

Representing The Child In Dependency Proceedings

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The Child's Right to Representation

- Child entitled to appointed counsel unless child is competent to represent self
 - W&I Code § 317(c)
 - California Rules of Court (CRC), rule 5.660(b)
- Appointed counsel must be competent as defined by rules
 - W&IC § 317.5(a)
 - Rule 5.660(d)

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Rule 5.660(d): Competency Defined

- Attorney in good standing with State Bar
- Training in juvenile dependency law
- Demonstrates adequate forensic skills
- Knowledge and comprehension of:
 - Statutory scheme
 - Purposes and goals of dependency proceedings
 - Specific statutes, rules, and cases
 - Procedures for filing writ petitions

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Competency Defined

- Rules of Professional Conduct (RPC)
Rule 1.1:
 - (a) A lawyer shall not intentionally, reck-
lessly, with gross negligence, *or* repeatedly
fail to perform legal services with
competence.
 - (b) For purposes of this rule, “competence”
in any legal service shall mean to apply the
 - (i) *learning and skill*, and
 - (ii) mental, emotional, and *physical ability*
reasonably necessary for the performance of
such service

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Enforcement of Competency Requirements

- Responsibility of each court
 - Each court must adopt local rules
 - Rule 5.660(a)
- Each court must have local rules for
considering complaints about compe-
tency of child’s counsel
 - Rule 5.660(a)(2)(F)

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Training and Education

- Eight hours before appointment or
sufficient recent experience to demon-
strate competency
- Eight hours every three years
 - Rule 5.660(d)(3)

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Training and Education Subject Matter

- Dependency law: statutes, rules of court, cases, trial skills, writ procedures
 - Rule 5.660(d)(1) & (3)
- Child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, reasonable efforts
 - Rule 5.660(d)(3)

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Duties of Child's Counsel-- Representation

- § 317(d): Counsel shall represent child at the detention hearing and all subsequent proceedings before the juvenile court, unless relieved by court upon substitution of other counsel or for cause.
 - (Marsden/IAC)
- 317(e)(1): Counsel is charged in general with representation of "child's interests."
 - NMD: Counsel is charged with representing "wishes" except when conflicts with protection or safety of NMD.

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Duties of Child's Counsel— Investigation/Participation

- § 317(e)(2): Counsel *shall* make or cause to be made any further investigation deemed reasonably necessary in good faith to ascertain the facts, including interviewing witnesses, and *shall* examine and cross-examine witnesses.
- Counsel may introduce own witnesses, make recommendations to the court concerning the *child's welfare*, and participate further to degree necessary to *adequately represent* the child.

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Duties of Child's Counsel— Investigate/Collaborate/Timelines

- Rule 5.660(d)(4). Child's attorney is expected to:
 - *Contact social workers* and other professionals associated with child's case
 - *i.e., investigate*
 - Work with other counsel and the court to resolve disputed aspects of case without contested hearing (if possible)
 - Adhere to mandated timelines
 - Continuances disfavored, § 352

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Duties of Child's Counsel— Client Contact

- § 317(e)(3): If child is four or older, counsel *shall* interview the child to determine the child's wishes and assess the child's well-being, and *shall* advise the court of the *child's wishes*.

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Duties of Child's Counsel-- Client Contact

- RPC, rule 1.4
- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which disclosure or the client's informed consent is required by these rules or the State Bar Act;
 - (2) reasonably* consult with the client about the means by which to accomplish the client's objectives in the representation;

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Duties of Child's Counsel-- Client Contact

- RPC, rule 1.4 (con't). A lawyer shall:
 - (a)(3) keep the client reasonably* informed about significant developments relating to the representation, *including promptly complying with reasonable* requests for information* and copies of significant documents when necessary to keep the client so informed; and
 - (a)(4) advise the client about any relevant limitation on the lawyer's conduct when the lawyer knows* that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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Duties of Child's Counsel-- Client Contact

