

Teamwork Makes the Dream Work


Understanding the Unique Roles of the Child
Advocate and Child's Attorney in Dependency Cases

Bailey Zydek, Office of Civil Legal Aid
Morgan Chaput, Pierce County Juvenile Court
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Agenda

- Current state of child advocacy
- Upcoming changes to child advocacy
- Primer on children's attorneys
- Primer on volunteer advocates and guardians ad litem
- Hypothetical scenarios




Current State of Child Advocacy in Washington {GALs }

- RCW 13.34.030(12)
 - A volunteer advocate is considered a “guardian ad litem” for the purposes of the RCWs
- RCW 13.34.100(1)
 - The court *shall* appoint a Guardian ad Litem absent good cause
 - If the child is represented by an attorney, the requirement of a GAL is “deemed satisfied”




Current State of Child Advocacy in Washington {GALs}

- RCW 13.34.100(5)
 - A guardian ad litem shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings
 - A guardian ad litem shall receive copies of all documents and notice of all hearings




Current State of Child Advocacy in Washington {GALs}

- RCW 13.34.105
 - Investigate, collect relevant information about a child's situation, and report to the court factual information regarding the best interests of the child
 - Meet with, interview, or observe the child and report to the court any views or positions expressed by the child on issues pending before the court
 - May make recommendations regarding the best interests of the child
 - Represent and be an advocate for the best interests of the child




Current State of Child Advocacy in Washington {GALs}

- Other guides for GALs and Advocates:
 - Guardian ad Litem Rules
 - Confidentiality
 - Conflicts of interest
 - Perform duties in a timely manner
 - Local Superior Court Rules
 - Case Law




Current State of Child Advocacy in Washington {Attorneys}

- RCW 13.34.105
 - GAL and Social Worker must inform the child, if the child is 12 or older, of his or her right to request an attorney and to ask whether the child wants an attorney
 - Report the child's position to the Court
 - Report the GAL's independent recommendation as to whether appointment of counsel is in the child's best interest



Current State of Child Advocacy in Washington {Attorneys}

- Court will evaluate appointment of counsel for child using the *Kent* factors, including:
 - Interests of the involved parties
 - Additional decisional accuracy
 - Available resources
 - Express wishes versus stated interest
 - Age of the child
 - Child's position on a proposed decision



Current State of Child Advocacy in Washington {Attorneys}

- Attorney appointed for
 - Youth who has been legally free for 6 months
 - Youth entering into Extended Foster Care
 - Incorporated into new RCW 13.34.212



Upcoming Changes to Child Advocacy in Washington



Understanding the New “Right to Counsel” Law

RCW 13.34.212:

What it does and when it will go into effect

RCW

13.34.212:

What it does

- Guarantees the right to counsel for all children 8-17 years old alleged to be or adjudicated as dependent
 - Attorneys assigned at or before the initial shelter care hearing for all children 8-17 years old
 - Children 8-17 in existing dependencies who do not already have counsel will also be appointed counsel under this law.
- Guarantees the right to counsel for all children 0-17 upon the filing of a termination petition
 - Children 0-7 who do not already have attorneys will be assigned an attorney once a petition for termination is filed.
 - Children who already have counsel at the time of filing will continue to have that same attorney for the termination proceeding.

RCW 13.34.212: What it does

- Establishes requirement that attorneys for dependent children render “standards based” legal representation
 - Standards of representation for dependent children first established by the Statewide Children’s Representation Workgroup in 2010. Currently under review.
 - Prior to RCW 13.34.212: no statewide requirement that attorneys for non-legally free children practice in accordance with the Statewide Children’s Representation Workgroup’s published standards. No formal mechanism for enforcing/overseeing. Created disparities in outcomes and quality of representation across state.
- Formal training requirements and caseload limits are included as part of the standards by which assigned attorneys must abide.

