

STANDARDS FOR THE PERFORMANCE OF ATTORNEYS APPOINTED PURSUANT TO VIRGINIA CODE § 16.1-266 TO REPRESENT PARENTS AND GUARDIANS IN CHILD DEPENDENCY CASES

Adopted October 21, 2025¹

Introduction

These standards apply to attorneys appointed as counsel to represent a parent or guardian of a child in a child dependency case as specified in Virginia Code § 16.1-266.1, including cases in the juvenile and domestic relations district courts and circuit courts on appeal, in which the child is alleged to have been abused or neglected; alleged to be at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; the subject of a petition for approval of an entrustment agreement; the subject of a petition for relief of custody; placed in foster care and is the subject of a foster care or permanency plan; and the subject of a petition for termination of residual parental rights. These standards augment the standards for the qualification of attorneys appointed pursuant to Virginia Code § 16.1-266 to represent parents and guardians in child dependency cases.

The Standards

The Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, hereby sets forth the following standards for the performance of attorneys appointed pursuant to Virginia Code § 16.1-266 to represent parents and guardians in child dependency cases.

The attorney shall:²

- A. Satisfy and maintain all qualification requirements before accepting a court appointment to represent a client in a child dependency case. Acquire a working knowledge of relevant federal and state laws, regulations, policies, and rules.
- B. Establish and maintain a working relationship with the client and provide the client with contact information. Prepare the client in advance for all hearings, meetings, and other case events.

¹ The STANDARDS FOR THE PERFORMANCE OF ATTORNEYS APPOINTED PURSUANT TO VIRGINIA CODE § 16.1-266 TO REPRESENT PARENTS AND GUARDIANS IN CHILD DEPENDENCY CASES are effective July 1, 2026.

² When used in these standards, “shall” designates a broad, fundamental, truly binding professional obligation. In contrast, when used in these standards, “should” typically points to obligations which are expected and not merely aspirational, but could be an obligation which might not apply in all instances or might simply be a recommended path to the satisfaction of a “shall.” “Should” often functions in the comments as an explanation of how to fulfill mandates.

- C. Independently investigate at every stage of the proceeding as is necessary and reasonable. Communicate as needed with other attorneys, professionals, and others in the case to protect or advance the client's interests.
- D. Avoid delays in court proceedings unless warranted by the interests of the client. Explain the statutory timeline applicable to the case.
- E. Diligently advocate for the client.
- F. Understand and protect the client's right to information and decision-making while the child is placed out of the home.
- G. Take reasonable steps to communicate with incarcerated clients and to locate and identify absent or unknown clients. Establish a plan for the client's participation in case-related events.
- H. Inform the client about the possible financial implications of the child dependency case.
- I. Consider the client's background and advocate in a manner that is culturally aware and with due regard to the client's unique circumstances. Advocate for appropriate supports for the client with the child welfare agency and court.
- J. Review and explain the requirements of the court orders with the client.
- K. Timely file necessary post-hearing motions and file appeals if the client decides to appeal.

**Commentary on STANDARDS FOR THE PERFORMANCE OF ATTORNEYS APPOINTED PURSUANT
TO VIRGINIA CODE § 16.1-266 TO REPRESENT PARENTS AND GUARDIANS
IN CHILD DEPENDENCY CASES**

The attorney shall:

- A. Satisfy and maintain all qualification requirements before accepting a court appointment to represent a parent or guardian in a child dependency case. Acquire a working knowledge of relevant federal and state laws, regulations, policies, and rules.**

COMMENT: As in all areas of law, it is essential that an attorney learns the substantive law as well as local practice. A client's fundamental liberty interest in the care and custody of the client's child is at stake, and the attorney shall be adequately trained to protect this interest. The attorney shall know enough about the relevant laws to diligently advocate for the client's interests. Additionally, the attorney shall be able to apply procedural, evidentiary, and confidentiality laws and rules to protect the client's rights throughout the court proceedings.

The attorney should be familiar with all federal and state laws, policies, and procedures regarding child dependency, including the Indian Child Welfare Act. In addition, the attorney should be familiar with other applicable laws to recognize when they are relevant to a case.

- B. Establish and maintain a working relationship with the client and provide the client with contact information. Prepare the client in advance for all hearings, meetings, and other case events.**

COMMENT: The attorney should ensure that the client understands how to contact the attorney and the importance of staying in contact with the attorney on an ongoing basis. The attorney should meet with the client regularly throughout the case. The attorney should also discuss the importance of the client keeping the attorney informed of changes in addresses, phone numbers, and client location. The attorney and client should establish reliable communication, which may involve phone contact, email, text messages, or other forms of communication.

The attorney should empower the client to direct the representation and make informed decisions. The attorney should consult with the client to develop a case theory and strategy, which may include kinship resources, and prepare the client in advance for participation in all hearings, meetings, and other case events. The attorney should assure the client that the attorney serves the client's interests and that their role is different from the other attorneys.

- C. Independently investigate at every stage of the proceeding as is necessary and reasonable. Communicate as needed with other attorneys, professionals, and others in the case to protect or advance the client's interests.**

COMMENT: The attorney should not rely solely on what the agency reports about the client but should seek updates and reports from service providers working with the child or the

family and should help the client obtain information about the child's safety, health, education, and well-being when the client desires.

Communication with others is necessary to ensure the client is involved with key aspects of the child's life. This requires open and ongoing communication with attorneys of record, self-represented parties, and any guardian ad litem. The attorney is subject to rules of professional conduct governing contact with represented and unrepresented parties. Similarly, the attorney should communicate with caseworkers, any court appointed special advocate, and service providers to learn about the client's progress and their views of the case.