- RPC, rule 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.*
- RPC, rule 1.0.1: Reasonable" or "reasonably" when used in relation to conduct by a lawyer means the *conduct of a reasonably prudent and competent lawyer.*

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Duties of Child's Counsel— Client Contact

- Attorneys or their agents are expected to *meet regularly with child client*, regardless of age or child's ability to communicate verbally
 - Rule 5.660(d)(4)
- Dilemma: Statute requires attorney to interview child—not an agent

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Duties of Child's Counsel— Client Contact

- *Attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship*
- Rule 5.660(d)(4)

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Duties of Child's Counsel-- Limits on Advocacy

- Counsel shall not advocate for return of the child if, *to the best of counsel's knowledge*, return would conflict with the protection and safety of the child.
- § 317(e)(2)
- Dilemma: Taking a position adverse to client (conflict of interest / revealing confidential attorney-client information)?
- Solution?: Tell court of client's wishes. Remain silent on whether child should be returned.

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Duties of Child's Counsel— Limits on Advocacy

- Counsel not required to assume responsibilities of social worker and not expected to provide nonlegal services.
- § 317(e)(3)
- Rule 5.660(d)(4): nonlegal services means:
 - Services unrelated to child's legal representation

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Duties of Child's Counsel-- Protecting Other *Legal* Interests

- Counsel shall investigate the interests of the child beyond the scope of the case, and report to court other interests of child that may need to be protected by institution of other proceedings.
 - § 317(e)(2)
- Examples:
 - Tort claims
 - SSI/Social Security eligibility
 - Educational/disability advocacy
 - Special Juvenile Immigrant Status (SJIS)

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Duties of Child's Counsel-- Protecting Right to Attend Hearing

- § 317.5: Children are parties to their own dependency proceedings
- § 349(a), (c): Children have right to be present and participate in own dependency proceedings (no age limit)
- § 349(a), (b): Dependent children have right to notice, right to attend, and right to be represented by counsel at hearings of siblings who are also dependents

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Duties of Child's Counsel-- Protecting Right to Attend Hearing

- § 349(d): If child is 10 or older, court must inquire why child is not present. If no notice or was not given opportunity to be present, even though child wished to be present, court must continue to allow presence, unless court finds not in best interests of child.
- Counsel has duty to ascertain if child wishes to be present in advance of hearing and notify SW if child wishes to attend
- Object if child is not present unless personal knowledge that child does not wish to be there.

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Duties of Child's Counsel- Attorney/Client Privilege

- Counsel not permitted to violate child's attorney-client privilege.
 - § 317(e)(5)
- RPC, rule 1.6: Attorney may not reveal confidential information without informed consent of the client
 - Dilemma: Is child capable of giving informed consent?
 - Case-by case

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Duties of Child's Counsel- Attorney/Client Privilege

- B&P Code § 6068(e)(1): It is duty of every attorney "to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."
- Dilemma: What if attorney's agent is a mandated CANRA (PC § 11165 et seq.) reporter (e.g., a social worker)?

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Duties of Child's Counsel- Attorney/Client Privilege

- RPC, rule 1.8.2: A lawyer shall not use a client's information protected by Business and Professions Code section 6068, subdivision (e)(1) to the disadvantage of the client unless the client gives informed consent, except as permitted by these rules or the State Bar Act.

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Duties of Child's Counsel--

Protecting Evidentiary Privileges

- § 317(f): Counsel is holder of privileges for child unless child of sufficient age and maturity to assert own privileges. Child over 12 presumed to be competent to assert or waive own privileges.
- Psychotherapist-Patient, Physician-Patient, Clergy-Penitent
- Counsel must assert privilege on behalf of child of sufficient age unless child waives
- Court determines child's competency to waive.

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Duties of Child's Counsel--

Avoid Conflicts of Interest

- RPC, Rule 1.7: (a) A lawyer shall not . . . represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not . . . represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.

