

**Public Comments on Proposed New Rule of Juvenile Procedure 8.36—
Qualification and Training to Represent Parents in Juvenile Court**

Table of Contents

	(received)
F. David Eastman	9-6-2012
John O. Moeller	9-6-2012
James H. Pickner	9-13-2012
A. John Frey Comment	9-14-2012
Lance J. Heeren Comment	9-17-2012
Shawn R. Showers Comment	9-17-2012
John C. Werden Comment	9-17-2012
Mark A. Newman Comment	9-19-2012
Jennifer G. Galloway Comment	9-19-2012
Kevin Brownell Comment	9-19-2012
Corwin Ritchie Comment	9-20-2012
Cheryl Newport Comment	9-25-2012
Jon E. Anderson Comment	9-27-2012
Karen Kaufman Salic Comment	10-1-2012
Timothy W. Dille Comment	10-5-2012
Leesa A. McNeil Comment	10-9-2012
Scott Strait Comment	10-18-2012
Andrea V. Hiesterman Comment	10-19-2012
Mark J. Neary Comment	10-22-2012
Edward Crowell Comment	10-22-2012
Lynhon Stout Comment	10-24-2012

Bethany J. Currie Comment	10-24-2012
Gail Barber Comment	10-25-2012
Brian Michaelson Comment	10-25-2012
Phil R. Canigla Comment	10-25-2012
J. Joseph Narmi Comment	10-26-2012
Stephanie Brown Comment	10-26-2012
Christina M. Gonzalez Comment	10-26-2012
Beth Baldwin Comment	10-26-2012
Philip L. Garland Comment	10-26-2012
Kathleen Kilnoski Comment	10-26-2012
Bill Bracker Comment	10-26-2012
Marti Nerenstone Comment	10-26-2012
Chuck Fagan Comment	10-26-2012
Kevin Maughan Comment	10-26-2012
Connie Cohen Comment	10-26-2012
Greg Life Comment	10-29-2012
Benjamin Pick Comment	10-29-2012
Jean C. Lawrence Comment	10-29-2012
Mona Knoll Comment	10-29-2012
Craig M. Dreismeier Comment	10-29-2012
Samuel P. Langholz Comment	10-29-2012
Susan Larson Christensen Comment	10-29-2012
Karen Volz Comment	10-29-2012
Kent Wirth Comment	10-30-2012

EASTMAN LAW OFFICE L.L.C.

FILED
SEP 10 2012
CLERK SUPREME COURT

F. David Eastman
914 N. 8th Street W.
P.O. Box 727
Clear Lake, Iowa 50428

Phone: (641) 357-8384
Fax: (641) 357-7090
eastmanlaw@netins.net

September 6; 2012

Clerk of Court
Iowa Supreme Court
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319

IN RE: Proposed New Rule of Juvenile Procedure 8.36

To Whom It May Concern:

I have reviewed this Proposed New Rule of Juvenile Procedure and I believe it is a good rule and should have been instituted some time ago. However, because it is already difficult to find attorneys who are willing to accept appointments in juvenile cases due to the extremely low pay, adding this requirement to those attorneys who are now accepting those appointments will, in all likelihood, further diminish the number that are willingly taking these appointments.

One of the major inconsistencies within our system of laws and rules is now, and has been for some time, the protections we give accused criminals under the Bill of Rights when they are facing possible incarceration compared to the extremely limited protection we grant to those parents who are facing the permanent loss of their children. In the many years I have done juvenile work, I cannot think of a single case where I had a client who was a parent that would be willing to permanently give up their children if in turn they could avoid incarceration.

Further, these cases are no different than criminal cases with regard to the possibilities of making mistakes. That would be true even if all parents were granted the same rights in juvenile matters as they are in criminal matters. Given that those rights do not exist for parents

in juvenile cases, there is no doubt that many, many mistakes have been made along the way.

Again, as an attorney who has done hundreds of juvenile cases, I wholeheartedly endorse the changes to the Rules of Juvenile Procedure.

Sincerely,

A handwritten signature in black ink, appearing to read "F. David Eastman". The signature is written in a cursive, flowing style with some loops and flourishes.

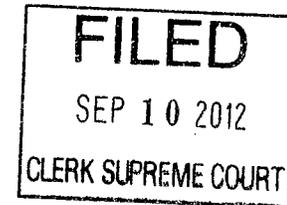
F. David Eastman

FDE/kmp

JOHN O. MOELLER

ATTORNEY AT LAW

September 6, 2012



Clerk Iowa Supreme Court
Iowa Judicial Branch Building
1111 E. Court Avenue
Des Moines, IA 50319

RE: Comment – Proposed New Rule of Juvenile Procedure 8.36.

Dear Chief Justice Cady:

I have practiced law in this State more than 30 years. I have represented clients in almost every type of case a lawyer is likely to encounter from speeding citation to first degree murder, divorce to products liability and professional negligence. I have represented many hundreds of parents and children in juvenile matters. Every one of these cases was important to the client. In every case I was required to be a competent representative on behalf of my client.

I am not surprised that a task force focused upon a specific area of the law might propose standards of practice for attorneys in that particular area of the law. Their intentions and their recommendations are commendable. However, their request that this court adopt and enforce standards is not necessary or appropriate and is likely to harm the persons it is intended to help – the parent.

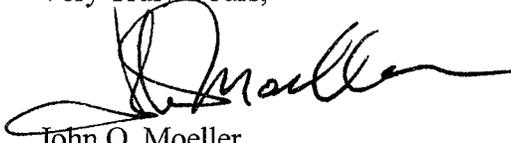
The representation of a parent in a juvenile matter is not a more difficult area of the law or one with more severe consequences to the client than many others. No certification is required to represent a client in a felony offense that might incarcerate the client for years or a lifetime. No certification is required to represent a client in matters that might have extreme economic or emotional consequences. Some states do require special certification before an attorney can be appointed to represent a defendant in a capital case.

If I am required to comply with the proposed recommendations before representing a parent in juvenile court I cannot justify the time and effort to satisfy the requirements to represent the occasional client that may wish my services in juvenile court. This will have the effect of preventing me from representing clients that I am capable of representing and it will deprive the

JOHN O. MOELLER
ATTORNEY AT LAW

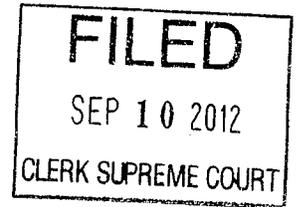
client of representation by the attorney of their choice. This decision should be made by the client and the attorney guided by existing Rules of Professional Conduct. The proposed new rule is unnecessary and harmful.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "J. Moeller", with a long horizontal flourish extending to the right.

John O. Moeller
JOM: jb

September 6, 2012



Clerk of Supreme Court
1111 East Court Avenue
Des Moines, IA 50319

RE: Proposed new rule of Juvenile Procedure 8.36

To whom it may concern:

My comments are included regarding the proposed new rule of Juvenile Procedure 8.36. I have reviewed the documents and feel comfortable including my opinion and comments. "Should there be a separate set of prerequisites for representing parents in juvenile court?" Responding to this question initially I believed that it would be beneficial if the attorneys completed the proposed prerequisites before representing the parents then I thought more personally to the rural area that I work in currently. Many times counsel is appointed from other counties to represent parents due to the lack of attorneys in the area. It's concerning if some attorneys choose not to represent parents in juvenile court due to the prerequisites and as a result there would be fewer attorneys in the area available to represent parents. "Are the proposed requirements reasonable and appropriate and will they lead to improved representation of parents in Juvenile Court?" Having prior experience required appears to be an excellent requirement. This will allow the parents to have appropriate representation by individual that has some experience with Juvenile Court but I am concerned that requiring only 1 of the 5 requirements may be too minimal and would like to see the expectations increased. Communication is vital between the parents and their attorneys and I hope that this requires for more communication to occur but this is hopeful thinking. Self-reporting and certification by the attorneys appears appropriate. If there is any concern regarding the information reported and certification, court could follow up and check verification. Costs to verify certification for all the attorneys state-wide is inefficient. I would like to see some requirements for counsel representing parents in Juvenile Court so that the parents can be represented by an individual that is knowledgeable about the Juvenile Court proceedings but being located in a rural area I worry that these requirements will deter attorneys to represent parents and therefore we may have issues with finding appropriate counsel in the area.

Thank you



"Jim Pickner"
<picknerlaw@acsnet.com>
09/13/2012 04:06 PM

To <rules.comments@iowacourts.gov>,
cc
bcc



Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
Jim Pickner	09/13/2012	04:06 PM	Proposed New Rule of Juver

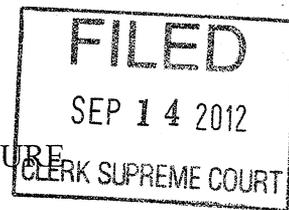
1 attachment



COMMENTS REGARDING PROPOSED NEW RULE OF JUVENILE PROCEDURE 8.doc

Attached please find my comments. Thank you. Jim Pickner

James H. Pickner
P.O. Box 113
613 8th Street, Hawarden, Iowa 51023
712-551-2724 Fax: 712-551-2725



COMMENTS REGARDING PROPOSED NEW RULE OF JUVENILE PROCEDURE
8.36

Via Email Only to : rules.comments@iowacourts.gov

Dated: September 13, 2012

Dear Honorable Justices:

My comments relate to rule 8.36(3) (a) regarding the ongoing requirements for representing parents as found at lines 6 thru 15.

I have been representing parents in juvenile cases for seventeen years. In June, 1997, I was able to attend the Iowa Court Improvement Project sponsored by the Iowa Supreme Court Select Committee to Review State Court Practices in Child Welfare Matters. I am a sole practitioner in a one attorney town and I continue to represent parents in Juvenile Court in large part to get over to the courthouse occasionally and meet the younger attorneys. From a financial stand point it is like taking every Friday afternoon off without pay.

I often see really bright, conscientious young lawyers arrive in juvenile court. They work for a year or two, have a couple difficult clients that require a great deal of time and then get the word from the partners in their firm to get out of juvenile court. It interferes with the private practice, it doesn't pay enough per hour and practitioners are seldom paid for all the hours it takes to do it well.

The five hours per year dedicated to juvenile continuing education is going to make it more difficult to attract and keep good, experienced attorneys in juvenile court. I agree with getting a foundation of experience and education initially but four or five hours every two years would be more reasonable to keep attorneys current on new developments and refresh their skills in any problem areas that are identified.

As a sole practitioner, I need to devote many of my hours available for cle's to areas such as taxation where changes occur more frequently. I think a very valuable rule would be to require all juvenile practitioners to agree to join a juvenile list serve and certify that they review the postings at least weekly. I belong to the real estate and the probate list serves and they are invaluable in alerting me to changes and providing me with a stimulating and wide ranging education in their subject areas.

Thank you for consideration of my comments.

Sincerely,

James H. Pickner

James H. Pickner

P.O. Box 113

Hawarden, Iowa 51023

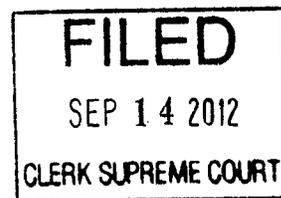
Phone: 712-551-2724 Fax: 712-551-2725

picknerlaw@acsnet.com



"John Frey"
<jfrey@iowatelecom.net>
09/14/2012 02:25 PM

To <rules.comments@iowacourts.gov>,
cc
bcc



Subject Proposed New Rule of Juvenile Procedure 8:36

Who	Date	Time	Subject
John Frey	09/14/2012	02:25 PM	Proposed New Rule of Juver

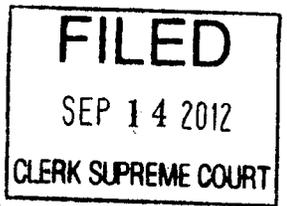
1 attachment



Proposed New Rule of Juvenile Procedure 8.docx

A. John Frey, Jr.; 408 S. 2nd St.; Clinton, IA 52732; office 563-242-1832; cell 563-321-8052; email jfrey@iowatelecom.net

This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, is confidential and legally privileged. If you are not the intended recipient you may not retain, disseminate, distribute or copy this communication. If you received this communication by error, please notify Frey,Haufe and Current, PLC at 563-242-1832, collect, and destroy the message and all attachments immediately.