The attorney should have open lines of communication with any attorneys representing the client in related matters, such as housing, criminal, family abuse protective order, private custody, or administrative proceedings to ensure that court orders and administrative determinations do not conflict with the client's goals and interests in the child dependency case.

**D. Avoid delays in court proceedings unless warranted by the interests of the client.
Explain the statutory timeline applicable to the case.**

COMMENT: The attorney should avoid requesting a continuance unless there is an emergency, extenuating circumstance, or a continuance necessarily furthers the interests of the client. If a continuance is unavoidable, the attorney should request a continuance for the shortest period possible, consistent with the client's interests. The attorney should object to continuance requests by the other parties if a continuance would harm the client.

Child dependency cases are subject to federal and state timelines that ensure a child is not in foster care any longer than absolutely necessary. Delaying a case often increases the time a family is separated and can reduce the likelihood of reunification. Appearing in court often motivates parties to engage with services and fulfill court order requirements.

E. Diligently advocate for the client.

COMMENT: The attorney should explain all legal aspects of the case and provide advice on the advantages and disadvantages of different options. The attorney should ensure that the client has copies of all relevant case documents.

When appropriate and consistent with the client's interests and goals, the attorney should use discovery methods in accordance with Virginia law and should preserve and protect the client's rights by opposing discovery requests of other parties.

The attorney should make appropriate motions and evidentiary objections to advance and protect the client's position. When possible, the attorney should participate with the client in multidisciplinary case planning meetings such as family partnership meetings and treatment team meetings, and advocate for appropriate services and high-quality family interaction.

The attorney should confer with the client regularly concerning any difficulties the client is experiencing while trying to comply with the court order or service plan. When the agency is not offering appropriate services to meet the needs of the client to promote reunification, the attorney should take appropriate steps to mitigate concerns.

F. Understand and protect the client's right to information and decision-making while the child is placed out of the home.

COMMENT: The client has obligations and rights while a child is in foster care. Often a client does not understand that the client has a right to help make decisions for, or to have information about, the child. The attorney should counsel the client and help the client understand and carry out the client's rights and responsibilities. Advocacy may be necessary to ensure the client can remain involved with key aspects of the child's life.

The attorney should explain to the client the decision-making authority that remains with the client and the authority of the child welfare agency while the child is in foster care. Where decision-making rights remain, the attorney should assist the client in exercising the client's rights to continue to make decisions regarding the child. If necessary, the attorney should intervene with the child welfare agency to ensure the client has decision-making opportunities. This may include seeking court orders.

G. Take reasonable steps to communicate with incarcerated clients and to locate and identify absent or unknown clients. Establish a plan for the client's participation in case-related events.

COMMENT: Incarcerated Clients: Upon being appointed to represent an incarcerated client, the attorney should take reasonable steps to locate the client. The attorney should be aware of the reasons for the incarceration and counsel the client on the effects of incarceration in the case. The attorney should help the client identify potential kinship placements and advocate for placement with relatives or kin who may provide care of the child while the client is incarcerated.

The attorney should encourage an incarcerated client to obtain any relevant and available services while incarcerated, such as substance use disorder treatment, parenting skills, or job training. The attorney should advocate for reasonable efforts for the client. When appropriate and permitted, the attorney should encourage an incarcerated client to have regular contact with the client's child while the client is incarcerated.

Absent or Unknown Clients: The attorney should make reasonable attempts to locate, identify, and communicate with absent or unknown clients to formulate the positions the attorney should take at hearings and to decide what information the attorney may present to the child welfare agency and the court.

The attorney should make arrangements to have an absent or incarcerated client appear in court in person, remotely, or by telephone, if available. The attorney should explain to a client who is hesitant to appear that the case will proceed without the client's presence and should explain the potential consequences of that choice.

H. Inform the client about possible financial implications of the child dependency case.

COMMENT: If the child is placed in foster care, a support obligation may be established to be paid by one or both of the parents. The court may order the client to reimburse the Commonwealth the cost of the guardian ad litem if the court determines that the client is able to pay.

I. Consider the client's background and advocate in a manner that is culturally aware and with due regard to the client's unique circumstances. Advocate for appropriate supports for the client with the child welfare agency and court.

COMMENT: The attorney should learn about and understand the client's background and consider how it might impact the client's case. For example, the attorney should consider the potential impact of the socioeconomic status and sociodemographic characteristics of the client and advocate accordingly.

When communicating with the client, the attorney should attempt to use an interpreter or other language service when the attorney is not fluent in the same language as the client, and the attorney should attempt to use an appropriate service when a client has a sensory impairment. The attorney should advocate for the use of such services when other professionals in the case are interacting with the client.

An attorney should consider whether a client's health condition interferes with the client's ability to make decisions about the case and advocate accordingly.

J. Review and explain the requirements of the court orders with the client.

COMMENT: The attorney should take reasonable steps to ensure the client understands the court orders and counsel the client on the requirements of the order and the consequences of noncompliance.

K. Timely file necessary post-hearing motions and file appeals if the client decides to appeal.

COMMENT: The attorney shall inform the client of appeal rights. The attorney should counsel the client on the likelihood of a successful appeal and the potential consequences of an appeal. The attorney should always handle the case and preserve the record with the assumption the case may be appealed.

The attorney shall carefully review obligations under Virginia law and timely file all appeal documents. The attorney shall keep the client informed of the status of the appeal. The client should be informed of the date, time, and place of any scheduled hearings of the appeal.

The attorney shall promptly communicate the result of the appeal and its implications to the client immediately upon learning of the decision, and the attorney shall provide the client with a copy of the appellate decision.