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Duties of Child's Counsel—

Avoid Conflicts of Interest

- Potential conflicts of interest
 - Prior representation of parent (family law, guardianship, DV, prior dependency case)
 - Public law office exception: OK if sufficient separation from attorney who represented parent in prior proceeding to protect client confidences. Burden on law office to show.
 - *In re Charlissee C.* (2008) 45 Cal.4th 145
 - Siblings
 - Rule 5.660(c)
 - Child's wishes vs. best interests

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Duties of Child's Counsel- Avoid Conflicts of Interest

- Rule 5.660(c)(a)(B) Attorney must decline to represent one or more siblings if, at outset of proceedings:
 - Actual conflict exists
 - Circumstances specific to case present reasonable likelihood that an actual conflict will arise among siblings

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Duties of Child's Counsel- Avoid Conflicts of Interest

- Rule 5.660(c)(1)(C) Standing alone, no automatic conflict of interest if:
 - Siblings are of different ages
 - Siblings have different parents
 - Conflict is theoretical or abstract
 - Some siblings more likely than others to be adopted
 - Siblings may have different permanent plans

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Duties of Child's Counsel— Avoid Conflicts of Interest

- Attorney representing siblings has on-going duty to evaluate interests of each sibling and assess whether there is a conflict.
 - Rule 5.660(c)(2)
- Standing alone, no actual conflict if:
 - Five factors listed above,
 - Siblings express conflicting desires or objectives, or
 - Siblings give differing or contradictory accounts of events, *but issues are not material to the case.*

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Duties of Child's Counsel— Avoid Conflicts of Interest

- If attorney believes that there is an actual conflict in representing siblings, attorney must take any action necessary to ensure that siblings' interests are not prejudiced and must:
 - Notify court of conflict
 - Request to withdraw from representation of some or all of the siblings
- May continue to represent some siblings if
 - Received no confidential information from sibling(s) no longer representing
 - Continued representation of sibling(s) will not prejudice other sibling(s)
 - Rule 5.660(c)(2)(F)

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Duties of Child's Counsel— Providing Contact Info

- Attorney for child must provide contact information to caregiver no later than 10 days after receipt of caregiver's name, address, and telephone number
- Attorney must also provide contact info to child if child is 10 or older
 - § 16010.6(d), rule 5.660(d)(5)
- Agency required to provide atty with new placement info within 1 business day of placement decision; 10 days in advance if placement change will separate siblings.
 - § 16010.6(a), (b)

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Duties of Child's Counsel— Avoid Excessive Caseload

- Counsel must not maintain a maximum full-time caseload that is greater than that which allows counsel to meet competency requirements
 - Rule 5.660(d)(6)
- Appointed counsel shall have a caseload and training that ensures adequate representation of the child
- Judicial Council to adopt caseload standards.
 - § 317(c), rule 5.660(d)(6)

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Caseload Standards

- Never adopted: Cost \$50+ million
- Caseload Study (2002)
 - Basic Practice Standard: 141 Cases
 - Optimal Practice Standard: 77 Cases
- Caseload Report (2008)
 - Half-time investigator: 161
 - 3/4 time investigator: 188
 - Full-time investigator: 228
 - <http://www.courts.ca.gov/documents/DependencyCounselCaseloadStandards2008.pdf>

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The Best Interests vs. Child's Wishes Debate

- W&IC § 317(e): The counsel for the child shall be charged in general with the representation of the "child's interests."
- W&IC § 317(c): A primary responsibility of child's counsel "shall be to advocate for the protection, safety, and physical and emotional well-being of the child."
- W&IC § 317(e)(2): Counsel "shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child."

