

CHAPTER 3
ATTORNEY SCREENING AND STANDARDS
OF REPRESENTATION

Rule 6.3.1

General Competency Requirement

Absent a knowing and intelligent waiver by the party represented, all attorneys appearing in juvenile dependency proceedings must be members in good standing of the State Bar of California and must meet the minimum standards of competence set forth in these rules. These rules apply to attorneys representing public agencies, attorneys employed by public agencies, attorneys employed by private firms, attorneys appointed by the court to represent any party in a dependency proceeding, and attorneys who are privately retained to represent a party in a dependency proceeding.

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 6.3.2

Screening for Competency

A. Absent a knowing and intelligent waiver by the party represented, all attorneys who represent parties in juvenile dependency proceedings must meet the minimum standards of training and/or experience set forth in these rules.

No attorney will be appointed by the court to represent a party in a dependency proceeding who has not submitted to the court and had approved a Certification of Competency as set forth on the Superior Court website (http://www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/generalinformation/forms/juvenileforms/juv116_fillable.pdf). Further, no retained counsel will be allowed to appear on behalf of a party in a dependency proceeding without having submitted to the court and had approved a Certification of Competency or a knowing and intelligent waiver by the party of such certification.

B. Attorneys who meet the minimum standards of training and/or experience set forth in rule 6.3.3, as demonstrated by the information contained in the Certification of Competency submitted to the court, are deemed competent to practice before the juvenile court in dependency cases, except as provided in subdivision C. of this rule.

C. Upon submission of a Certification of Competency which demonstrates that the attorney has met the minimum standards for training and/or experience, the court may determine, based on conduct or performance of counsel before the court in a dependency case, that a particular attorney does not meet minimum competency standards. Further, the court retains the authority to review the general conduct and performance of an attorney and to decertify such attorney for good cause at any time. The court may order denial of certification and decertification only after the attorney has been given notice of the intended action and an opportunity to be heard.

D. Any attorney appearing before the court in a dependency case who does not meet the minimum standards of training and/or experience must notify the court to that effect at his/her initial appearance. The clerk of the court must notify the represented party by first-class mail to the party's last known address and the attorney at least 10 days before the hearing date of the following: (1) a hearing date, time, and location; (2) that at that hearing the court will consider the issue of whether to relieve counsel for failing to complete the requisite training and to provide a Certification of Competency; and (3) that failure to appear for the hearing will be deemed a waiver of any objection and acquiescence to the relief of appointed counsel. At that hearing, absent a knowing and intelligent waiver by the party represented, the court must relieve such appointed counsel and must appoint certified counsel for the party whose attorney failed to complete the required training. If the attorney relieved is a member of a public agency, the agency has the right to transfer the case to a certified attorney within that agency. In the case of retained counsel, the court must notify the party that his or her counsel has failed to meet the minimum standards required by these rules. The determination whether to waive certification or obtain substitute private counsel is solely within the discretion of the party so notified.

E. If a retained attorney maintains his or her principal office outside of this county, proof of certification by the juvenile dependency court of the California county in which the attorney maintains an office will be sufficient evidence of competence to appear in a juvenile dependency proceeding in this county.

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 6.3.3

Minimum Standards of Education and Training

A. No attorney appearing in a dependency matter before the juvenile court may be certified by the court as competent until the attorney has completed the following minimum training and educational requirements.

1. Before certification, the attorney must have either:

a. At least six months of experience in dependency proceedings in which the attorney has demonstrated competence in representing his or her clients. To qualify for certification under this paragraph, the attorney must have made a substantial number of appearances and handled a variety of dependency hearings, including contested hearings. In determining whether the attorney has demonstrated competence, the court will consider, among other things, whether the attorney has demonstrated knowledge and understanding of the topics listed in paragraph b. of this subdivision.

b. Obtained at least 12 hours of training or education in juvenile dependency law, which included applicable case law and statutes, rules of evidence, state and local rules of court, Judicial Council forms, motions, trial techniques and skills, writs and appeals, child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, reasonable efforts, the educational rights of children, the Uniform Child Custody Jurisdiction and Enforcement Act, the Interstate Compact on the Placement of Children, and the Indian Child Welfare Act.

2. If an attorney has obtained the required training or education but has not represented parties in a substantial number of dependency cases as determined by the juvenile court, the court must grant a provisional certification pending satisfactory completion of a mentor program within three months. While under the mentor's supervision, the attorney must try at least three contested hearings and handle at least one detention hearing, one jurisdiction hearing, one disposition hearing, one pre-permanency planning review, one supplemental petition, and one petition to modify a prior order. The attorney and the mentor must consult at least weekly regarding the handling of the attorney's cases. The mentor must be present and observe the attorney handle at least one contested hearing and such other hearings as are necessary and appropriate.