Proposed New Rule of Juvenile Procedure 8:36

While well intentioned, there is danger the new rules will be just another disincentive to attorneys who might otherwise work in juvenile court. The pay is low. Submitting bills to the Public Defender's office is a nuisance. At some point, the opportunity to make a difference with juvenile court work is not sufficient to justify the aggravation, particularly where there are a number of people in the world who need legal services. Furthermore, someone must pay for the implementation of these requirements. Since no money is being allocated from the judicial budget, where will the funding be found? If the seminars are not free, the lawyers already working for a small amount of money will be called upon to invest further in the system. In my opinion, the new rule is ill advised. It is likely to create a shortage of lawyers available to represent parents in juvenile proceedings.

A. John Frey, Jr., Lawyer
408 S. 2nd St.
Clinton, IA. 52732



"Heeren, Lance"
 <Lance.Heeren@linncounty.org>
 09/17/2012 02:10 PM

To "rules.comments@iowacourts.gov"
 <rules.comments@iowacourts.gov>
 cc
 bcc
 Subject Proposed New Rule of Juvenile Procedure 8.36

FILED
 SEP 17 2012
 CLERK SUPREME COURT

Who	Date	Time	Subject
→ Heeren, Lance	09/17/2012	02:10 PM	Proposed New Rule of Juver

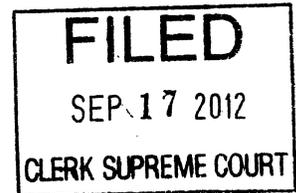
1 attachment



Proposed New Rule of Juvenile Procedure 8.36 Comments.docx

To whom it may concern: Attached are my comments on the Proposed New Rule 8.36 of Juvenile Procedure. Thank-you for the opportunity to share my thoughts on the matter.

Lance J. Heeren
 Assistant Linn County Attorney, Juvenile Division



To: The Iowa Supreme Court

From: Assistant Linn County Attorney Lance J. Heeren

Re: Comments to Proposed New Rule of Juvenile Procedure 8.36 and Proposed New Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

Date: September 17, 2012

Although I have never represented a parent in a Child In Need of Assistance (CINA) or Termination of Parental Rights (TPR) proceeding in juvenile court, I have practiced full-time and exclusively in juvenile court for over 18 years as an Assistant Linn County Attorney. Since 2007, the Juvenile Division of the Linn County Attorney's Office has filed an average of 335 CINA petitions and 127 TPR petitions per year. So I do believe that I have some insights to share regarding Proposed New Rule 8.36 of the Iowa Rules of Juvenile Procedure, and the companion Proposed New Standards of Practice for Attorneys Representing Parents in Juvenile Court.

Comments in response to Questions/Topics 1-4, listed on pages 2-3 of the August 30th Order accompanying Proposed New Rule 8.36

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

No. While juvenile court practice does involve a very specialized area of the law, the skills, competency, knowledge, ethics, and practice standards required to effectively represent a parent (or any client in juvenile court for that matter), are already spelled out quite adequately in the current Iowa Rules of Professional Conduct, and the Iowa Standards for Professional Conduct. TPR and CINA cases certainly do implicate important constitutional rights... but so do all criminal cases and a multitude of civil litigation. The implication of constitutional rights cannot therefore be the rationale for the creation and adoption of a separate set of practice standards and CLE prerequisites, for a class of attorneys who desire to practice in juvenile court.

Iowa no more needs a separate set of practice standards for such attorneys than it does for divorce attorneys, criminal defense attorneys, medical malpractice attorneys, probate attorneys, and others. The adoption of New Rule 8.36 would be the first time that licensed Iowa attorneys are required to complete certain additional CLE courses, and satisfy "prior experience" requirements, in order to be deemed competent to step into an Iowa courtroom. This is far different from the imposition of specific CLE and "prior experience" prerequisites for the purpose of allowing an attorney to hold him/herself out to the public as specializing in a particular area of the law. If the judges, county attorneys, and guardian ad litem who work in juvenile court are not likewise required to demonstrate competency beyond licensure and compliance with the Code of Judicial Conduct or Rules of Professional Conduct, how can we justify requiring more of the attorneys who choose to represent parents in juvenile court? What rational basis exists for not similarly regulating attorneys who represent parents in divorce proceedings, which also involve litigation of child custody issues?

Additionally, has any inquiry been made as to how many complaints involving the representation of a parent in juvenile court are filed annually with the Attorney Disciplinary Board (ADB)? What percentage is that number to the total number of annual complaints filed with the ADB? And does that number or percentage then warrant or justify the adoption of a separate set of practice standards and certification prerequisites for attorneys who desire to represent a parent in a juvenile court proceeding?

Based upon my 18+ years of practice in juvenile court, I simply have not observed a crisis in the quality of representation provided by attorneys for parents. Overall, the quality of representation is very high. As in all areas of the law, there admittedly are a few bad apples that tarnish the professional reputation of all attorneys. But the number of "bad" or "incompetent" attorneys is so small, that those cases are best addressed on an individual basis by the court, or by disciplinary action under the Rules of Professional Conduct. Proposed New Rule 8.36 and the New Standards of Practice are the equivalent of using a shotgun to kill a fly.

2. Are the proposed requirements reasonable and appropriate? Will they lead to improved representation of parents in juvenile court? Will they deter some attorneys from practicing in juvenile court?

Providing attorneys additional opportunities to attend and obtain low cost CLE training on the core substantive and procedural laws used in child welfare proceedings is a great way to improve representation of all parties in a juvenile court proceeding. I am all for that. But requiring the completion of five hours of such training every year (1/3 of annual CLE requirements), as a prerequisite to practicing in juvenile court, will likely deter many skilled and experienced attorneys from accepting juvenile court work. Compensation for attorneys practicing in juvenile court is not lucrative, especially given the embarrassingly low hourly rates currently paid for court-appointed work. Creating additional hoops for juvenile court attorneys to jump through may well cause many attorneys to decide that a juvenile court practice is simply not worth their time and effort. This is a real concern in smaller, rural Iowa counties, where attorneys willing to take on time-consuming cases in juvenile court are already in short supply.

3 & 4. What is the best way to administer the program?

I do not believe it is right to spread the cost of administration among all Iowa attorneys, whether they practice in juvenile court or not, as proposed by OPR. So I oppose administration of the program by OPR, and the imposition of yet another, across the board, administrative fee. If this program is implemented, the best way to administer it would be to have the affected attorneys file his/her annual certification at the local level, with the district court administrator for each judicial district that the attorney desires to practice in juvenile court. The district court administrator could then provide each juvenile court judge in the district with a list of attorneys who have filed annual certifications of compliance.

Comments to Proposed New Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

Standards 1-27 of the Proposed New Standards of Practice are not objectionable on their face. However, the standards are so simplistic and rudimentary that I find them to be insulting to the intelligence and competence of any licensed attorney. The proposed standards are also totally redundant to the current Rules of Professional Conduct and Standards for Professional Conduct, and are therefore completely unnecessary. If any attorney practicing in juvenile court is not living up to the Iowa Rules and Standards of Professional Conduct, then enforce the Rules and Standards that are currently in place. Do not attempt to solve the problem by creating and adopting an even more rudimentary set of practice standards for a specific group of attorneys, with no viable enforcement mechanism.

Standard #14 and commentary, page 15, lines 8-46, and page 16, lines 1-32: Standard #14 requires that an attorney representing a parent in juvenile court use effective discovery methods according to the Iowa Rules of Juvenile Procedure. That sounds quite reasonable at first glance. Rule 8.3 of the Iowa Rules of Juvenile Procedure governs discovery in CINA and TPR proceedings, and provides that informal discovery methods are preferred in juvenile court. This is to ensure that juvenile cases move forward in a timely manner without getting bogged down by delays inherent in formal discovery methods. Delays in juvenile court proceedings result in delays in the achievement of permanency for the child.

However, the commentary to Standard 14 requires counsel to take action that directly contravenes the purpose behind Rule 8.3. Under the commentary, attorneys for the parents are expected to continuously ask for and review the DHS case file. Such a practice standard will lead to countless discovery motions and litigation, as DHS will not likely turn over its case files to anyone without a court order compelling it to do so. In Linn County, DHS will not even allow its own case workers to bring any part of the DHS case file to juvenile court!

The commentary to Standard 14 also suggests that requests for formal discovery (e.g. depositions, interrogatories, requests for production of documents, and requests for admissions) should be the norm for parent's counsel, rather than the exception. While Rule 8.3 of the Iowa Rules of Juvenile Procedure does allow for the use of such formal discovery methods, the stated preference of the Rule is, again, *informal discovery*. Standard 14 and its commentary fail to adequately recognize the preference for and purpose of informal discovery in CINA and TPR proceedings, as provided in Rule 8.3.

Furthermore, who will pay for the increased costs of formal discovery (e.g. depositions and transcripts) in juvenile court? Standard 14 and its commentary also fail to recognize the tight purse strings held by the Appellate Defender's Office, and the likelihood that it will greatly reduce or deny increased claims for discovery costs made by court-appointed counsel for parents.

Comments to Proposed New Iowa Rule of Juvenile Procedure 8.36

Rule 8.36(1)(c)(Agreement to Comply), page 1, lines 11-1: Given my above stated objections to the adoption of the New Iowa Standards of Practice for Attorneys Representing Parents, I do not believe attorneys representing parents should be required to comply with the new standards, and therefore this subparagraph (c) of subsection 1 should be stricken entirely.

Rule 8.36(7)(Potential Sanctions), page 2, lines 40-44: What specific sanctions are authorized by law and the Iowa Court Rules? If this is in reference to the disciplinary procedures established in the Iowa Court Rules, then has the Attorney Disciplinary Board been consulted, and is it prepared to take on this additional enforcement and sanction responsibility? Has the ADB been asked to review and trouble shoot the New Proposed Iowa Standards of Practice for Attorneys Representing Parents? If none of that has yet been done, then I recommend striking subsection (7).

More importantly, subsection 7 of Rule 8.36 should also be stricken because it contradicts the final comments for the standards, which appear at lines 8-12 on page 3, following Standard 27. Those comments state that the proposed standards and commentary are intended only to provide *guidance* for practicing in compliance with the Iowa Rules of Professional Conduct. The proposed new standards are therefore clearly not intended to be enforceable by sanction, but rather are offered only to improve practice by establishing a set of aspirational "best practice" guidelines. If that were indeed the true and stated purpose of the proposed new standards, and if subparagraph "c" of subsection "1" and subsection "7" of Rule 8.36 are both stricken, then the proposed standards could very well be, without objection, a helpful guide to improving the quality of representation for parents in juvenile court.

Short of that, I do not know how Iowa can rationalize the adoption and enforcement of an additional set of practice standards that are applicable only to a select class of attorneys, who are singled-out for more stringent regulation based on the identity of the clientele they represent. The Proposed New Rule 8.36 and New Standards of Practice are a well-intentioned, but ill-advised solution to a problem that has not been proven to exist.



Shawn Showers
<sshowers@co.washington.ia.us>

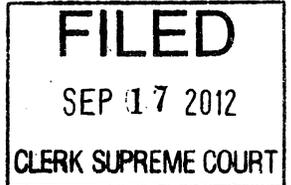
09/17/2012 03:50 PM

To "rules.comments@iowacourts.gov"
<rules.comments@iowacourts.gov>,
cc

cc

bcc

Subject Proposed Rules of Juvenile Procedure 8.36



Who	Date	Time	Subject
 Shawn Showers	09/17/2012	03:50 PM	Proposed Rules of Juvenile F

This email is in reference to the Iowa Supreme Court's August 30, 2012 request for public comment on the proposed new rule of juvenile procedure 8.36. I believe in the Court's desire for parents in CINA cases to have quality representation. However, I believe the proposed rules will be a deterrent for very competent attorneys to practice in juvenile court. I have been a juvenile prosecutor for four years, first in Cerro Gordo County, the last two and a half in Washington County. In that time I have observed many parents' attorneys in court in contested and uncontested matters. I have found the vast majority of the attorneys practicing in are highly effective and dedicated to representing parents and children.