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The ABA Standards of Representation

- Abuse and Neglect Standards
 - Adopted 1996.
 - http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf
 - "Child's Attorney" must "provide legal services for" the child. The child's attorney "owes the same duties of loyalty, confidentiality, and competent representation as is due an adult client."
 - Standard A-1
 - Child's attorney must "represent the child's expressed preference and follow the child's direction throughout the course of litigation."
 - Standard B-4

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The ABA Standards of Representation

- Where child unable to express preference, attorney must make a good faith effort to determine child's wishes or request appointment of a GAL
- Where child does not express preference, the child's attorney should determine and advocate for child's "legal interests."
- If expressed interest would be "seriously injurious to the child" (as opposed to being contrary to what lawyer believes is in child's best interests) attorney should request appointment of GAL and continue to represent expressed preference unless child's position is prohibited by law or without factual foundation.
- Standard B-4(1)-(3)

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ABA Standards (NACC Revised)

- Standard B-4 Revised
 - Client-directed representation does not include "robotic allegiance" to each client directive.
 - Representation involves attorney's counseling function and good communication with client.
 - Goal is outcome that serves the client, mutually arrived upon, after exploring available options.
 - Where client-directed model does not serve client, attorney may use substituted judgment or ask for appointment of GAL depending on circumstances. Revised Standard B-4(1)
 - https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/Standards/ABA_Standards_NACC_Revised.pdf

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ABA Standards (NACC Revised)

- Standard B-4 Revised (con't)
 - If child cannot meaningfully participate in formulation of position, attorney may substitute judgment and formulate position that serves child's interests using objective criteria, rather than attorney's life experience or instinct. Revised Standard B-4(2).
Criteria:
 - Full investigation of child's circumstances
 - Assessment of child at time of determination
 - Examine options in light of two child welfare paradigms: psychological parent and family network
 - Get assistance from experts, medical, mental health, educational, social work, etc.
 - Possible for child to move from incompetent to competent during course of representation.

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ABA Standards (NACC Revised)

- Standard B-4 Revised (con't)
 - If child's preference would be "seriously injurious," and counseling function does not change child's mind,
 - Request appointment of GAL
 - Continue to represent child's expressed preference unless prohibited by law or without factual foundation.
 - Revised Standard B-4(4)

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California Case Law

- *In re Josiah Z.* (2005) 36 Cal.4th 664
 - Uses words "best interests" in terms of *client's* best interests; not limited to children:
 - The attorney has "power to seek dismissal of appeal based on the attorney's *and* the client's evaluation of the client's best interests."
 - "The client's best interests remain the lodestar for counsel. *When the client is a child, the rule is no different.*"
 - "Though an attorney must zealously advocate for her client, she cannot unilaterally appeal or bring a motion to dismiss. A motion to dismiss *requires the authorization of the child*, or if the child is incapable of giving authorization", the CAPTA GAL must authorize it.

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California Case Law

- *In re Josiah Z.* (2005) 36 Cal.4th 664 (con't)
 - "At some point, notwithstanding their formal legal incompetence, children become capable of giving informed consent to key decisions affecting their circumstances. Whether that point has been reached is generally a factual question." (fn 7 citing ABA standards.)
 - Given the ages of the children, if the CAPTA GAL refused to authorize dismissal, "*counsel would have the option of either zealously arguing case or seeking to withdraw.*"
 - Recognized that appointment of separate CAPTA GAL may be appropriate where conflict between attorney role and GAL role. (fn 8.)

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California Case Law

- *In re Zamer G.* (2007) 153 Cal.4th 1253
 - Holds that attorney's job is to represent best interests of child
 - Cites *Josiah Z.* without analysis for proposition
 - Cites *In re Julie W.* (1999) 69 Cal.App.4th 41
 - That case said arguing against child client's wishes ok--relying on provision prohibiting attorney from arguing for return where would be detrimental
 - Cites older cases decided when children were not parties to dependency proceedings

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California Case Law

- *In re Kristen B.* (2008) 163 Cal.4th 1535
 - Holds that attorney's job is to represent best interests of child
 - Cites *Zamer G.* without analysis