RCW
13.34.212:
How it came
to be

- Expanding mandatory representation for children in foster care has been years in the making
- Child representation study previously mandated by legislature and implemented/overseen by the Office of Civil Legal Aid
 - Data collected from 2017-2019
 - Provided counsel for ALL children in dependencies
 - Grant & Lewis subject counties; Douglas & Whatcom control counties
- Data collected showed meaningful impact on case outcomes:
 - Higher rates of reunification and/or placement with relatives
 - Less placement disruptions

RCW 13.34.212: Implementation

- Washington State Office of Civil Legal Aid tasked with implementing this legislation and overseeing operations once implemented.
 - Prior to RCW 13.34.212: county-based system of managing and overseeing counsel for children.
- Continuity of counsel prioritized



RCW 13.34.212: Implementation


- Phased in over the next six years
 - First 3 counties operational by July 1, 2022.
 - Tentatively: Yakima, Lewis, and Grant
 - Finalizing January 1, 2027
- Schedule designed to address racial disproportionality and disparate practices across counties.
 - Counties with highest rates of racial disproportionality; lacking a system for appointing attorneys for children; and/or who have higher rates of dependent children compared to the rest of the state take priority.



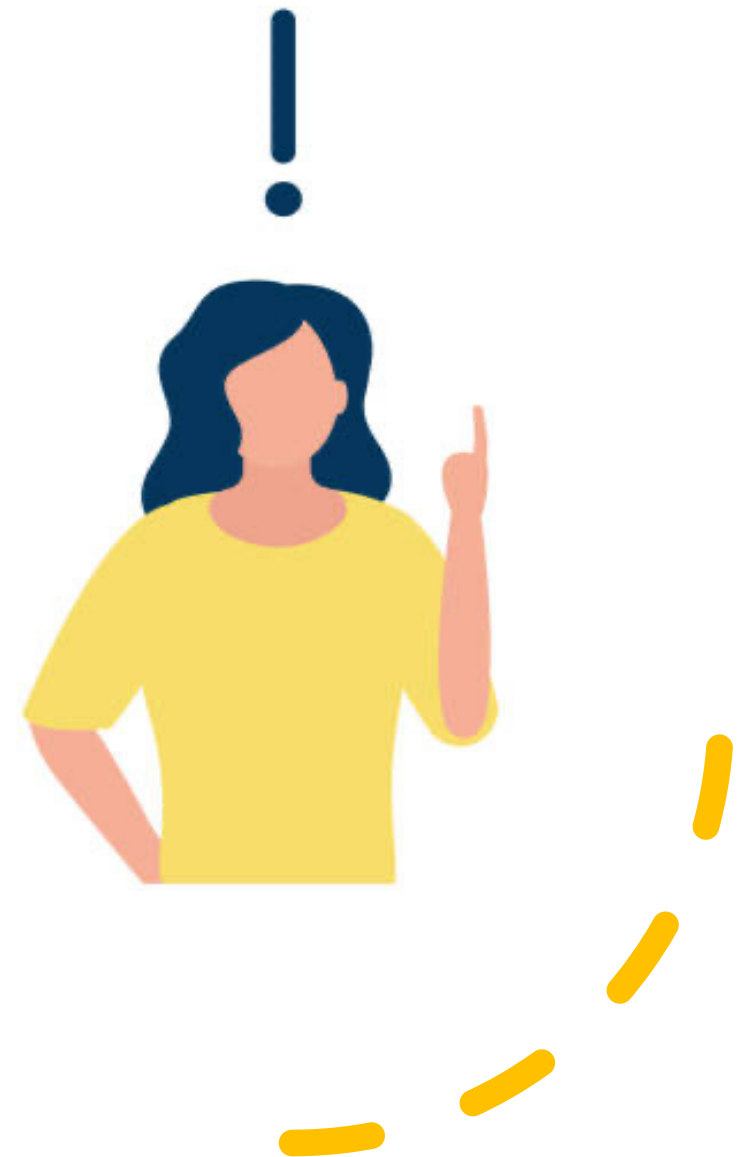
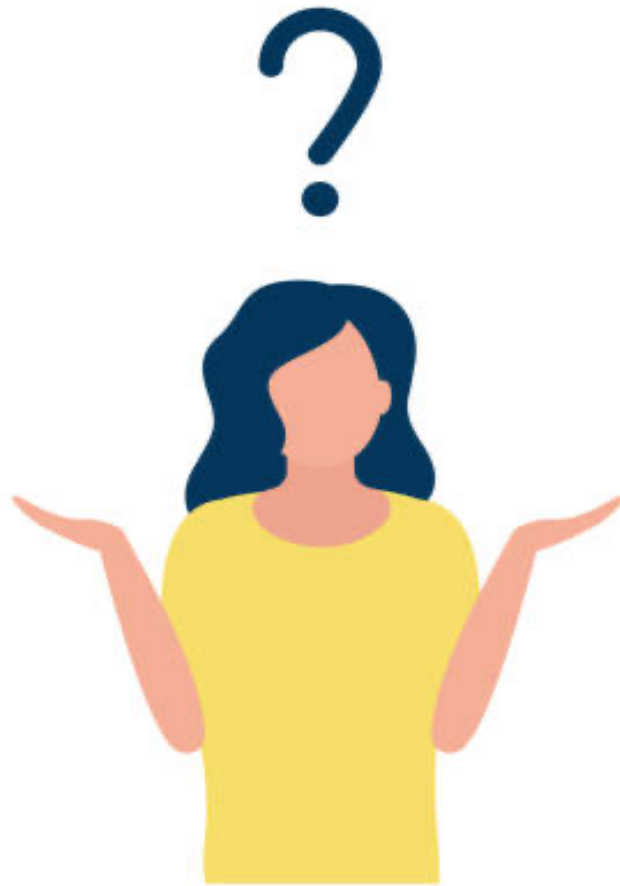
The Role of the Child's Attorney