I join the Iowa County Attorney's Association's opposition to these proposed standards. I would specifically echo many of the concerns that Assistant Linn County Attorney Lance Heeren, co-chair of the Iowa Juvenile Justice Committee, wrote in his opposition to the proposed standards. I believe that proposed rule 8.36(3) would place an unnecessary additional burden on juvenile attorneys that are not placed on criminal attorneys, divorce attorneys, or probate attorneys. Requiring attorneys interested in practicing in juvenile court to complete 5 hours a year on CLEs for child welfare specific material will deter quality attorneys from representing parents in juvenile cases. In short, I believe the proposal will, instead of ensuring quality representation of parents, make it more difficult for parents in CINA cases to obtain experienced and competent attorneys.

Thank you for your consideration.

Sincerely,

Shawn Showers

Shawn R. Showers
Assistant Washington County Attorney
Iowa County Attorney's Juvenile Justice Committee Member
PO BOX 841
Washington, Iowa 52353
(319)653-7746 (phone)
(319) 653-7784 (fax)

sshowers@co.washington.ia.us



John Werden
 <JWerden@1043.net>
 09/17/2012 04:46 PM

To "rules.comments@iowacourts.gov"
 <rules.comments@iowacourts.gov>,
 cc
 bcc

FILED
 SEP 17 2012
 CLERK SUPREME COURT

Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
John Werden	09/17/2012	04:46 PM	Proposed New Rule of Juver

1 attachment



2012-0917 werden to Supreme Court re juvenile rule 8 36.docx

Please submit my comment on the new proposed rule of juvenile procedure 8.36.

John C. Werden
 Attorney at Law
 Eich, Van Dyke & Werden PC
 815 North Main St
 Carroll IA 51401-0851
 Office 712-792-3424
 Direct office 712-792-9752
 Fax 712-792-7770
jwerden@1043.net
www.evwlaw.com

This email and any attachments may contain information which is confidential, proprietary, privileged or otherwise protected by law. The information is solely intended for the named addressee (or a person responsible for delivering it to the addressee). If you are not the intended recipient of this message, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this email in error, please notify the sender immediately by return email and delete it from your computer.

IRS CIRCULAR 230 Disclosure: Under U.S. Treasury regulations, we are required to inform you that any tax advice contained in this e-mail or any attachment hereto is not intended to be used, and cannot be used, to avoid penalties imposed under the Internal Revenue Code.

EICH, VAN DYKE & WERDEN PC
ATTORNEYS AT LAW

RONALD F. EICH
reich@evwlaw.com

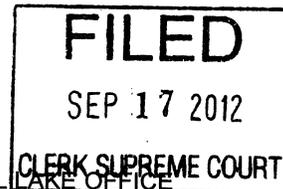
JAMES R. VAN DYKE
jvandyke@evwlaw.com

JOHN C. WERDEN
jwerden@evwlaw.com

CURT S. STEGER*
csteger@evwlaw.com
*Also Licensed in
Nebraska
and South Dakota

815 NORTH MAIN STREET
P.O. BOX 851
CARROLL, IOWA 51401

PHONE (712) 792-3424
FAX (712) 792-7770



WALL LAKE OFFICE
(712) 664-2273
CARROLL LEGAL
BUILDING
(712) 792-9752

September 17, 2012

Clerk of the Supreme Court
1111 East Court Avenue
Des Moines, IA 50319

RE: Proposed new rule of Juvenile Procedure 8.36

I urge the Court to reject the proposed new rule of Juvenile Procedure 8.36.

The proposal seems to address a perception by some that inexperienced lawyers are not doing a good job for some parents in juvenile court. If this is so, then those involved need to be reminded of their obligation under the Rules of Professional Conduct. The presiding judge should not appoint attorneys merely because they have a contract with the public defender. In this county and district it is understood that certain lawyers are no longer appointed based on past experience with those lawyers.

A quality county seat lawyer in Iowa handles no less than 50 or perhaps 100 separate definable matters such as representing a parent in juvenile court. That each one of these should be the subject of a five hour CLE requirement is not appropriate.

I do not believe that this rule will lead to improved representation of parents in juvenile court. It might even be counter-productive. I can see some busy lawyers not making it to the juvenile CLE program and then decline taking juvenile court appointments.

There are many fine lawyers in this area who routinely take juvenile court appointments for parents and as guardian ad litem. None of them need five hours of juvenile law CLE per year.

My cursory review indicates that no other state in the country has such a requirement. I urge you to reject the proposal.

Sincerely,
John C. Werden
John C. Werden



"Mark Newman"
<newmanlaw@wctatel.net>
09/17/2012 05:57 PM

To <rules.comments@iowacourts.gov>,
cc
bcc
Subject Proposed New Rule of Juvenile Proceedure 8.36

FILED
SEP 17 2012
CLERK SUPREME COURT

Who	Date	Time	Subject
 Mark Newman	09/17/2012	05:57 PM	 Proposed New Rule of Juver

1 attachment



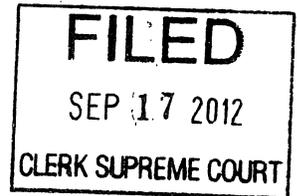
PROPOSED NEW RULES.docx

Mark Alan Newman

Newman Law Office, PC
205 S Clark St.
PO BOX 408
Forest City, IA 50436

(641) 585-5043
FAX (641) 585-4444

Attorney Mark A. Newman



COMMENTS

836(1)(a-d). This is idealistic, but not practical. For instance, I have clients who know me and trust me with serious matters involving their families. I do not frequently practice in juvenile court, but have done so on a number of occasions. I have completed cases involving terminations of parental rights to and including the appeal stage. I have represented parents in cases which had very satisfactory results to the parent. I have participated in many appeals to the higher courts on issues of constitutional rights and have obtained a reversal of a lower court decision on a basic constitutional right of a young man – not a juvenile – and tend to think that I am very protective of the constitutional rights of Iowans.

I find that this requirement would probably bar me from representing the occasional parent with a very serious matter who would like me to represent them.

The four conditions set forth in 836(1) are as follows:

836(1)(a): Though I have participated in many hours of such legal education, I don't keep a current list of five fresh hours and may have not had any such hours for several years. Not practical when I get the call which says, there is a hearing in ten days.

836(1)(b): I know that many of the judges I practice before are not in the same area. It would be difficult to reconstruct exactly how many hours a certain Black Hawk County case took and get the signature of that judge. Same for a CINA out of Cerro Gordo County. I was requested on that one because the mother would have no one else. That case did not take forty hours, but maybe 15. Winnebago County cases may add up to 40 hours, but to get the retired Judge McGee to sign such a statement without specific accounting would be asking too much of him.

I also did some hours, quite a few, in Polk County, but simply don't always remember the names of the judges or how long each case took. This is not workable.

836(1)(c): This is a lofty set of ideals and I can read them and agree with them. I can do this. However, some are not necessary or desirable. For instance: Sub (12) is not desirable. It matters not to the client whether I am culturally competent in cultures other than the client's culture. A client's world view may be one of intolerance. Must I be tolerant of intolerance in order to represent him? What if my client is a member of an undesirable group, like disgruntled Viet Nam Ex Marines? He may care that I am an ex Marine of the Viet Nam era, but may not want a person who meets your definition of culturally competent (as defined in Wikipedia). This is a poor example, but a client only cares if you are culturally competent as to his own culture and that of his child, and the court.

836(1)(d): This is workable, but complying still requires me to get the signatures of the judges in far flung areas and with records of time which are difficult to produce. As stated above, 836(2)(b)(3) (requires the signature of the juvenile court judge) & 836(2)(a)(3) (forty hours' practice in a juvenile court) are probably something that I will not take the extensive time to log and justify, but I have done these. Again, not impossible, but impractical.

836(3)(a). I currently have to obtain many hours in probate and real estate to allow me to practice in the area which allows me to meet a \$300,000 annual payroll in my office. I have two junior attorneys and three para-legals plus support staff. I find that parents in juvenile cases often cannot pay for services. I must be able to make enough money every day to allow me to do pro-bono or low pay work for these parents. I am also a licensed auctioneer in Minnesota and in Iowa. I have a heavy overhead for that business and devote many hours to continuing ed in those areas, also. Everyone thinks that they are the only entity who requires education. Five hours does not sound like much, but I would need to bend my schedule around the offered hours. When someone wants a farm sold at auction, they pick the date. You get the idea. I spend more than five hours researching the current law when I get one case. I get up to speed. I have personally argued before the Supreme Court of Iowa five or six times. You don't have that kind of record without studying the law. I won the "best brief" award chosen by the Iowa Supreme Court back in about 1993 as a 2L. I obtained scholarships to law school. My son won a full ride through U of Iowa Law School where he finished 3rd in his class. He learned his study habits from me. The five hours will not guarantee competence; it will discourage people like me from practicing this field. Also, my son will soon lose his right to practice in Iowa because he can't do all of the continuing ed here. (He is in DC now). He used to help me research and work on cases on occasion. Continuing ed will stop that.

836(7) This is a bit subjective. Again, a good idea, but this will chill the competent attorney from taking the occasional case, even where the case may involve a substantive matter of law which is not specific to juvenile court. Again, constitutional rights run across the gamut of legal cases. Good, constitutional lawyers will be eliminated. My son has written published Law Review Notes and Articles. He is smart. He is in the process of writing one about First Amendment (Religion) issues. Some CINA cases involve the conflict between a parent's religious beliefs and the state's mandates. He will be more up to date on such issues than any five hour class can provide, but will be barred from taking on the representation of a parent in such a case.

General Comment as to 836.1:

Why no exception for an attorney who pairs up with an "expert" juvenile court attorney? We will have attorneys for parents who have a great grasp on the procedure in juvenile court, but may lack depth as to the particular issue which could be the crux of the case.



Jennifer Galloway
 <Jennifer.Galloway@polkcoun
 tyiowa.gov>

09/19/2012 05:08 PM

To "rules.comments@iowacourts.gov"
 <rules.comments@iowacourts.gov>,
 cc

cc

bcc

Subject Proposed New Rule of Jvenile Procedure 8.36

FILED
 SEP 19 2012
 CLERK SUPREME COURT

Who	Date	Time	Subject
Jennifer Galloway	09/19/2012	05:08 PM	Proposed New Rule of Jvenil

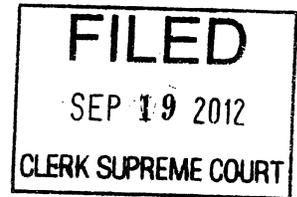
1 attachment



Comment on Proposed Rule of Juvenile Procedure 8.36.doc

Please find my attached comments. Thank you.

Jennifer G. Galloway
 Assistant Polk County Attorney
 Polk County Attorney's Office
 206 6th Avenue
 Des Moines, Iowa 50309
 515.286.3956 phone
 515.323.5303 fax



Polk County Attorney

JOHN P. SARCONE
County Attorney

ADDRESS REPLY TO:
206 Sixth Avenue
Des Moines, IA 50309-4025
(515) 286-3737

September 19th, 2012

To: The Iowa Supreme Court
From: Jennifer Galloway, Assistant Polk County Attorney
Re: Proposed New Rule of Juvenile Procedure 8.36 Comments

I have served as an Assistant Polk County Attorney in the Juvenile Division for 14 years. The Polk County Juvenile Division filed 877 child in need of assistance petitions in 2011 and filed 488 petitions from January of 2012 through June 30, 2012. We also have the responsibility of filing termination of parental rights petitions along with juvenile delinquency petitions. I appear in court regularly on behalf of the Iowa Department of Human Services in the child in need of assistance and termination of parental rights cases and have had the opportunity to work with counsel appearing on behalf of parents and children. I would like to share my opinion and perspective in regard to the Proposed New Rule of Juvenile Procedure 8.36.