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CAPTA GAL Status Does Not Resolve the Issue

- Duties of CAPTA GAL, rule 5.662(d)
 - Obtain first-hand clear understanding of situation and needs of child
 - To make recommendations concerning best interests of child "as appropriate under (e) and (f)"
- The specific duties and responsibilities of the child's attorney appointed to serve as CAPTA GAL are set forth in § 317(e) and rule 5.660, rule 5.662(e)
- *Josiah Z.* noted that may be conflict between two roles and that separate CAPTA GAL may be appropriate

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Considerations Favoring Direct Representation

- W&IC § 317(e)
 - Counsel's duties include investigation, interviewing witnesses, examining and cross-examining witnesses, introducing own witnesses, and participating in proceedings to degree necessary to "adequately represent the child."
 - Contra: Make recommendations concerning the welfare of the child
- Attorney not expected to perform social work and not expected to provide "non-legal" services

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Considerations Favoring Direct Representation

- Rule 5.660(d)(4)
 - Meet regularly with clients, including children, regardless of age or ability to communicate
 - Contact social workers and other professionals
 - Work with other counsel and court to resolve contested issues without hearing, if possible
 - Adhere to mandated timelines
 - Have sufficient contact with child to maintain "adequate and professional attorney-client" relationship
 - Not expected to perform services unrelated to "legal representation."

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Considerations Favoring Direct Representation

- Child is a party, W&IC § 317.5
- All children have right to be present at hearings, § 349(a)
- Child has right to be *represented* by counsel at hearing, § 349(b)
- All children who attend hearing have right to address court and "participate in the hearing" § 349(c)
- Children 10 and older are expected to be present unless choose not to attend, § 349(d)
- Children 10 and older have right to be served with pleadings and reports, § 270.1 et seq.
- Minor has right to make statement to court concerning placement, § 399

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Considerations Favoring Direct Representation

- As party, child has right to procedural due process
- Court must inform parents and child of procedural due process rights at first hearing, rule 5.534(j)
- Children 12 and older must be personally informed of provisions of section 388 and right to file 388 petition
- Due process in dependency cases focuses on the rights to notice and to be heard, *In re Matthew P.* (1999) 71 Cal.App.4th 841

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Considerations Favoring Direct Representation

- Child may have substantive due process liberty interests at stake
- Children have fundamental right to belong to a family unit, to be protected from abuse and neglect, and to have a placement that is permanent and stable. *In re Marilyn H.* (1993) 5 Cal.4th 295
- Dependency proceedings may adversely impact child's physical liberty. *Santosky v. Kramer* (1982) 455 U.S. 745, 765 [fn 15]

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Considerations Favoring Direct Representation

- In 2011, the ABA adopted a *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*
- https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf

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Considerations Favoring Direct Representation

- *Model Act* provides for
- Appointment of a lawyer for every child who
 - is bound by the rules of professional conduct, including confidentiality and zealous advocacy, and
 - has access to the child's confidential information regarding education, health, mental health, social services, delinquency, and other information relevant to the proceeding.

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Considerations Favoring Direct Representation--*Model Act*

- Child's lawyer's duties include:
 - Interviewing and counseling the child
 - Preparing the case
 - Negotiating and participating in hearings and settlement discussions
 - Meeting with the child at least once per quarter
 - Consulting with the best interests advocate (e.g., CASA) when appropriate and consistent with confidentiality and the child's legal interests
 - Representing the child in all proceedings before the court
 - Eliciting the child's wishes in a developmentally appropriate manner

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Considerations Favoring Direct Representation--*Model Act*

- Includes guidance on diminished capacity:
- Allows states to use a rebuttable presumption (e.g., 10 years of age) to establish child's ability to direct the representation
 - A child disagreeing with the lawyer or insisting on position that lawyer deems unwise is not diminished capacity
- Diminished capacity is determined using objective criteria
- Diminished capacity can be incremental and issue specific; child directs representation on other issues