Why we do what we do & how attorneys
and CAAs can work together!

Being A Practicing Attorney

- Schooling:
 - BA—4 years, any field
 - JD—3 years; all the same degree, no majors/minors
 - Examinations:
 - Bar Exam—two and half day long multiple choice and written exam
 - Ethics Exam—3 hours multiple choice
 - Washington State Law Component—open book, ??? Hours
 - Washington State Bar Association CLE requirements (45 every 3 years)
 - Public Defense CLE requirements (varies)
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Understanding Why We Do What We Do



The Rules We Follow

- Attorneys are governed by the Rules of Professional Conduct (RPC)
 - All attorneys licensed to practice in Washington State are subject to the RPCs
- RPCs dictate that attorneys for children render *stated interest* representation, not best interest
 - This is an *ethical* obligation that forms the very foundation of the attorney-client relationship.
 - “Best interest” representation is unethical and would threaten an attorney’s ability to practice law in Washington State.

Key RPCs

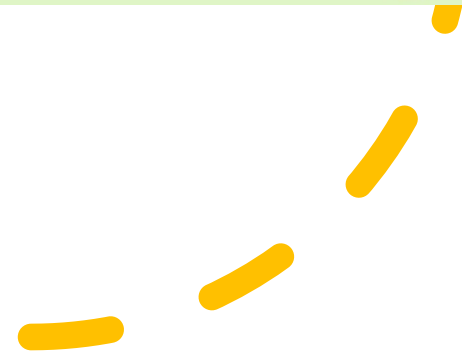
- RPC 1.2 Scope of Representation and Allocation of Authority Between Attorney and Client
- RPC 1.4 Communication
- RPC 1.6 Confidentiality



Exceptions to RPC 1.6: Confidentiality

- Selected relevant exceptions:
 - *Shall* reveal information to prevent reasonably certain death or substantial bodily harm
 - *May* reveal information to prevent the client from committing a crime
 - *May* reveal information to prevent, mitigate, or rectify substantial injury to the financial interests or property of another
- Fun Fact: breaking confidentiality to prevent death or substantial bodily harm used to be a permissive exception (“may”), not mandatory (“shall”)!

But what about
the 0-7 year
olds?



Guidance

- Attorneys rely on guidance from RPC 1.14 (concerning clients with “diminished capacity”) & the standards of legal representation for children published by the Statewide Children’s Representation Workgroup
 - Workgroup legislatively mandated and commissioned by the Washington State Supreme Court’s Commission on Children in Foster Care

Standards of Representation for Very Young Children

- Standard of practice shifts from “stated interest” to “legal interest” for a pre-verbal or very young children
- From the current Standards:
 - “If the child is pre-verbal or unable to communicate a stated interest, the determination of the child’s **legal interests** should be based on the laws that are related to the purpose of the proceedings, the child’s specific needs and preferences, the goal of expeditious resolution of the case so that the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available.”
- HB 1219 requires a new Statewide Children’s Representation Workgroup to revisit and update, as necessary, best practices for “legal interest” representation