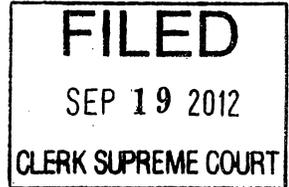
I do not believe there should be a separate set of prerequisites for representing parents in juvenile court. My experience reflects that most attorneys for parents are appointed by the Court after they have financially qualified. I would not want to preclude an otherwise competent attorney to provide representation when it could potentially limit the number of attorneys that would be able to practice and provide representation for parents in the juvenile court. Many attorneys who do this work encounter low wages for the work, battle billing disputes and in many cases work much harder than they are compensated for. I do think training and education as to juvenile court procedures and practice is important for any attorney practicing within those courts but do not believe that mandating the requirement is necessary. I would say that most attorneys that I come into contact with that practice regularly in juvenile court do attend trainings and CLE courses that are directly related to subjects and issues in juvenile court. They do that because they want to become better advocates and in many cases understand some of the underlying issues that many of the families deal with that become protective issues. I do not believe the new proposed order will necessarily improve representation as many of the attorneys that I deal with frequently appear in juvenile court and are very skilled at representing their clients. I support additional training opportunities in relation to child welfare but feel that the current obligations regarding CLE requirements are sufficient. Thank you.



Kevin Brownell
<Kevin.Brownell@polkcountyiowa.gov>
09/19/2012 05:10 PM

To "rules.comments@iowacourts.gov"
<rules.comments@iowacourts.gov>,
cc
bcc

Subject Proposed New Rule of Juvenile Procedure 8.36



Who	Date	Time	Subject
 Kevin Brownell	09/19/2012	05:10 PM	Proposed New Rule of Juver

To Whom It May Concern,

I have been asked to comment about the proposed new rule of Juvenile Procedure 8.36 due to my experience as an Assistant County Attorney for the past six years. I have never represented a parent in Juvenile Court, however, my role as an Assistant County Attorney has allowed me to observe and work with attorneys who represent parents on a regular basis.

Should there be a separate set or prerequisites for representing parents in juvenile court?

No. Parental termination and Child In Need of Assistance cases do implicate important constitutional rights, however, almost any legal action implicates important constitutional issues as well. There is no discernible reason that only attorneys in juvenile court are given prerequisites to practice when all other attorneys in the other fields of law are required to only follow the general ethic duties. There is nothing that I am aware of in the practice of Juvenile Law that would precipitate a separate set of ethical duties at this time.

Are the proposed requirements reasonable and appropriate and will they lead to improved representation in juvenile court?

Maybe. Certainly additional training and education can help any attorney in their practice of law. I could see additional requirements to practice in Juvenile Court as a potential barrier to some attorneys practicing at all in Juvenile Court which could mean that very capable attorneys who practice in all other fields of law could not practice in the Juvenile Law arena because they choose to not meet the prerequisites. In addition, the attorneys who are currently very competent and/or highly effective in representing parents already are participating in these types of trainings and education and I don't see any improvement for them. The attorneys who are less effective in representing parents are few and additional free training may help them, however, the improvement of most would probably be nominal.

The last two questions deal with the administration of this program. I don't see that this new rule is necessary at this time and I don't believe that it is necessary for only attorneys appearing in Juvenile Court that represent parents when the rest of the practicing attorneys in all other legal fields would not

have a separate requirement to appear in other areas of law. In the event that this rule is passed, I trust the Court to administer the program in a manner that makes sense. I would think the Clerk of Court at the local levels would be able to manage these requirements and be able to facilitate this information to the judges.

Do not hesitate to contact me with any questions or if you would request any additional information.

Sincerely,

Kevin Brownell
Assistant Polk County Attorney
206 Sixth Avenue - Suite 400
Des Moines, IA 50309
(515) 286-2009
Kevin.Brownell@PolkCountyIowa.gov

FILED
SEP 20 2012
CLERK SUPREME COURT



"Ritchie, Corwin [AG]"
<Corwin.Ritchie@iowa.gov>
09/20/2012 10:09 AM

To "rules.comments@iowacourts.gov"
<rules.comments@iowacourts.gov>,
cc
bcc
Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
Ritchie, Corwin [AG]	09/20/2012	10:09 AM	Proposed New Rule of Juver

1 attachment



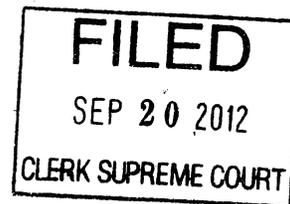
Proposed New Rule of Juvenile Procedure 8.36 Comments.docx

Chief Justice Mark S. Cady and Justices of the Iowa Supreme Court:

Attached please find comments submitted by the Iowa County Attorneys Association in regard to Proposed Rule of Juvenile Procedure 8.36.

Thank you for your consideration.

Corwin Ritchie
Executive Director
Iowa County Attorneys Association
Hoover Building
Des Moines, IA 50319
515-281-5428
corwin.ritchie@iowa.gov



September 20, 2012

To: The Iowa Supreme Court

From: Iowa County Attorneys Association

Re: Comments to Proposed New Rule of Juvenile Procedure 8.36 and Proposed New Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

Comments to Questions 1 & 2, on page 2 of the August 30th Order accompanying Proposed New Rule 8.36

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

We believe that there should not be separate requirements. Representing parents in juvenile court is extremely important, but the same level of competence and advocacy should be exhibited on behalf of all clients in all areas of the law. Those standards are clearly set forth in the current Iowa Rules of Professional Conduct and the Iowa Standards for Professional Conduct. All criminal cases and much civil litigation implicate constitutional rights; that should not stand as the rationale for the creation and adoption of a separate set of practice standards and CLE prerequisites. Why begin, or stop, there?

Iowa does not need a separate set of practice standards for parent's attorneys any more than it would for divorce, criminal defense, medical malpractice, probate, or the many other areas of practice. The adoption of Rule 8.36 would be unwise; it would be the first volley in an expected demand that all Iowa lawyers be required to complete certain additional CLE courses and satisfy "prior experience" requirements in order to be deemed competent to practice in each area of the law. The negative impact for Iowa lawyers regarding legal malpractice allegations would mushroom.

This proposal is overkill for an undemonstrated "problem".

2. Are the proposed requirements reasonable and appropriate? Will they lead to improved representation of parents in juvenile court? Will they deter some attorneys from practicing in juvenile court?

Requiring the completion of five hours of specialized training every year (1/3 of annual CLE requirements), as a prerequisite to practicing in juvenile court, will very likely deter many skilled and experienced attorneys from doing juvenile court work. Compensation for those attorneys is less than lucrative, especially for court-appointed work. Creating additional hurdles for juvenile court attorneys will very likely cause many attorneys to decide that a juvenile court practice is simply not worth their time and effort. This concern is even more pronounced in small, rural counties. In those areas attorneys willing to take on time-consuming cases in juvenile court are already in very short supply.

Conclusion

Iowa should not adopt an additional set of practice standards that are applicable only to a select class of attorneys who are singled-out for more stringent regulation based solely on the type of the client represented. Proposed New Rule 8.36 and New Standards of Practice may be well-intentioned, but they are an ill-advised solution to a problem that has not been proven to exist. In addition, their very adoption opens the door to a host of unnecessary questions and problems involving legal practice in every conceivable category of the law. We ask that you not venture there. Thank you for your consideration.



Cheryl Newport
<cnwport@clintonca.net>
09/25/2012 01:04 PM

To "rules.comments@iowacourts.gov"
<rules.comments@iowacourts.gov>,
cc
bcc
Subject Juvenile Procedure 8.36

FILED
SEP 25 2012
CLERK SUPREME COURT

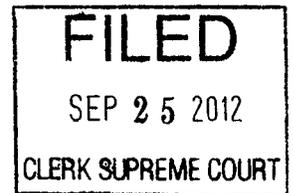
Who	Date	Time	Subject
→ Cheryl Newport	09/25/2012	01:04 PM	Juvenile Procedure 8.36

1 attachment



Proposed New Rule of Juvenile Procedure 8 36 Comments.docx

Please see attached comments.



To: The Iowa Supreme Court

From: Assistant Clinton County Attorney, Cheryl Newport

Re: Comments to Proposed New Rule of Juvenile Procedure 8.36 and Proposed New Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

Date: September 25, 2012

For the past six years I have been an assistant county attorney handling all of the juvenile filings (both cina, termination and delinquency) in Clinton County. Prior to my current position, I was in private practice for ten years. While engaged in the private practice of law, I represented both parents, grandparents, foster parents and children (both as attorney and guardian ad litem) in many cases. Prior to the appellate rule change requiring an attorney to continue on as appellate counsel, many attorneys referred their juvenile appeals to me for processing. I believe I have an unique insight as having been on both sides, currently prosecuting and formerly representing children, parents, relatives and foster parents in juvenile matters.

Comments to Proposed New Rule 8.36

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

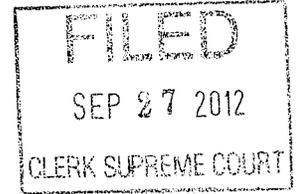
No. Juvenile court is a very specialized area of the law. The requirements of an attorney providing representation in a juvenile case are adequately spelled out in the Rules of Professional Conduct, the Iowa Standards for Professional Conduct, and statutorily for guardian ad litem. The rules should apply to all attorneys, not those practicing in a certain area of the law.

I think the idea is a "touchy-feely" solution to an age old problem. There are good attorneys and there are no-so good attorneys. Requiring attorneys practicing in juvenile court to attend additional cle's will not solve the problem of the "not so good attorneys". During the time in which I represented parents/children/grandparents/foster parents and the like, there were always some "not so good attorneys". The additional requirement of continued legal education will not make the "not-so-good attorneys" to become good attorneys. No amount of further education requirements will solve the problem. The solution really lies in the hands of the court. The Court is in charge of which attorneys get on the court appointed list and who gets appointed. The Court is in a position to know which attorneys serve their respective clients and which do not. Therefore, if the Court believes there is an attorney on their list that needs additional continuing education, the Court can confer with that particular attorney and be clear as to what is required to stay on the court appointed list in their courtroom.



Jon Anderson
 <Jon.Anderson@polkcountyiowa.gov>
 09/27/2012 03:01 PM

To "rules.comments@iowacourts.gov"
 <rules.comments@iowacourts.gov>,
 cc
 bcc



Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
→ Jon Anderson	09/27/2012	03:01 PM	Proposed New Rule of Juver

1 attachment

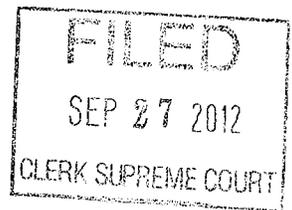


Proposed New Rule of Juvenile Procedure 8 36 Comments.docx

Please read the attached.

Jon E. Anderson
 Assistant Polk County Attorney
 206 6th Avenue - 4th Floor
 Des Moines, Iowa 50309
 515-286-3433
 jon.anderson@polkcountyiowa.gov





To: The Iowa Supreme Court

From: Assistant Polk County Attorney, Jon E. Anderson

Re: Comments to Proposed New Rule of Juvenile Procedure 8.36 and Proposed New Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

Date: September 27, 2012

I have practiced full-time and exclusively in juvenile court for over 15 years as an Assistant Polk County Attorney. Prior to my employment with the Polk County Attorney's Office I was employed in the private practice of law for 5 years, during that time represented parents in both CINA and TPR proceedings in juvenile court. I do believe that I have some insights to share regarding Proposed New Rule 8.36 of the Iowa Rules of Juvenile Procedure, and the companion Proposed New Standards of Practice for Attorneys Representing Parents in Juvenile Court.