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Considerations Favoring Direct Representation

- *RPC, Rule 1.2, effective 11/1/18*
 - A lawyer shall *abide by a client's decisions concerning the objectives of representation* and, as required by rule 1.4, shall reasonably*consult with the client as to the means by which they are to be pursued.
 - New rule—no counterpart in old rules
 - *No exception if client is a child*

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Duties of Child's Counsel

- Independent investigation of the facts
- Communication with clients
 - Can't represent wishes or best interests without knowing child
- Determine the child's wishes and legal interests in proceeding
 - Counsel the child regarding possible positions.
 - Where child is unable to formulate position, develop position using objective criteria
- Avoid conflict between client wishes and best interests
 - Consider asking for separate CAPTA GAL in appropriate cases.

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Duties of Child's Counsel

- Actively advocate for child's interests in the courtroom—take a position!
 - Be a lawyer. Present evidence, cross-examine witnesses, write a trial brief, etc.
 - Make objections, protect record in case of appeal
 - Prepare child who must testify, seek appropriate protective measures
- Bring to court's attention other legal interests of child that may need protection
- Keep court and parties focused on needs of the child

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Specific Issues for Child's Counsel--Parentage

- Early determination
 - § 316.2. Paternity inquiry at detention
- Due diligence, Rule 5.635
 - attempt to serve alleged father(s)?
 - Served with JV-505?
 - JV-500 sent to child support services?
- Who does child see as parent?
- Public policy favors at least two parents for each child

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Specific Issues for Child's Counsel--ICWA

- Child is person most adversely affected by later reversal because of improper or lack of notice
- Insist that copies of notices and all documents filed with court showing mailing and tribe responses be served on all counsel--now required by § 224.3(a)
- Object early and often if notice is not being done correctly
- If child is eligible for membership, explore whether child should be enrolled in tribe
 - Gaming \$\$\$
 - College scholarships

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Specific Issues for Child's Counsel

- Continuances, § 352
 - Continuances disfavored and not supposed to be granted if contrary to interests of the child
 - Keep timelines in mind and object to continuances that will adversely affect timely resolution for child

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Specific Issues for Child's Counsel

- **Relative placement**
 - Ask child about relatives child knows and likes
 - Require agency to complete relative searches/vetting by disposition. § 309(e)
 - Request a due diligence hearing § 358.1(b)(2)
 - Ask court to make relative placement decisions when there is a conflict concerning relative placement
 - § 361.3

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Specific Issues for Child's Counsel--Visitation

- Does visitation schedule meet needs of child?
 - Younger children need more frequent visits to develop or maintain emotional connection with parent
- If visitation will be detrimental, why is there no by-pass recommendation?
 - No visitation=no reunification
 - If no grounds for by-pass, how can child be protected?
 - E.g., visits only in family therapy

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Specific Issues for Child's Counsel—Sibling Contact

- Should siblings be together? § 16002
- What efforts are being made to place them together?
- If not placed together, what kind of contact and how much contact does child need?
- Is contact appropriate?
- Is contact happening?

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Specific Issues for Child's Counsel—Concurrent Planning

- Is there a specific concurrent plan?
- Is placement one that can provide permanency and meet child's needs on a long-term basis if parents don't reunify?
 - Required to be in dispo report
 - § 358.1(b) and (i)
- Is placement one that you would approve of as a permanent placement?
 - PAP after six months, § 366.26(n)
- Multiple placement changes are bad for children

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Specific Issues for Child's Counsel—Service Plan

- Adequately address problems that brought child into system?
- Appropriate services for child in timely manner?
 - Inappropriate requirements for child?
- Monitor for compliance
 - Delays in getting child into therapy
 - Visitation problems

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Specific Issues for Child's Counsel--Placement

- Is placement appropriate and able to meet child's needs?
- Where does child want to be placed?
- Is placement one that you would approve of as a permanent placement?
 - PAP after six months, § 366.26(n)
- Placement considerations require personal knowledge of the placement
 - Visit child in placement at least once--regularly is better.