While serving under a provisional certification, an attorney may be appointed to represent parties in dependency cases and to receive compensation for such representation. For purposes of this program, a "mentor" is an attorney who has been approved to serve as a mentor by the supervising judge of the dependency court, has at least three years' experience handling dependency cases, has a current competency certification, and has agreed to serve without compensation as a mentor under this program. If the provisionally certified attorney is employed by a public agency or a private firm, the mentor must be a supervising attorney of that agency or firm or his/her designee.

B. Each attorney who has been certified by the court will submit a new Certification of Competency to the court on or before January 31st of the same year in which the attorney must certify his or her MCLE credits to the State Bar of California. The new Certification must be accompanied by evidence of 18 hours of continuing dependency education or training which were completed in the three years after the previous Certification was issued.

If the training or education was not presented by a California MCLE provider, the documentation of attendance is subject to the approval of the juvenile court. Evidence of training or education may include: a copy of a certificate of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider; a copy of the training or educational program schedule together with evidence of attendance at such program; proof of attendance at a court-sponsored or court-approved program; or such other documentation that demonstrates the relevance of the program and the attorney's attendance at such program.

C. At least one-half of the attorney's continuing training or education hours must be in the areas set forth in subdivision A.1.b. of this rule. The remaining hours may be in other areas related to juvenile dependency practice, including, but not limited to, special education, mental health, health care, immigration, adoption, guardianship, parentage, the Parental Kidnapping Prevention Act, state and federal public assistance programs, client interviewing and counseling techniques, case investigation, and settlement negotiations and mediation.

D. When a previously certified attorney fails to submit evidence that he or she has completed the minimum required training and education for recertification to the court by the due date, the court will notify the attorney in writing by first-class mail that he or she will be decertified unless the attorney submits, within 20 days of the date of the mailing of the notice, evidence of completion of the required training or education. If the attorney fails to submit evidence of the required training or education, the court shall proceed as set forth in rule 6.3.2D. (Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 6.3.4

Standards of Representation

A. **Basic Attorney-Client Obligations.** All attorneys appearing in dependency proceedings must advise their clients of the legal and factual aspects of the client's case and must represent their clients' interests vigorously within applicable legal and ethical boundaries.

In performing these duties, each attorney is expected to:

1. Thoroughly and completely investigate the accuracy of the allegations, explore any possible defenses, and consider alternatives to court action;
2. Meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally;
3. Advise the client of the risks and benefits of the possible courses of action, including the taking of writs and appeals;
4. Determine the client's desires and interests;
5. Advocate the client's desires and interests to the court and other parties;
6. Contact social workers and other professionals associated with the client's case;
7. Work with other counsel and the court to resolve disputed aspects of a case without contested hearings;
8. Adhere to mandated timelines;
9. Inform the client of the procedure for lodging a complaint against the attorney;
10. Be familiar with relevant constitutional, statutory, and case law; and

11. Possess fundamental legal skills and a rudimentary understanding of relevant interdisciplinary topics.

In addition to the duties listed above, counsel for the child or counsel's agents are expected to:

12. Have sufficient direct, personal contact with the child to establish and maintain an adequate and professional attorney-client relationship;

13. Explain fully, consistent with the child's ability to understand, the nature and consequences of the court proceedings;

14. Have sufficient contact with the child's caregiver, including a parent with whom the child has been detained or placed, CASA, if any, and/or therapist, if any, to accurately assess the child's well-being and needs;

15. Monitor the child's development throughout the course of the proceedings and advocate for services that will provide a safe, healthy, and nurturing environment for the child;

16. Maintain a caseload that allows the attorney to perform the duties required by Welfare and Institutions Code section 317, subdivision (e), and California Rules of Court, rule 5.660, and to otherwise adequately counsel and represent the child;

17. Immediately inform the court of any interest or right of the child which may need to be protected or pursued in other judicial or administrative forums and seek instructions from the court as to appropriate procedures to follow; and

18. Provide the attorney's contact information to the child's caregiver and the child if 10 years of age or older no later than 10 days after receipt of the name, address, and telephone number of the caregiver.