Comments in response to Questions/Topics 1-4, listed on pages 2-3 of the August 30th Order accompanying Proposed New Rule 8.36

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

No. There is no rationale for the creation and adoption of a separate set of practice standards and CLE prerequisites, for a class of attorneys who desire to practice in juvenile court. TPR and CINA cases certainly do implicate important constitutional rights, but so do all criminal cases and a multitude of civil cases.

Iowa doesn't have a separate set of practice standards for divorce attorneys, criminal defense attorneys, medical malpractice attorneys, probate attorneys, and others. The adoption of New Rule 8.36 would be the first time that licensed Iowa attorneys are required to complete certain additional CLE courses, and satisfy "prior experience" requirements, in order to be deemed competent to step into an Iowa courtroom. If the judges, county attorneys, and guardian ad litem who work in juvenile court are not likewise required to demonstrate competency beyond licensure and compliance with the Code of Judicial Conduct or Rules of Professional Conduct, how can we justify requiring more of the attorneys who choose to represent parents in juvenile court? What rational basis exists for not similarly regulating attorneys who represent parents in divorce proceedings, which also involve litigation of child custody issues?

Based upon my 15 years of practice in juvenile court, I simply have not observed a crisis in the quality of representation provided by attorneys for parents. Overall, the quality of representation is very high. As in all areas of the law, there admittedly are a few bad apples that tarnish the professional reputation of all attorneys. But the number of "bad" or "incompetent" attorneys is so small, that those cases are best addressed on an individual basis by the court, or by disciplinary action under the Rules of Professional Conduct. Proposed New Rule 8.36 and the New Standards of Practice are the equivalent of using a shotgun to kill a fly.

2. Are the proposed requirements reasonable and appropriate? Will they lead to improved representation of parents in juvenile court? Will they deter some attorneys from practicing in juvenile court?

Providing attorneys additional opportunities to attend and obtain low cost CLE training on the core substantive and procedural laws used in child welfare proceedings is a great way to improve representation of all parties in a juvenile court proceeding. Creating additional hoops for juvenile court attorneys to jump through may well cause many attorneys to decide that a juvenile court practice is simply not worth their time and effort. This is a real concern in smaller, rural Iowa counties, where attorneys willing to take on time-consuming cases in juvenile court are already in short supply.

3 & 4. What is the best way to administer the program?

If this program is implemented, the best way to administer it would be to have the affected attorney file his/her annual certification at the local level, with the district court administrator for each judicial district that the attorney desires to practice in juvenile court. The district court administrator could then provide each juvenile court judge in the district with a list of attorneys who have filed annual certifications of compliance.

OFFICE OF THE
HANCOCK
COUNTY
ATTORNEY

KAREN KAUFMAN SALIC



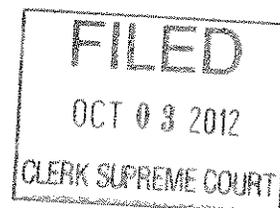
855 State Street
PO Box 70
Garner, Iowa 50438

641-923-4198
641-923-4199 fax
salick@hancocklaw-ia.com
www.hancockcountyia.com

Office Hours:
Monday through Friday
8 a.m. to 4 p.m.

October 1, 2012

Donna Humpal
Clerk of the Supreme Court
1111 East Court Avenue
Des Moines, IA 50319



RE: Comments to Proposed Rule of Juvenile Procedure 8.36 and
Iowa Standards of Practice for Attorneys Representing Parents in
Juvenile Court

Dear Ms. Humpal:

I currently serve on the Children's Justice Initiative Advisory Committee which commissioned the work of the Parents Standards Taskforce. I also serve on the Supreme Court's Juvenile Rules Advisory Committee, the Grievance Commission, the Governor's Juvenile Justice Advisory Board, my local Legal Services Advisory Board and the Hancock County Bar Association. I have practiced as an attorney in the State of Iowa for 14 years, and during that time have represented parents, children, and intervening grandparents in Child in Need of Assistance (CINA), Termination of Parental Rights (TPR) and delinquency matters. As the Hancock County Attorney for the past 11 years, among my other duties, I represent the State/Department of Human Services in CINA and TPR cases. I am a member of the Iowa County Attorneys Association Board of Directors and Legislative Committee, and co-chair of the Juvenile Committee.

On the Children's Justice Initiative Advisory Committee, I was the sole dissenting vote on the issue of recommending the Parent Representation Standards. I hope, given my knowledge of this process, and my significant involvement in juvenile law, that my comments will be given serious consideration.

RESPONSE TO QUESTIONS/TOPICS 1-4, LISTED ON PAGES 2-3 OF THE ORDER OF AUGUST 30, 2012 ACCOMPANYING PROPOSED RULE 8.36

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

No. Juvenile court proceedings are important legal matters, as are all court proceedings. The practice standards are offensively rudimentary and redundant given that there are existing ethical requirements to ensure that an attorney is zealously and competently representing a client in juvenile

court. Each practice standard is micromanagement of a parent's attorney style of practice, overlaid with internally inconsistent prior experience and burdensome continuing legal education requirements. (I fail to see how watching five hours of court is equivalent to actually practicing law for 40 hours.)

Most importantly, in the many, many meetings I attended on this subject, I have yet to hear evidence of a significant problem with the quality of representation parents receive in CINA and TPR cases. I believe the practice standards are a solution looking for a problem. Surely, there are parents unhappy with the outcome of a particular case because they no longer have custody of their children, but a parent has never lost their child because of their lawyer failed. Parents lose their children because they fail to make the changes necessary to provide a safe home for their children.

There is no area of law that currently imposes practice standards. CINA and TPR proceedings do implicate important rights, but those are rights are no more, nor less, important than those in other proceedings. Guardianships, conservatorships, custody determinations, child support matters, paternity cases, delinquency proceedings and mental health and substance abuse proceedings all involve very important – and often more permanent -- rights of a child and his parents. For adults, there are significant constitutional rights implications for a criminal defendant whose liberty may be deprived, an heir who is trying to secure his appropriate share of his parent's estate, and injured motorist trying to recoup his financial losses. Yet, there are no practice standards for *any* of those areas, and there shouldn't be. The existing professional regulations are sufficient to ensure that an attorney fulfills her obligations to her client, regardless of who that client is, or what that client wants.

Obviously, there are some attorneys who are more effective, personable and/or invested in juvenile practice than others; however, that doesn't necessarily result in prejudice to the parent client. As a collaborative, problem-solving arena, all juvenile court participants are invested in working toward the best interest of the child. The juvenile judge is not swayed by shiny presentations, Darrow-esque oratory or unlimited discovery efforts. The Department of Human Services is required to provide reasonable efforts to reunify a family, which occurs regardless of whether the parent's attorney asks for a particular service, conducts formal discovery or has memorized the contents of HIPAA. The child's attorney and guardian ad litem advocate for the child's interest and best interests, which invariably includes services and information to benefit the parent. Service providers, CASAs and foster parents are knowledgeable about the system and are partners with parents in progressing to a healthy relationship with the child. The County Attorneys, even in their representation of DHS, continue to serve the interest of the public in seeing that every family is given the opportunity to succeed.

Regrettably, there are occasions when a parent is represented by an attorney who cannot remember the client's name, mistakes the service provider for the parent, or did

not meet in-person with the client prior to the hearing. However, I can say with all honesty, it is my experience that this is extremely rare, and that those types of shortcomings cannot be corrected by imposing practice standards, CLEs or initial experience requirements. The failings of any individual attorney are best resolved on an individual basis by the court or the grievance process.

I would also note that it is often the more aggressive, adversarial attorneys who damage their client's opportunities to reunite with their children. They tell their client to distrust DHS, service providers and treatment professionals, fight even the most rational recommendation because it comes from the State, advise their client not to disclose relapses or shortcomings in order to protect their criminal case, and require lengthy, bitterly contested hearings that convince the parent that every other participant is the enemy. Practice standards will not fix that either.

In rural Iowa, which is most of the State, attorneys by necessity are attorneys of general practice. Naturally, there are some areas they prefer, but when a client of 40 years wants you to help his daughter keep his grandchildren, the client isn't going to be happy to hear you can't represent her because you didn't do five hours of juvenile CLEs that year. Of course, you could represent grandpa as an intervenor, or if he were the guardian of the child, which further highlights that the practice standards have little to do with improving anything.

2. Are the proposed requirements reasonable and appropriate?

I cannot say that the requirements are unreasonable or inappropriate things for an attorney to do; however, I can say that they are redundant, unnecessary and ineffective.

Will they lead to improved representation of parents in juvenile court?

No. The standards themselves cannot change the quality of representation in any regard. Training would be beneficial, but the standards cannot improve representation.

For instance, it certainly is not unreasonable to expect an attorney to meet in person with their client before each hearing. An attorney could strictly comply with that directive, but still be ineffectual. Additionally, nearly every parent involved with juvenile court has limited resources, time and transportation capabilities. Hancock County does not have a user-friendly public transportation system. Mom in Kanawha certainly could take the transit bus to Garner or Mason City to meet with her attorney, but she's going to have to leave home at 6 a.m. and not return until after 4 p.m. For a Mom who must also complete substance abuse treatment, meet with service providers, participate in Crisis Intervention Services, obtain employment, maintain a household, submit to drug testing, and attend frequent visitation (unless she has custody of her child in which case she needs to provide care on a fulltime basis), adding an in-person appointment with her attorney is likely not going to *really* help her. It will be one more appointment she can't consistently make, or if she does, will require that she miss some

other appointment/obligation that we expect her to meet. Most of our parents don't have phones, decent or reliable transportation (let alone a license, registration or insurance), or good coping mechanisms when they become overwhelmed. Most are struggling mightily to navigate the world – otherwise we would not be involved with their family. An in-person meeting doesn't solve that, and doesn't provide any more information than what can be provided on the phone or, in most cases, what is in the DHS report.

Are five hours of annual juvenile law CLE needed?

No. Through study and experience, an attorney will become well-versed in the core substantive and procedural aspects of juvenile law, but there simply are not five hours of juvenile legislation, caselaw or developments that a parent's attorney needs to do every year in order to do their job effectively. The attorney need not be an expert in every field related to a juvenile case, diagnosis or theory.

Will they deter some attorneys from practicing in this area court? Is that an important concern?

I do believe that the Practice Standards will deter attorneys from practicing in the juvenile area, and that is a tremendously important concern. I currently have two attorneys in Hancock County who accept juvenile court-appointments. They are in their 60s and will not practice law forever, but they feel an obligation to serve the public doing court-appointed work and feel a sense of accomplishment from their participation in making a child's life better. The younger attorneys in Hancock County do not feel that sense of public duty, and in part because they do not have as established of a practice, simply cannot afford to do it. They will appear as privately retained counsel for existing clients, but under this proposal they could no longer do that. Few attorneys will drive to Hancock County to take these cases now because they do not get paid for travel time. If Rule 8.36 and the practice standards are implemented, several have told me they will not only have to stop coming to Hancock County, they will liking stop taking appointments in juvenile court altogether. One can opine about improving representation, but driving good, experienced attorneys away from the practice does no one any good and will cause the system to grind to a halt, which only harms our most vulnerable children.

Especially for attorneys who have appeared in juvenile court for decades, I feel the initial prior experience requirements are ridiculous. Everyone is new, inexperienced lawyer at some point in their career. The afternoon I was sworn in as a lawyer, I returned to Mason City for a felony sentencing. The client had prior felony offenses and the pre-sentence investigation report recommended prison. I had two hours of experience as a lawyer – all of which was spent alone in my car – yet I managed to sufficiently represent my client's interest and persuade the judge not to send her to prison. She could have lost up to five years of her life, but without specialized standards and prior experience requirements and five hours of criminal CLEs, I figured out how

to do my job well. The same was the case in the juvenile cases I handled. If I had to jump through all the meaningless hoops proposed by the practice standards while establishing myself in my firm, I don't know that my boss would have let me go into juvenile practice.