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Specific Issues for Child's Counsel--Findings

- Are proposed findings correct findings for that hearing?
- Are required findings missing?
 - Detriment finding
 - Reasonable services finding
- Are "routine findings" supported by evidence in the SW report or evidence at trial?

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Specific Issues for Child's Counsel—STRTP Placement

- No group home placement is supposed to last for more than a year. § 16010.8
- § 361.2(e). Placements for ages 6-12 limited to six months; an additional six months requires approval of agency director or deputy
 - Child under six--120 day limit
 - Federal dollars at risk
- Placement of child 6-12 at detention OK if court finds need for evaluation; must have case plan showing need to continue beyond 60 days
§ 319.3

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Specific Issues for Child's Counsel—ICPC

- Regular process can be too slow
- Rule 5.616(h). Ask for expedited placement process if:
 - Proposed placement is stepparent, relative, or guardian and
 - Dependency due to unexpected incarceration, incapacitation, or death of parent or guardian;
 - Child is 4 or younger or part of sibling group including a child who is 4 or younger
 - Child or sibling has substantial relationship with proposed placement; or
 - Child is in an emergency placement

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Specific Issues for Child's Counsel—Placement Changes

- Has SW developed and attempted to implement a placement preservation plan? § 16010.7
 - Assumes no court order or imminent risk
 - Include caregiver in development of plan?
 - Consult with CFT?
 - Did SW give 14-days advance notice of move to parent(s), caregiver, child's atty, child 10 or older?
 - Child's attorney is child's representative for purposes of agreement to move between hours of 9 pm and 7 am

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Specific Issues for Child's Counsel—Placement Changes

- Out-of County Placements. § 361.2(h), rule 5.614
- Did SW give 14 days advance written notice to parent(s), caregiver, child's attorney, child 10 or older, CASA, tribe, and Indian custodian?
 - Notice not required if CFT determined placement change is in child's best interests, and no one entitled to notice objects
- File objection w/i 7 days (JV-556) to prevent move until court can decide the issue

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Specific Issues for Child's Counsel—Educational Stability

- Child's right to attend school of origin
 - Ed. Code § 48853.5(e), Rule 5.561(e)
- Notice to court, attorney, educational representative within 24 hours of determination to make a placement change that would result in removal from school of origin
- Attorney must discuss with child and ed. rep. and may request a hearing within 2 days of notice (JV-539) if move is disputed

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Specific Issues for Child's Counsel--Educational Stability

- If hearing requested, child may not be moved from school pending hearing
 - Rule 5.651(e)(3)
 - Social worker report required within two days of filing of objection
 - Court must determine whether proposed placement meets requirements of rule and Ed. Code and whether in best interests of child
 - Rule 5.651(f)

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Specific Issues for Child's Counsel--Educational Stability

- § 16501(a)(5). If proposed placement change will result in change of schools, there must be a CFT and child's educational representative, if someone other than parent, must be invited to CFT
- Staying in or returning to school of origin must be discussed as part of placement preservation/placement change discussion
- If educational representative determines that remaining or returning to school of origin in child's best interests, CFT must make a transportation plan for child to attend school of origin and extracurricular activities

Specific Issues for Child's Counsel--Psychotropic Meds

- Read the application immediately
- Talk to client and, if possible, M.D. if new medication
- File appropriate objections if unsure about safety or efficacy of new meds or client objects
- Check with client about side-effects after a few weeks

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Specific Issues for Child's Counsel—Privileges § 317(f)

- Assert privileges unless child waives
- Child may waive if of sufficient age and maturity
 - Court must make determination
 - Child over 12 presumed capable of waiving unless clear and convincing evidence to contrary
- If child lacks capacity to waive, counsel is holder of privilege
- Clarify with therapist that SW is not holder of the privilege and child's right to confidentiality remains unless waived by a competent child

