Client-Directed Representation

HOW STAKEHOLDERS CAN SUPPORT EFFECTIVE IMPLEMENTATION

OFFICE THE CHILD'S REPRESENTATIVE (OCR)

HOUSE BILL 22-1038

BY REPRESENTATIVE(S) Daugherty and Van Beber, Amabile, Bacon, Benavidez, Bernett, Bird, Boesenecker, Carver, Cutter, Duran, Esgar, Exum, Froelich, Gonzales-Gutierrez, Gray, Herod, Hooton, Jodeh, Lindsay, Lontine, Lynch, McCluskie, McCormick, Michaelson Jenet, Ortiz, Pelton, Pico, Rich, Ricks, Sandridge, Sirota, Snyder, Soper, Titone, Valdez A., Weissman, Will, Woodrow, Young;
also SENATOR(S) Moreno and Gardner, Buckner, Ginal, Gonzales, Jaquez Lewis, Kirkmeyer, Kolker, Lee, Liston, Lundeen, Pettersen, Priola, Smallwood, Woodward, Zenzinger, Fenberg.

CONCERNING CLIENT-DIRECTED LEGAL REPRESENTATION FOR YOUTH IN COURT PROCEEDINGS FOR YOUTH.

Be it enacted by the General Assembly of the State of Colorado:

Today's Presentation

Why

- Reasons for HB22-1038

What

- Nuts and Bolts of HB22-1038

How

- Effective Implementation of HB22-1038

01 January

Sun	Mon	Tue	Wed	Thu	Fry	Sat
01	02	03	04	05	06	07
08	09	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Notes

1038 goes into effect

Monday January 9th, 2023

THE WHY

Reasons for client-directed representation for youth in D&N proceedings and increased youth participation in their cases.

Why This Matters to Youth

- Youth voice in support of legislation
- Children's rights
- Procedural justice and youth "buy-in"
- Develops important skills

Other Reasons for Counsel for Youth

- Nationally recognized best practice
- Consistent with other states
- Better information for court to make decisions
- Mitigation of bias inherent in best interests

Why Age 12?

In Colorado, youth 12 and older:

- Must consent to their adoption
- Have the right to consent to or refuse appointment of a guardian
- Should be involved in meetings regarding their future
- May seek some mental health treatment without parental consent

THE WHAT

Nuts and Bolts of HB 22-1038

Summary

- Client-directed for youth 12+ (D&N only)
- Diminished Capacity and Conflicts
- Access to Information for CFY and GALs
- Party Status
- Right to Attend Court
- Developmentally Appropriate Notice
- Privilege
- Crossover youth

Client-Directed Representation

- Counsel for Youth (CFY) must be appointed
  - D&N, age 12 and older
  - Adoption/Relinquishment if related D&N
- RTC cannot be waived
- Process on open cases when youth turns 12
  - CFY automatically transitions at age 12
  - CFY notifies court
  - Court issues new appointment order within 7 days

§ 19-3-203(2), (3)

GAL
Best Interests

- Professional Duties flow to best interests of the child
- Attorney advocates for what they have determined to be in the child's best interests.
- Child's position must be stated unless directed otherwise.
- May hold therapeutic privilege (if youth or parent is not appropriate to do so)
- May be GAL in multiple case types.

Both Roles

Provide Diligent representation

Conduct independent investigation

Provide legal advocacy throughout all stages of the proceeding

Communicate and establish client relationship

Attend staffings & meetings

May work with CCs

Provide conflict free legal representation

CFY
Client directed

- Professional Duties flow to the client (for e.g., has a confidential relationship with the client).
- Attorney advocates for the youth's stated position.
- Attorney counsels youth to help them determine their position.
- May represent youth who hold their own therapeutic privilege.
- Coordinates with GAL in other case types (like JD).

Diminished Capacity and Conflicts

- Diminished Capacity GAL appointment
  - Court ***may*** appoint if deemed necessary due to diminished capacity.
  - Diminished capacity definition:
    - Youth lacks sufficient capacity to communicate or make considered decisions adequately in connection with the child's or youth's legal representation.
    - Age or developmental maturity must not be the sole basis for a determination of diminished capacity.
  - GAL may not be a substitute for CFY.
- Conflicts
  - Court may appoint an attorney as both CFY and GAL for members of a sibling group as long as attorney does not assert there is a conflict of interest.

§ § 19-1-103(55.5); 19-1-111(2)(e); 19-3-203(2), (7)

Diminished Capacity	VS	Competency
About the youth's ability to participate in representation. Matter will proceed either way.		*About the constitutional ability to stand for trial. Determines if the matter will proceed.*
Attorney determines		Judicial determination
Impacts attorney's professional responsibilities		Legal standard re: taking the stand or ability to stand trial.
Guided by the Rules of Professional Conduct (Rule 1.14)		Guided by statute and constitutional considerations
Continuum		Black and white (you are or you are not)

Access to Information for GALs and CFY

GAL/CFY must be provided with:

- All reports relevant to a case
- Fingerprint-based criminal history (if ordered by court)

Must have access to confidential info concerning child/youth, including but not limited to:

- Educational records
- Medical records
- Mental health records
- Social service agency files
- court records (including those involving allegations of abuse/neglect and delinquency records)
- Other information regarding the child relevant to the proceedings
- Reports that form the basis of recommendations to the court

Does not confer independent right to info regarding confidential/privileged info about parents.

GAL/CFY must have access to child or youth.

§ 19-3-203(4)

Party Status of Child/Youth

- Child named in the petition is a party.

§ **19-3-502**

Right to Attend and Fully Participate in Court

- Child/Youth has the right to attend and fully participate in all hearings related to their case.

- Child or Youth's GAL or CFY shall provide them developmentally appropriate notice of all hearings.

§ 19-3-502 (4.5)

What about the Psychotherapist-Patient Privilege?

***L.A.N. v. L.M.B.*, 292 P.3d 942 (Colo. 2013)**

- In general, patient holds the privilege.
- When child is "too young or otherwise incompetent," we look to parent or GAL.
- Court does not address criteria courts should employ to determine whether child is old enough or otherwise competent to hold their own privilege.

What about Crossover Cases?

- Same attorney cannot represent youth as GAL in JD and CFY in D&N.
- CJD will require contact and coordination between representation when possible.

THE HOW

Implementation of HB 22-1038

District Liaison Map

Find your OCR staff attorney District Liaison at any time here:
https://coloradochildrep.org/attorney-center/

Training

- Fall Conference
- Roadmap Leading to Implementation
- Case Staffings and Office Hours
- Stakeholder Training

CJD 04-06 Summary

- Update appointment authority and payment provisions
- Define professional responsibilities and role of CFY/GAL
- Guidance regarding conflicts and diminished capacity
- Emphasize youth contact through organization and guidance
- Further define advocacy responsibilities of CFY/ GAL
- Update investigative requirements in D&N (same for both GAL and CFY)
- FYTP practice standards
- Delinquency cases: coordination of representation and update reference to youth

Other Efforts

- **Litigation and practice supports**
  - Checklists
  - Tips and Guides
  - Motions, pleadings
- **GRID update**
- **Rules**
  - CDHS
  - Juvenile

Office of the Child's Representative (OCR) Resources

- **Other Stakeholder Youth Page** (https://coloradochildrep.org/youth-center/other-stakeholders/)
- **District Lists, Liaison Map** (https://coloradochildrep.org/attorney-center/)
- **Information about HB 22-1038** (https://coloradochildrep.org/about-ocr/general-assembly-information/)

Questions?

Thank You!

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