I also believe that especially in rural areas, attorneys will simply be unable to comply with the requirements, which will bar them from practice. Training opportunities, provided at no or low cost to ALL attorneys in ALL locations across the State, with a focus on the core substantive and procedural laws used in child welfare proceedings simply do not occur. Even the most well-intentioned attorney may not be able to arrange his schedule to attend five hour-long brown bag lunches in Mason City. Especially in our district, attorneys practice in multiple counties which requires balancing schedules very carefully with District Court service days and Juvenile Court hearings occurring on every day of the week throughout the district. Making five hour-long round-trips to Mason City for hour trainings is ten hours of lost billable time to meet the pre-requisite to engage in a law practice that pays \$60 per hour. At some point, attorneys will not be able to afford to do juvenile work, which will hit the rural counties the fastest and the hardest, but will eventually impact every county.

Further, while there currently is some federal funding to pay for training, even now it does not occur on a regular basis, and there is no guarantee that this funding will continue. What are attorneys to do if there simply aren't any trainings offered? What will the Court do if there is no money to pay for training?

3. Is annual self-reporting and certification by attorneys to district court administrators the best way to administer the program?

No. I personally think the court administrators have enough to do right now. I marvel that with the manpower shortages of judges, court reporters and clerks that we can complete any court business. Further, if the Court determines that these standards are absolutely necessary to improve the quality of representation for parents, then it should be important enough to enforce them in a rational, uniform way. If failure to complete the required CLEs is such a deficiency that an attorney will be banned from practicing juvenile law, there should be a way to track whether they can practice juvenile law. I don't see how the district court administrators can manage that information with their existing system, and it doesn't seem like OPR can do it without significant expense, which should not be paid by all attorneys nor the taxpayers.

I am not sure if any thought has been given to whose responsibility it will be to approve each individual CLE as being a juvenile CLE. Will OPR's take on that responsibility? If they aren't going to track the attorneys attending the class, should they have to approve them? What are the criteria for something to be a "juvenile CLE?" Juvenile brain development is a hot topic right now, but likely has little to do with the issues addressed in a CINA. A lecture on attachment disorder may be very interesting and

qualify as a juvenile CLE, but would that actually improve representation of a parent? In most cases the local DHS worker or other expert can provide more than sufficient information to the attorney?

4. Would it be better to require annual certifications to be filed with the state court administrator rather than district court administrators?

No. If the state court administrator is going to be charged with this task, it is going to require some sort of specialized computer program and dedicated staff to monitor. The cost of that needs to be absorbed somewhere in the judicial budget, and I would rather that money be spent on a judge, court reporter or clerk who is doing something that meaningfully contributes to the conduct of court business.

Or should attorneys representing parents be required to file a notice of appearance at the outset of each case that certifies their compliance with rule 8.36?

As a member of the Advisory Committee, I have consistently opposed the individual certification in each case. This is just another document that an attorney has to prepare and serve on the parties, and for the Clerk to docket. In many cases there are multiple fathers which could result in three or four different certifications per file. Most importantly, what is the consequence if a certification isn't filed? Is that an appeal issue? I doubt the Court of Appeals has time to address those types of issues. I would rather they be allowed to address substantive and procedural issues that actually impact the welfare of a child.

What if an attorney appears and later it is discovered that the attorney actually hasn't complied with the requirements (i.e. not all of their juvenile CLEs were approved)? Is that malpractice, ineffective assistance of counsel, grounds for an ethical complaint, perjury? It just seems there is no viable tracking or enforcement mechanism. If the purpose is to improve representation, this proposal creates a lot of busy work for some administrator, and misses the mark in many ways.

STANDARD 14 AND COMMENTARY, PAGE 15, LINES 8-46, AND PAGE 16, LINES 1-32

Standard 14 requires the use of effective discovery methods, which the commentary expands to include formal and exhaustive procedures, such as constant requests for the DHS file, depositions, interrogatories, requests for production of documents, and requests for admissions. This specifically contravenes the directive of existing Iowa Rule of Juvenile Procedure 8.3 which encourages informal discovery methods. Informal discovery methods are preferred because virtually no CINA or TPR case requires more.

For instance, in a CINA, the State's case is laid bare from the very beginning in the Child Abuse Assessment Report and police reports. The people preparing those reports are trained professionals who are going to testify to what they've put in their reports. Any people interviewed or relied on are going to be identified, and are in almost every instance, the parents and household members of the child, who the parent has ready

access to. The parents, as parents, already get copies of provider reports, evaluation and treatment and case plans. What else could they want or need? Formal discovery takes time and money to provide. An hour-long deposition is going to cost the State Public Defender's Office \$180 just in attorney fees for the parents' attorneys (assuming there are just 2) and GAL/ attorney for the child (assuming one person serves both roles). The deposition will probably be another \$300 for the original and \$50 for each of the three copies. If the witness is subpoenaed, there will be another \$40 or so for service fees. That is \$670 (assuming the witness isn't a doctor or expert with additional fees), which multiplied by even 5,000 cases per year will bankrupt the public defender with a \$3.3 million bill.

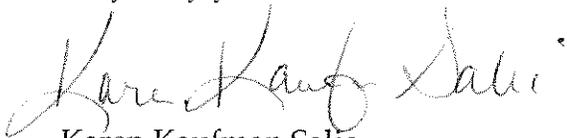
More important than the financial impact is the delay that formal discovery inserts into the reunification process. Given the number of attorneys and days with existing court commitments, a deposition can't be thrown together in a day. Children and their chance at permanency will suffer if the attorneys are expected/required to engage in these practices.

PROPOSED NEW IOWA RULE OF JUVENILE PROCEDURE 8.36

The entire rule should not be adopted. The rule and the enforcement mechanism contradict the stated purpose of the standards (after Standard 27, lines 8-12 on page 3) to provide *guidance* for practicing in compliance with the Iowa Rules of Professional Conduct. Either these are aspirational "best practice" guidelines or enforceable sanctions implicating an attorney's authority to practice law, but they cannot be both, and should not be either.

I am mindful that many professionals devoted a great deal of time to developing the Rule and practice standards. I appreciate that type of interest in improving our juvenile system, but it is unwise to adopt this work product and I urge the Court to reject it.

Very truly yours,

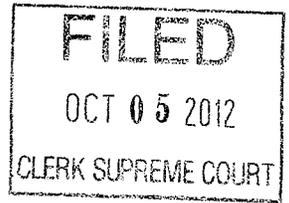


Karen Kaufman Salic
Hancock County Attorney



"Timothy Dille"
 <timd@lisco.com>
 10/05/2012 01:46 PM

To <rules.comments@iowacourts.gov>,
 cc
 bcc



Subject Proposed Rule of Juvenile Procedure 8.36 and Proposed
 New Iowa Standards of Practice for Attorneys Representing
 parents in Juvenile Court

Who	Date	Time	Subject
Timothy Dille	10/05/2012	01:46 PM	Proposed Rule of Juvenile Pi

1 attachment



Document1.docx

To whom it may concern:

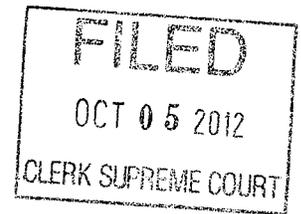
Attached are my comments concerning Proposed New Rule of Juvenile Procedure 8.36 and Proposed New Iowa Standards of Practice for Attorneys Representing parents in Juvenile Court. Please let me know if you have any questions or you need anything further from me. Thank You.

Timothy W. Dille
 Jefferson County Attorney
 117 West Broadway
 Fairfield, Iowa 52556
 (641) 472-9201 PHONE
 (641) 472-9202 FAX
 jeffcoatty@lisco.com OFFICE E-MAIL
 timd@lisco.com PERSONAL E-MAIL

"Success is not final, failure is not fatal: it is the courage to continue that counts." - Winston Churchill

"Try and fail, but don't fail to try." - Stephen Kaggwa

CONFIDENTIALITY NOTICE: This email, and any attachments hereto, contains information which may be CONFIDENTIAL and/or PRIVILEGED. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please note that any unauthorized disclosure, copying, distribution or use of the information is prohibited. If you have received this document in error, please notify the sender immediately and DESTROY ALL ELECTRONIC AND HARD COPIES of this communication, including attachments. Thank you.



To: The Iowa Supreme Court

From: Jefferson County Attorney Timothy W. Dille

Re: Comments to Proposed New Rule of Juvenile Procedure 8.36 and Proposed New Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

Date: October 5, 2012

As a county Attorney, I practice in Juvenile court regularly. I have been prosecuting and handling juvenile cases since 1997. From 1992 to 1997, I practiced regularly in juvenile court representing parents and also acting as guardian ad litem. Thus I feel that I am knowledgeable of juvenile court and the processes therein and feel that I wanted to comment on the proposed new Rule of Juvenile Procedure 8.36 and the proposed New Iowa Standards of Practice for Attorney's Representing Parents in Juvenile Court.

I do not believe there is a need for a separate set of prerequisites for representing parents in juvenile court. As stated, Juvenile practice is a very specialized area of the law. These types of cases do implicate important constitutional rights. However, so do other cases such as criminal cases and other types of litigation. Why is the group representing parents in juvenile court being singled out? Has there been a problem with representation of parents in the past? If so, are the Iowa Rules of Professional Conduct and Iowa Standards for Professional Conduct not able to deal with an attorney that is not competently representing his/her client in juvenile cases? If so, wouldn't it be better to amend those rules to deal with those issues rather than adding another layer of rules and continuing education requirements?

As stated in the notice, there have never been any additional requirements beyond bar membership and general ethical duties for practicing in a particular area. SO my question would then be why are attorneys who represent parents in juvenile court being singled out? Is the same going to be done in other areas of the law that effect important constitutional rights, such as criminal law or in dissolution of marriage cases where custody is often decided as in juvenile court? And If not, why not?

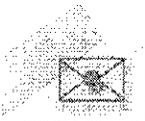
The requirements that are being proposed, I believe, would keep many lawyers from practicing in juvenile court where the cases can be quite lengthy with important issues. The specialized requirement for additional continuing education and affirmations would deter people. In a rural area such as mine, this would often times make us have to look to neighboring counties for attorneys who have the CLE requirements and experience to represent these parties. I would want to see how many of the complaints against attorneys are for representation in juvenile court on a yearly basis. My guess is they are low. Based upon my experience, I have not observed a problem that would require this type of

solution. There are always a few bad apples that give everyone a bad name, but I feel these can be addressed appropriately by the current disciplinary system. It seems if this is a proposed solution to a non-existent problem.

Will there be specialized training and requirements for those attorneys representing juveniles in these cases, and guardian ad items? Are not the constitutional rights of these parties as important as those of the parents? I have not seen any such proposed rules for them. Are they doing that much more of a competent job than their counterparts representing the parents?

Based on my experience and what I have stated above, I feel that the new rule and standards are a solution to a problem that does not exist, and that any problem there is can be handled adequately under the current professional conduct rules.

FILED
OCT 09 2012
CLERK SUPREME COURT



Leesa A
McNeil/District3/JUDICIAL
10/09/2012 02:35 PM

To Rules Comments/SCA/JUDICIAL@JUDICIAL,
cc Donald J Bormann/District3/JUDICIAL@JUDICIAL, Robert
Dull/District3/JUDICIAL@JUDICIAL, Timothy
Jarman/District3/JUDICIAL@JUDICIAL, David
bcc
Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
Leesa A McNeil	10/09/2012	02:35 PM	Proposed New Rule of Juver

The juvenile judges of the Third Judicial District and the Woodbury County Juvenile Court Collaboration team took meeting time to consider the proposed rules and the impact of them. I've categorized the feedback per the instructions into the four categories identified. The feedback for sections 3 & 4 represent my thoughts only.

1) Should there be a separate set of prerequisites for representing parents in juvenile court?