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Specific Issues for Child's Counsel—Rights in Foster Care

- § 16001.9. Foster Care Bill of Rights
 - Completely revised effective January 1, 2020 to specify *rights* of children in foster care
 - Previously stated as legislative policy
 - Many new rights not included in previous version of the statute
 - Be aware of and prepared to seek enforcement if agency, caregiver, service providers, etc. are violating client rights
 - Client rights may be vehicle for supporting other arguments on behalf of child.
 - In best interests if violates rights?

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Specific Issues for Child's Counsel—Adoptability

- Likelihood of Adoption § 366.26
 - Purpose of TPR is not to punish bad parents
 - Appropriate only if adoption probable
 - Was an adoption worker involved in writing the assessment report? § 366.21(i)(1)
 - Does report thoroughly discuss all of the required elements?
 - Object if report insufficient or incomplete
 - If any doubt that child will be adopted soon after parental rights are terminated, consider seeking 180 day continuance, § 366.26(c)(3)

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Specific Issues for Child's Counsel—Legal Orphans

- § 366.26(i) Child has not been adopted after three years or agency has decided to “change the permanent plan” to LTFC
- Is there a relationship with parent, siblings, or other relatives or is there a chance for such a relationship if termination set aside?
- What does child want?
- Child must file the 388 petition

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Specific Issues for Child's Counsel—LTFC

- § 366.3 What efforts is agency making to make a more permanent plan?
- Is reunification with parent now a possibility?
- Are there other important adults, past or present, who might serve as guardian?
- Did anyone ask child?
 - Relatives
 - Coaches
 - Teachers

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Specific Issues for Child's Counsel--SIJS

- If undocumented child is in long-term foster care, make sure that child gets special immigrant juvenile status (SIJS) before case is dismissed
- Prepare findings and orders necessary to get child SIJS status
- Seek appointment of counsel to handle SIJS if jurisdiction does not expect/allow child's counsel to handle or require agency to pursue SIJS for the child.

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Specific Issues for Child's Counsel-TILCP

- Independent Living
 - If child is 16 or older, has child received required documents? § 391(a)
 - Does plan provide for ILSP and was child involved in making plan? § 16501.1(g)(13),(15)
 - Are services adequate?
 - College counseling, applications, FASFA document?
 - Is child participating in ILSP and, if not, why not?
 - Transportation

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Specific Issues for Child's Counsel

- Dismissal, § 391
 - Make sure nonminor has all required documents, information, and services
 - Continuing Medi-Cal in place?
 - Eligibility for SSI as an adult approved?
 - Place to live?
 - Means of support?
 - Make sure nonminor is aware of right to stay in the system until age 21
 - Make sure nonminor is aware of ability to petition to reenter the system and eligibility requirements for reentry

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Specific Issues for Child's Counsel

- Dismissal, § 391
 - Make sure nonminor is present at the hearing
 - Make sure nonminor understands JV form when s/he signs it
 - Cannot make nonminor remain a dependent if s/he does not wish to do so

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Specific Issues for Child's Counsel

- Writs & Appeals
 - Grounds for appeal of decision adverse to client?
 - Grounds for cross-appeal if other party appeals?
 - Appellate counsel for child if other party appeals?
 - Placement, including relative placement
 - Parentage
 - Sibling Placement/Contact
 - Writ petition on Post-termination placement issues, § 366.28
 - File brief on behalf of child in writ proceedings brought by others

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Duties of Child's Counsel

- Protect child's interests on appeal
 - Appeal adverse rulings
 - Consider cross-appeal when another party appeals
 - Ask for appointment of appellate counsel for child when other parties appeal, rule 5.661; JV-810
 - Cooperate with appellate counsel

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Questions?????

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