Volunteer Advocates & Guardians ad Litem

- We are volunteers
- We go through extensive and ongoing training to be a child advocate
- We often don't have an attorney to assist us with our cases
- We have really strict confidentiality obligations when it comes to sharing information
 - Guardian ad Litem Rules



Volunteer Advocates & Guardians ad Litem

- We have different access to resources than you might
- We visit the child(ren) very frequently
- We don't mind coordinating our visits for the same time as your visits
- We are tasked with arguing for what is in a child's best interest and have the ability to change our opinion based on new information




Volunteer Advocates & Guardians ad Litem


- We have often been on the case since the beginning and are the “case historian”
- We are happy to work with you when what the child wants is in the child’s best interest


CAAs and
Attorneys
Working
Together




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Teamwork Makes the Dream Work!

- When our positions align, we become a powerfully persuasive voice for the children
 - CAAs can address family issues that a child's attorney might not be able to authoritatively speak on
 - E.g. The relative safety of other children in the home
 - CAAs can testify in court
 - CAAs may be able to speak to represented parties and gather information in ways children's attorneys cannot (as easily)
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Teamwork Makes the Dream Work!

- CAAs may have a pre-established relationship with the children we represent
 - CAAs can be a wealth of information
 - CAAs are often connected to funding resources and enrichment opportunities that attorneys for children are often not
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Hypothetical Scenario

You represent a 16 year old girl living in a suitable other placement. You fought hard to get her out of licensed care and into this placement. Lately, she has complained to you about how the father of the home has been drinking and that it makes her “uncomfortable.” When you ask for more details, all she can say is “I dunno. He just gives me the creeps!” Your client insists that she does not feel unsafe in the home, just uncomfortable when he drinks. She is adamant that she wants to remain in this home until she is 18.

Hypothetical Scenario: the child attorney approach

How does an attorney approach this situation?

- Try to get as much information from client as possible—is she reasonably certain to suffer substantial bodily harm if you keep this information to yourself? How vulnerable is she with respect to the father’s “creepy” behavior?
- Ask client what action, if any, she would like the attorney to take on her behalf to address her concerns
- Offer courses of action the client or attorney could take to address the client’s concerns *and the likely consequences of those actions*
- If client wants this information kept confidential, attorney is likely bound by RPC 1.6 to keep it confidential under these facts

Hypothetical Scenario: the CAA approach

How does an Advocate approach this situation?

- Try to get more information from the child to get a better sense of what is going on in the home
- Consult with a supervisor to see if the disclosure triggers mandatory reporting requirement
- Advise the social worker (and child's attorney!) of the client's disclosure, assess the risk and discuss possible responses
- Suggest services, supports, or conditions of continued placement
- Advise the court of your concerns

Hypothetical Scenario 2

- Casey is an 11-year-old boy. He is legally free and represented by an attorney. He also has a volunteer Court Appointed Advocate.
- Casey has lived with the same paternal Aunt for the past 3 years. There are no safety concerns with Casey in the home.
- Casey wants to live with his Aunt.
- Aunt has failed her homestudy, due to concerns around her health and her ability to manage Casey's therapy appointments.
- DCYF will be filing a Motion to place Casey into foster care.



Hypothetical Scenario 2

- What are your immediate thoughts?



Hypothetical Scenario 2

- What are some things that a volunteer Court Appointed Advocate could do?
- What are some things that a child's attorney could do?



Hypothetical Scenario 2

- Things a child's attorney could do:
 - Advocate at an FTDM for Casey to remain with Aunt
 - Preemptive *Motion to Preserve Placement*
 - Oppose State's Motion to Amend Placement
 - Recommend in-home service
 - Assist with securing a private homestudy



Hypothetical Scenario 2

- Things a volunteer Court Appointed Advocate could do:
 - Advocate at an FTDM for Casey to remain with Aunt
 - Preemptive *Motion to Preserve Placement*
 - Oppose State's Motion to Amend Placement
 - Recommend in-home services to remedy concerns

Questions

- Bailey Zydek, Office of Civil Legal Aid
 - bailey.zydek@ocla.wa.gov
- Morgan Chaput, Pierce County Juvenile Court
 - morganchaput@piercecountywa.gov