- Recognition that juvenile court is one of the most complicated area to work in and training on the law would be helpful.
- Need for training on what an effective appeal petition should look like--most attorneys are not prepared to do appeals.
- Concern about the private pay situations where a parent hires his/her family attorney to deal with a juvenile court issue - even though that attorney never works in juvenile court. Would that attorney be subject to Rule 8.36(1) and 8.36(4) -- the proposed rules read as if the rules would apply in those situations.
- With the extra training required the attorneys taking juvenile cases should get paid more.

2) Are the proposed requirements reasonable and appropriate and will they lead to improved representation of parents in juvenile court?

- The focus of training should be the law and not psychology, counseling and therapy.
- 3 hrs of training suggested as sufficient -- not the 5 hrs as proposed
- localized training preferred --- not all training in Des Moines!
- Idea raised that perhaps the law schools should be doing more to prepare attorneys for work in juvenile court.
- Who would fund the training and coordinate it?
- Concern about discouraging attorneys from practicing in juvenile court - especially in rural areas of the state.
- Improved practice would result from paying for more attorney time/activities on the juvenile cases and putting best practices for working in juvenile court on the court's website.

3) Is annual self-reporting and certification by attorneys to district court administrators the best way to administer the program?

- Many attorneys work across district boundaries and any requirement for reporting via DCAs would result in some attorneys having to file multiple certifications.
- DCAs have no staff or special database to provide for tracking and monitoring. This is extra work that would need extra staff to manage!

4) Even if OPR is not involved, would it be better to require annual certifications to be filed with the state court administrator rather than district court administrators?

-Yes - is it possible that the database used to monitor attorney CLE be utilized for the tracking that is needed if the proposed rules are adopted?

The Iowa Judicial Branch dedicates itself to providing independent and accessible forums for the fair and prompt resolution of disputes, administering justice under law equally to all persons.

Leesa A. McNeil
District Court Administrator-Third Judicial District
Woodbury County Courthouse, Room 210
620 Douglas Street, Sioux City, Iowa 51101-1249
phone: 712-279-6608 fax: 712-279-6631
Leesa.McNeil@iowacourts.gov



"Scott Strait"
<scott@scottstrait.com>
10/18/2012 12:27 PM

To <rules.comments@iowacourts.gov>,
cc
bcc
Subject Proposed New Rule of Juvenile Procedure 8 36

FILED
OCT 18 2012
CLERK SUPREME COURT

Who	Date	Time	Subject
Scott Strait	10/18/2012	12:27 PM	Proposed New Rule of Juv

1 attachment



Ltr in opposition to Proposed Rule 8 36 docx

See attachment

--Scott Strait
108 West Broadway
Council Bluffs, IA 51503
Phone: 712-256-8200
Fax: 712-256-7733

SCOTT STRAIT

108 WEST BROADWAY
COUNCIL BLUFFS, IA 51503-4311

ATTORNEY AT LAW
LICENSED IN IOWA & NEBRASKA
SCOTT@SCOTTSTRAIT.COM

PHONE: (712) 256-8200
FAX: (712) 256-7733

October 16, 2012

The Honorable Mark S. Cady
Chief Justice of the Supreme Court of Iowa
1111 East Court Avenue
Des Moines, IA 50319

RE: Proposed New Rule of Juvenile Procedure 8.36

Dear Chief Justice Cady:

I am writing this letter in opposition to the Proposed New Rule of Juvenile Procedure 8.36. I am deeply concerned that the implementation of this new rule will have significant and long lasting negative impacts upon our Iowa Juvenile Court system

I am private attorney in Council Bluffs, Iowa. I was admitted to practice law in Iowa in 1994 and have consistently practiced in Juvenile court since 2001. I have represented children, parents, custodians, foster parents and grandparents in juvenile court. I have done both CINA and Delinquency cases and handled numerous terminations of parental rights. The following is a list of the reported juvenile court appeals I have worked on:

In the Interest of D.P., (Iowa App. 2003)
In the Interest of R.G., (Iowa App. 2003)
In the Interest of J.W., (Iowa App. 2003)
In the Interest of D.L.M.P., (Iowa App. 2003)
In the Interest of L.A.H., (Iowa App. 2004)
In the Interest of B.M.K. (Iowa App. 2006)
In Interest of M.V.P. (Iowa App. 2006)
In Interest of A.H. (Iowa App. 2006)
In Interest of A.G.R. (Iowa App. 2006)
In the Interest of J.R.B. (Iowa App. 2007)
In Interest of K.F. (Iowa App. 2007)
In the Interest of J.W. (Iowa App. 2007)
In Interest of K.L.B. (Iowa App. 2007)
In Interest of M.J.H. (Iowa App. 2007)
In the Interest of C.K.L., (Iowa App. 2008)
In the Interest of C.L.W.-M., (Iowa App. 2008)
In the Interest of M.S., (Iowa App. 2008)
In the Interest of R.C. (Iowa App. 2009)
In the Interest of G.E.P. (Iowa App. 2010)
In re E.G.C. (Iowa App. 2010)
In re B.B.B. (Iowa App. 2011)

In re R.M.C. (Iowa App. 2011)
In re L.B.-A.D. (Iowa App. 2011)
In re K.R.L. (Iowa App. 2012)
In re C.A.M. (Iowa App. 2012)
In re A.D.W. (Iowa App. 2012)
In re M.S.B. (Iowa App. 2012)
In re L.C. (Iowa App. 2012)
In re C.L.P. (Iowa App. 2012)
In re B.A.L. (Iowa App. 2012)

The Juvenile Court system means a great deal to me. While I certainly recognize areas of improvement, I do believe that fundamentally, our Juvenile Court system works, and has a positive impact in the lives of the children it is designed to protect. It is my sincere belief that Proposed Rule 8.36 will discourage attorneys from practicing in Juvenile Court. Proposed Rule 8.36 will not improve the level of legal services being offered to parents. Proposed Rule 8.36 will not achieve any of the laudable goals it is designed to accomplish.

Your Order of August 30, 2012 asks that commenters focus on four areas of interest: (1) should there be separate prerequisites for representing parents; (2) are the requirements reasonable and appropriate; (3) Is annual self-reporting to district court administrators the best way to administer the program; and (4) should the state court administrator be involved or should attorneys file a notice at the outset of each case?

Issue #1. Should there be separate prerequisites for attorneys representing parents?

The answer is absolutely "no." To date, the Supreme Court has not imposed additional requirements for practicing in a particular area. The Iowa Rules of Professional Conduct already regulate the practice of law by requiring that attorneys must be competent within a particular area to practice in that area I.R.P.C. 32:1.1. If a Juvenile Court Judge does not believe a particular attorney is competent to handle a particular case, he or she is required by their own ethics to file a complaint concerning that attorney. Furthermore, Judges have the discretion in screening competent and incompetent attorneys at the appointment stage to insure that only competent attorneys are being appointed to represent parents (or children) in CINA matters. To alter this system and require additional certification, specific standards of practice, annual CLE requirements, etc. is a fundamental change to our system. It is unwarranted, excessive, and inappropriate. Shall the Supreme Court now set specific standards for representing parents in child custody matters? Shall the Supreme Court now set new CLE standards for practicing in Criminal Court, since there are important Constitutional interests at stake? Is the Supreme Court effectively creating the basis for legal malpractice claims whenever these "standards" are deviated from?

On what basis was Proposed Rule 8.36 drafted? Is there an epidemic of substandard attorneys representing parents in Juvenile Court? Is there a disproportionate number of ethical complaints filed annually against attorneys for parents in Juvenile Court? Is there a disproportionate number of legal malpractice claims filed against attorneys practicing in this area? I would hope that the Parents Representation Task Force has substantial evidence of this perceived problem before making such a radical and fundamental change to our system. Based upon the questions asked by my legal malpractice carrier each year, I suspect that there is NOT a disproportionate number of legal malpractice claims filed against attorneys practicing in this area, but that is probably just anecdotal

evidence...and we should certainly not rely upon anecdotal evidence when making such important and far reaching system changes.

Issue #2. Are the proposed requirements reasonable and appropriate? Will the new requirements lead to improved representation of parents in juvenile court? Are 5 hours of CLE needed? Will these rules deter attorneys from practicing in the area? Is this an important concern?

It is my belief that these proposed rules are neither reasonable nor appropriate. As mentioned earlier, there are already mechanisms in place to prevent incompetent attorneys from practicing in this area. Will requiring 5 hours of mentoring or 5 hours of annual CLE equate to improved representation? It is difficult to know the answer to that question. It first assumes that there is a need for improved representation, an assumption I do not share. Second, will 5 hours of mentoring transform an incompetent attorney into a competent one? Not likely.

However, what is likely is that these rules WILL deter experienced attorneys from practicing in this area. Court appointed attorneys presently are paid \$60 per hour for their services in Juvenile Court, well below the State or national average for attorneys. The Iowa Public Defender pays certified Spanish interpreters \$75 per hour for their services at the same hearing the contract attorney is receiving only \$60 for. If there was travel required, the attorney cannot bill for his/her travel time, but the Spanish interpreter is allowed to bill for that time. Will adding additional requirements for an already under compensated, and underappreciated area of practice deter attorneys from this area? I absolutely believe that it shall. If the purpose behind Proposed Rule 8.64 is to remove the experienced bar from this area of practice, I am confident it will succeed in achieving that goal.

I do not see a need for these rules. By and large, we have a dedicated group of private attorneys who work very hard in representing their clients in juvenile court. I do not believe that the practicing bar is under-educated in the arena of juvenile court or require specific CLE requirements. I do believe that this is a solution without a problem...which will do much more harm than good.

Issue #3. Is annual self-reporting and certification to district court administrators the best way to administer the program. Should the OPR handle this?

No, this program should be administered by either the OPR or the district court administrators. We already have significant budgetary concerns and an overtaxed judicial system. Adding additional reporting and tracking requirements to either entity is not fiscally responsible. Again, based upon my own experiences in juvenile court over the past 11 years, there is not an immediate and demanding need to implement this costly program.

Issue #4. Should annual self-reporting and certification be made to the state court administrator or should attorneys be required to file a notice at the outset of each case?

Again, I do not believe that added state tracking and reporting is fiscally responsible for a problem which does not truly exist. Second, adding additional notice and filing requirements for attorneys is another reason that some may choose to avoid the entire area all together.

Additional Comments and Concerns:

In reviewing the actual Proposed Rule 8.36, I am struck by a number of issues which I do not believe the drafters have considered, including the following:

1. Reviewing and agreeing to comply with the Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court definitively sets the standard for legal malpractice for attorneys practicing in this area. While these kind of guidelines and good practice tips are certainly useful and would make a great instructional tool for the Iowa Public Defender in instructing attorneys he contracts with, making this a part of the Rules of Juvenile Procedure is excessive, unwarranted and dangerous. The Supreme Court should not be dictating good and bad practice methods for specific areas of law. It sets a dangerous precedent and a role I do not believe the Supreme Court should embrace
2. The Rules are very ambiguous. Some of the Rules contain language that appear to be directed to only court appointed counsel. Other areas apply to all attorneys representing parents in juvenile court. The right of an individual to retain the counsel of his/her choice may be infringed by these rules. A well respected criminal defense attorney with 30 years of experience may be hired by a parent charged with child endangerment. Proposed Rule 8.36 would prevent that well respected attorney from also representing his client in Juvenile Court if he/she were not properly certified and credentialed. The parent would be forced to either forego his choice of counsel, or hire multiple attorneys for obviously inter-related matters.
3. Is there a reason that attorneys for parents are singled out in these rules and they do not apply to all attorneys practicing in Juvenile Court? Are the Constitutional rights of the children less important? Are the rights of the legal guardian grandparents not afforded the same protections? Is the role of the County Attorney and their responsibility to protect the welfare of the children and society at large not valued on the same level as the rights of the parents? Singling out attorneys for parents seems arbitrary and capricious.
4. The CLE requirements exceed the present level required for an attorney's ethics. They necessarily mean that an attorney will be less likely to work in other areas or attend other CLEs. Again, court appointed Juvenile Court attorneys are many of the least compensated attorneys in the state. How will singling them out and adding additional requirements for only this area of the law NOT discourage them from practicing in this area? Fewer experienced attorneys representing parents does not help the system, it hurts it. In rural areas, it is already difficult to find attorneys willing to do Juvenile Court work. Rule 8.36 enhances this problem.
5. Proposed Rule 8.36(7) allows for sanctions for failing to follow the Iowa Standards of Practice. Thus, the Juvenile Court is now empowered to sanction an attorney for failing to return phone calls, failing to request depositions, failing to find a client in federal custody, all at the discretion of the Juvenile Court, all without any of the normal procedures for an ethical complaint being filed, all without there being a prosecutor, investigation or other normal judicial due process.