B. Relevant Laws and Programs. All attorneys practicing in dependency proceedings must have a working knowledge of the following statutes and rules, as well as the cases interpreting and applying them:

1. Welfare and Institutions Code sections 200-399, 825-830, 900-911, 914, 10618.6, 10850-10851, 11360-11393 (Kin-GAP), 11400 et seq. (AFDC-FC), 13750-13757, and 16000-16519 (State Child Welfare Services);

2. California Rules of Court, rules 5.440-5.740, 5.900-5.906, and 8.400-8.474;

3. Code of Civil Procedure sections 128, 170, 170.6, 917.7, and 1209;

4. Education Code sections 48850-48859, 48906, 48911, 48915.5, and 48918.1, 49069.5, and 56000 et seq. and Government Code sections 7579.1 and 7579.5 (educational rights of children);

5. Evidence Code;

6. Family Code sections 3400 et seq. (Uniform Child Custody Jurisdiction and Enforcement Act), 7500 et seq. (Parental Rights; Paternity Presumptions, Blood Testing, and Voluntary Declarations), 7600 et seq. (Uniform Parentage Act), 7800 et seq. (Freedom from Parental Custody and Control), 7900 et seq. (Interstate Compact on Placement of Children), and 7950 et seq. (Foster Care Placement Considerations);

7. Penal Code section 11165 et seq. (Child Abuse and Neglect Reporting Act);

8. Title 25 United States Code, sections 1901-1963 (Indian Child Welfare Act) and Indian Child Custody Guidelines published at 44 Federal Register 67,584 (1979);

9. San Diego Superior Court Rules, Division VI—Juvenile and Chapter 10 of Division VIII—Mental Health.

The following areas of the law and local programs are critical in many dependency cases, and counsel must develop a working knowledge of them as they become applicable to individual cases.

10. Dependency Drug Court;

11. Special immigrant juvenile status under Title 8 United States Code section 1101;

12. Title 28 United States Code section 1738A (Parental Kidnapping Prevention Act);

13. Criminal law, juvenile delinquency law, and the San Diego Juvenile Court protocol regarding dual jurisdiction cases;

14. Mental health law in Welfare and Institutions Code sections 4500 et seq. (Lanterman Developmental Disabilities Services Act), 5000 et seq. (Lanterman-Petris-Short Act), 5850 et seq. (Children's Mental Health Services Act), and 6000 et seq. (Admissions and Judicial Commitments);

15. Family Code section 6200 et seq. (Domestic Violence Prevention Act);

16. San Diego County Child Victim-Witness Protocol;

17. Welfare and Institutions Code sections 10609.3-10609.45 (Independent Living Program), 16522 et seq. (Transitional Housing), 16525.10 et seq. (Options for Recovery); 16600 et seq. (Family Preservation), 17730-17738 (Children with Special Health Care Needs), 18250 et seq. (Wraparound Services), and 18950 et seq. (Child Abuse Prevention);

18. Other relevant portions of federal and California law relating to the abuse or neglect of children and to children's mental and physical welfare.

C. Legal Skills. In addition to basic legal knowledge, counsel must have and continue to develop the following basic legal skills:

1. Basic trial skills (e.g., proper and succinct direct and cross-examination, proper objections);

2. Basic advocacy skills (e.g., client interviewing and counseling, case investigation, settlement negotiation, witness preparation, use of experts);

3. Relevant motion practice (e.g., motions pursuant to Welfare and Institutions Code sections 350, 388, and 390);

4. Sufficient understanding of writ and appellate practice to advise a client whether and how to seek such remedies and to arrange for a specialist to pursue them when necessary.

D. Relevant Interdisciplinary Skills. The dependency system is complex in that it frequently involves issues arising from a variety of disparate and highly specialized areas. A collaborative problem-solving approach usually improves outcomes for children and families. Attorneys appearing in dependency court cannot effectively represent their clients without a fundamental understanding of the interdisciplinary issues listed below and the ability to obtain more detailed insight as the demands of individual cases require. Attorneys should have a general familiarity with and receive ongoing training in the following areas:

1. Dynamics of child abuse and neglect
2. Child development
 - a. Interviewing children
 - b. Children as witnesses
 - c. Developmental milestones as they relate to the identification and consequences of child abuse and neglect
3. Risk assessment
4. Substance abuse - the addiction and recovery process
5. Mental health issues
 - a. Purposes and uses of psychological and psychiatric evaluations
 - b. Purposes and expectations of various modalities of therapy
 - c. Psychotropic medications
6. Medical issues
 - a. Traumatic injuries
 - b. Nutritional deficits
 - c. Drug toxicity in children
7. Government payment issues
 - a. AFDC-Foster Care
 - b. CalWORKS and TANF
 - c. Medi-Cal
 - d. County Treasury funds
 - e. Supplemental Security Income (SSI)
 - f. Social Security Administration (SSA)
 - g. Adoption Assistance Program (AAP)
 - h. Kin-GAP funds
8. Cultural issues
9. Poverty issues
10. Education issues
11. Domestic violence
12. Family reunification and preservation
13. Reasonable efforts
14. Immigration issues

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014)