day seminar,</p>

attorneys provided senior lawyer mentorship.

“Children and Family Law Trial Panel Certification Training Program.” Applicants with significant trial experience may apply for a waiver of the trial skills portion of the training which takes place during the last two days of training. The program is administered through Massachusetts Continuing Legal Education (MCLE) and is offered two or more times each year. Newly-certified CAFL trial panel attorneys must attend a 4- hour seminar, “Medical Treatment Decisions for Children in DCF Custody,” administered by CPCS, within two years of the completion of the Certification training. This seminar is offered once a year.

Annual Requirements: Trial panel attorneys must complete 8 hours of CAFL-approved continuing legal education each fiscal year. The fiscal year begins on July 1 and concludes on June 30. Trial panel attorneys are required to satisfy the annual continuing education requirement beginning in the fiscal year after they successfully complete the CAFL Trial Panel Certification Training Program. Continuing legal education is available at CAFL-sponsored trainings throughout the Commonwealth, MCLE, the CPCS Annual Training, and other approved seminars. A list of approved seminars is available on the CPCS web site, www.publiccounsel.net. To obtain approval for attending a program that is not on the list, attorneys must submit a request for approval (including a comprehensive description of the program, its length and a syllabus describing its contents and faculty) to the CAFL Training Director. Attorneys are urged to seek approval prior to attending such programs. [Committee for Public Counsel Services: Assigned Counsel Manual Policies and Procedures, Chapter 3: Rule V\(B\)\(1\)](#).

Children & Family Law (CAFL) Representation at the Appellate Level (Care and Protection, CHINS, Termination of Parental Rights, and Guardianship Petitions)

b. Training Requirements Initial Certification: Attorneys accepted into the program who are already certified to take trial-level CAFL appointments must attend the one-day course, “Appealing CPCS Children and Family Law Cases.” Attorneys who are not currently certified to take trial-level CAFL appointments must attend the one-day course, “Appealing CPCS Children and Family Law Cases” and the three-day substantive-law portion of the trial panel certification course. The two-day trial skills portion of the trial panel certification course is not required. The CAFL appellate panel certification training is held annually.

Annual Requirements: Appellate panel attorneys must complete 8 hours of CAFL-approved continuing legal education each fiscal year. The fiscal year begins on July 1 and concludes on June 30. Appellate panel attorneys are required to satisfy the annual continuing education requirement beginning in the fiscal year subsequent to their completion of the CAFL Appellate Panel Certification Training Program.

Continuing legal education is available at CAFL-sponsored trainings throughout the Commonwealth, MCLE, the CPCS Annual Training, and other approved seminars. A list of approved seminars is available on the CPCS web site, www.publiccounsel.net. To obtain approval for attending a program that is not on the list, attorneys must submit a request for approval (including a comprehensive description of the program, its length and a syllabus describing its contents and faculty) to the CAFL Training Director. Attorneys are urged to seek approval prior to attending such programs. [Committee for Public Counsel Services: Assigned Counsel Manual Policies and Procedures, Chapter 3: Rule V\(B\)\(4\)](#).

<p>9. Lawyer Compensation: Adequate and timely compensation, reimbursement provided for expenses.</p>	<p>The court shall determine whether the parent or guardian of a child stated to require assistance is indigent. If the court determines that the parent or guardian is not indigent, the court shall assess a \$300 fee against the parent or guardian to pay for the cost of appointed counsel. If the parent is determined to be indigent but is still able to contribute toward the payment of some of said costs, the court shall order the parent to pay a reasonable amount toward the cost of appointed counsel. Mass. Gen. Laws Ann. ch. 119, § 39F.</p> <p>Attorneys appointed in care and protection cases are paid at the rate of \$50 per hour. Committee for Public Counsel Services, Assigned Counsel Manual, Policies & Procedures: Governing Billing & Compensation, Chapter 5, Rule 33.</p> <p>It is each attorney's responsibility to keep track of his or her billable hours. Attorneys who reach the billable hour cap prior to the end of the fiscal year shall not accept new case assignments for the remainder of the current fiscal year. Attorneys who exceed the billable hour limit will not be compensated for hours billed in excess of the annual cap. To avoid prejudice to clients, and to fulfill one's ethical responsibility to provide fully competent representation to every client, attorneys must continue to zealously advocate on behalf of all clients for whom assignments have been accepted, despite having exceeded the cap on billable hours. Committee for Public Counsel Services, Assigned Counsel Manual, Policies & Procedures: Governing Billing & Compensation, Chapter 5, Rule 17.</p>
<p>10. Caseload Levels: Caseloads are of a manageable size.</p>	<p>Caseload Limits Care and Protection case assignments are limited to 75 open cases at any one time and all CAFL cases to 100 open cases at a time. Committee for Public Counsel Services, Assigned Counsel Manual, Policies & Procedures: Governing Billing & Compensation, Rule 16.</p>