

TO: Volunteer CAP Attorneys  
FROM: Legal Aid Center of Southern Nevada Pro Bono Project  
Date: January 7, 2013  
RE: New Department of Family Services Representation Model

This memo is intended to inform you about a new model of representation impacting all Children's Attorneys Project volunteers. Under this new model, the District Attorney's (DA) office will serve as counsel for the Department of Family Services (DFS). Previously, the model of representation was the "prosecutorial model" wherein the DA represented the "people of Clark County". In the former model, DFS had no representation at court proceedings. Under the new "agency model," the DA now represents the agency, specifically, DFS.

Pursuant to Professional Rule of Conduct 4.2, as attorneys for the agency, the DA's could conceivably prohibit counsel for parents and for the children from speaking to the Department's social workers. Fortunately, in other jurisdictions, this hasn't happened. Rather, most jurisdictions waive this requirement and start with a presumption in favor of open communication. However, exceptions can be made. For example, if an attorney begins to badger or berate a case worker, that caseworker can request that further communication happen only with the DA. Additionally, if there is a high profile trial coming up, the DA can request communication occur only with the DA.

The Chief Deputy District Attorney (DDA) for the Juvenile Division, Brigid Duffy, has taken a similar stance. In an email to Children's Attorneys Project staff, she made the following points related to Child and Family Team Meetings (CFT's):

- CFT's are to continue with the DA (and all attorneys of represented parties) being notified. If the DA cannot attend, the caseworker is to obtain the DA's express permission to move forward in their absence. Similarly, all other parties must be given notice of a CFT and give their express permission for a CFT to proceed without their presence.
- If at any time during the CFT a legal debate occurs and it is no longer a factual sharing of information and problem solving meeting, the Department has the right to stop the meeting until it can be rescheduled with the DA present. The represented agency should be treated with the same respect that counsel would expect from the DA toward other parties wherein counsel cannot attend.
- There will be growing pains as the DA and DFS adjust to the new model. The DA's agree that there is no possible way for them to be looped into every conversation with their caseloads. The CFT is supposed to be a fact-based opportunity to obtain help and services for the family. If the communication becomes adversarial, the case worker can ask that the meeting discontinue and refer the attorney to the assigned DA.

DA Duffy also requests that counsel avoid getting into conversations with caseworkers that would expose them to violating statutory law and/or DFS policies and procedures. She asks that counsel bring these issues to her attention for resolution rather than bringing it to Court.

Please keep Pro Bono Project staff apprised of any issues that come up in your cases relative to this issue. Children's Attorneys Project staff are having an ongoing dialogue with the DA and DFS regarding issues and concerns as they arise. If you have further questions or want more information, contact your assigned CAP mentor or CAP Deputy Directing Attorney, Gregory D. Ivie, Esq. at [GIvie@lacsnc.org](mailto:GIvie@lacsnc.org) or by phone at 702-386-1070 x113.