Honorable Justice Cady
October 16, 2012
Page 5.

In summary, I cannot in good conscience support Proposed Rule 8.36. I believe that while it is well intentioned, it fails to properly consider the realities of Juvenile Court work. I believe that if it were implemented we would immediately see a decline in the number of attorneys accepting juvenile court appointments. This decline would not be the youngest and least experienced attorneys, but those who are most experienced and most sensitive to the issues of frivolous malpractice claims, dedicated CLE requirements and judicial micromanaging of their practices. This would not enhance the representation of parents in juvenile court, but fundamentally harm it. I urge you to reconsider this proposal and oppose its implementation.

Sincerely,

SCOTT STRAIT



Andrea Vitzthum Hiesterman
 <Andrea.Vitzthum-Hiesterman@polkcountyiowa.gov>
 10/19/2012 02:32 PM

To "rules.comments@iowacourts.gov"
 <rules.comments@iowacourts.gov>,
 cc
 bcc

FILED
 OCT 19 2012
 CLERK SUPREME COURT

Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
➡ Andrea Vitzthum Hiesterman	10/19/2012	02:32 PM	Proposed New Rule of Juv

To: The Iowa Supreme Court

From: Assistant Polk County Attorney Andrea S. Vitzthum

Re: Comments to Proposed New Rule of Juvenile Procedure 8.36 and Proposed New Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

Date: October 19, 2012

I practice exclusively in juvenile court and have done so for the extent of my nine year career. I believe passionately about the good work that is done to aid children and families in Iowa's Juvenile Courts. While I do not and have never represented parents, I did serve on the Parents Representation Committee that drafted the new proposed standards. I am writing to register my resistance to the Proposed New Rule of Juvenile Procedure 8.36 and Proposed New Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court for the following reasons and in response to the questions posed.

Question 1 - Should there be a separate set of prerequisites for attorneys representing parents in juvenile court considering the important constitutional rights?

I truly believe that the work we do in juvenile court is among the most important work done in the legal profession. We have a tremendous impact on the lives of children and families every day and good parent representation is a very important part the process. Based on my personal experience, a large percentage of attorneys practicing in juvenile court do very good work. However, I do not believe that there is a need for a separate set of prerequisites for attorneys who represent parents in juvenile court cases. In my opinion, more rules and expectations are not going to make marginal attorneys any better. I suspect they will continue to marginally provide services. An attorney who never contacts her client before a court hearing is not likely to suddenly start doing something which seems so obvious to the sound practice of law simply because a new set of standards spells out the expectation that she communicate with her client. In my opinion the proposed requirements do not provide expectations of attorneys that are not already covered by the Rules of Professional Conduct. While juvenile court is certainly a unique court experience, the basic skills

necessary for zealous representation of parents is not all that different than the representation required in divorce, criminal or tort cases. What precedent will separate expectations for attorneys representing parents in juvenile court set? While I understand and acknowledge that there is a separate set of Federal Guidelines that spell out the duties of attorneys representing children in juvenile court, I draw a distinction between the representation of children from capable adults. The child client is a unique circumstance worthy of guidelines as to the adequate representation of someone so young and often incapable of guiding his or her attorney.

Question 2 - Are the proposed requirements reasonable and appropriate and will they lead to improved representation of parents in juvenile court? Will they deter attorneys from practicing in juvenile court?

It is my opinion that the standards, while reasonable and appropriate to expect of attorneys representing parents, will not serve to improve the practice of attorneys in juvenile court because there is, and always will be, the matter of accountability. If improving parent representation is the goal, I do not believe that new requirements and standards is the means to achieve that goal. I see the standards like this. If you have two children, one of whom follows all parental rules and never has a single problem or rule infraction and you have another child who is out of control and does not comply with parental rules do you respond to the situation by imposing even more rules for both children? What purpose does that serve? The child who has always complied will likely continue to do so with even more oversight and expectations placed upon her and the child who did not comply in the first place will continue his pattern of non-compliance with the new expectations. More rules and expectations will not necessarily change behaviors without some sort of accountability. There will be no change in behavior and I believe the same to be true as it relates to these proposed requirements and expectations for attorneys practicing in juvenile court. Why not target efforts directly at the offending attorneys who judges believe are not meeting their client's needs?

Secondly, I have serious concerns about the impact of these proposed regulations and requirements could have on attorneys, especially those who practice in more rural districts. I would be concerned that attorneys would decide that a juvenile practice is simply not worth the time and effort given the requirements and the rate at which they are paid for court appointed work. Five CLE hours for someone like myself who only practices in juvenile court might seem practical but the same expectation for attorneys who we ask to take on a few juvenile court cases a year in the grand scheme of their entire practice could be overly burdensome when considering a desire to include other areas of practice where the attorney spends more of his or her time.

Questions 3 and 4 - How best to administer program and how to distribute costs? How to provide notice that an attorney is in compliance?

I suspect that all aspects of administering the program will provide some costs to an overly burdened court administration in these economic times.

In conclusion, I fully respect that parents in the Juvenile Justice system face the possibility of grave, life-long consequences as a result of the actions that brought them into the system. I acknowledge that strong, zealous representation of the rights of parents is an extremely important part of ensuring justice for all involved. However, I unfortunately do not believe that additional standards and requirements for

those who choose to represent parents in juvenile court, in addition to the standards already expected of all attorneys in the Rules of Professional Conduct, achieves the desired goal of better, more skilled representation; especially in light of the possibility that we risk losing skilled practitioners who determine that the additional requirements make parent representation in juvenile court too burdensome. I believe a mentoring program where new attorneys are paired with more seasoned attorneys, perhaps even attorneys who have been approved by the local judge and believed to be very proficient in the practice of juvenile court, would go much further in serving the purpose of strengthening the representation of parents in juvenile court. Thank you for your time and consideration.

Andrea S. Vitzthum

Assistant County Attorney

Polk County Attorney's Office

206 6th Avenue

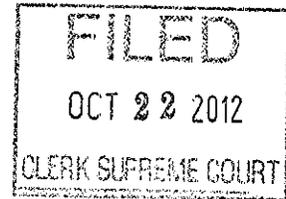
Des Moines, IA 50312

(515) 286-2164

andrea.vitzthum-hiesterman@polkcountyiowa.gov

Mark J. Neary Law Office

300 East Second Street, Suite 301
Muscatine, Iowa 52761
563 264 1900 (phone)
563 264 3521 (fax)
marknearylaw@gmail.com



October 19, 2012

Hon. Mark S. Cady
c/o Clerk of the Supreme Court
1111 E. Court Ave.
Des Moines, IA 50319

Re: Proposed Rule 8.36 and new Iowa Standards of Practice for Attorneys
Representing Parents in Juvenile Court

Dear Chief Justice Cady:

As an attorney who has represented children and parents for over twenty years in juvenile court, I applaud the efforts to try to instill greater training and accountability of those lawyers who are involved in juvenile court. However, after reviewing the proposed new Rule 8.36 and the Iowa Standards that further discuss the requirements of the Rule, I am concerned that implementation of these requirements, as currently set forth, will not only cloud the issue of what is expected of the attorneys, but will also discourage attorneys from becoming involved in juvenile court, thus further limiting the number of attorneys available to handle such cases. In the counties that I work, there are currently only a limited number of attorneys available now, and while I would assume most or all of them would continue, I am concerned that additional attorneys would be hesitant to begin taking such cases in the future if this Rule and these Standards are in place.

The following is a summary of my concerns:

With regard to proposed Rule 8.36, my main concern is that it could prove to be record-keeping nightmare and imposes additional duties on the already overburdened juvenile court judges. While I do not think it is a problem for the judges to sign the initial forms acknowledging that an attorney has sufficient experience (in accord with Rule 8.36(2)(b)(2 & 3)), I do not see how a juvenile judge could be expected to have any knowledge whether a particular attorney attended a juvenile law CLE during the prior year and, if so, whether the attorney actually attended five hours of the CLE (as required under Rule 8.36(4)). With regard to the CLE requirement, while such courses may be

available, it is likely that they would not be easily accessible throughout the entire state, or that they would be available on dates other than those typically available now for CLE (such as during open court dates on Veteran's Day, judicial conference dates, and other court holidays). If attending a juvenile law CLE would conflict with many of the already existing CLEs, then I would expect some number of attorneys to choose to remain with their favorite CLEs and drop out of juvenile law.

As a more general matter, if it is the intent of the Supreme Court to implement similar mandatory requirements before an attorney may engage in any specified area of practice, then I could understand the adoption and implementation of this Rule. However, if only this area of law is singled out, then I believe the attorneys who work in this area would potentially be targets of disciplinary action and/or ineffective assistance of counsel claims based on the fairly specific requirements of the Rule and Standards. This will not only discourage those currently practicing in the area from continuing to do so, but which could also discourage others from entering the field. Thus, the net effect of the implementation of the Rule could be to actually decrease the number of attorneys available to handle these types of cases, and thus could result in a decrease in the quality of the representation of the parents involved in juvenile court.

With regard to the Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court, I am concerned about the following (the number of the paragraph corresponds to the number of the Standard):

1. Requiring the mentoring or training before an attorney may practice, without imposing such a requirement on other fields of law, will discourage attorneys from undertaking these types of cases. Further, requiring at least 5 hours of CLE per year towards this area may limit an attorney's availability to take certain other CLEs (such as general practice CLEs by the Iowa Bar Association or many of the programs offered by Drake University or the University of Iowa) and thus may force the attorney to choose not to remain involved in juvenile law.

Further, by noting twenty different areas of law that a practitioner should be familiar with, this may not only discourage people from becoming involved, but may also be used by parents to set up ineffective assistance of counsel claims if their attorney is not intimately familiar with all of these areas of law. I believe that this requirement may in fact lead to more litigation against the attorneys, which would further discourage lawyers from becoming involved in juvenile law cases.

2. While I agree that continuances should be discouraged, I believe that it is the job of the judge and/or other litigants to contest such requests, rather than impose it as a requirement on the individual attorney. If the attorney has a reason to seek a continuance, (s)he should not have to consider whether (s)he may be sanctioned as a factor in whether or not to seek the continuance. Further, by specifically allowing an attorney to seek a continuance if "there is a strategic benefit the client" thus sets up an

attorney to be required to disclose her/his strategy simply because a continuance is sought. This could impede the attorney/client relationship.

3. As a representative of the parent, I agree that it is important to maintain lines of communication with relevant parties, including many of the social workers. However, by requiring communication with at least eight different entities (other attorneys, pro se litigants, guardian ad litem, relatives, caseworker, foster parents, CASA worker and service providers), the Standard would potentially set up an attorney as being ineffective for not communicating with all of these entities. It could also set up an attorney as being ineffective FOR communicating with all of these entities if the client does not trust or communicate with some or all of them.

4. While I believe Standard 10 is designed to address the issue of uncooperative or non-communicative clients, I believe Standard 4 as written imposes a duty on the attorney to try to track down the client if the client is not responsive. This could involve going to a client's workplace or home, and that may make the attorney a witness should something inappropriate or detrimental to the child be observed, and that could again place the attorney in the middle of an ethical dilemma.

7. I believe that this conflicts with Standard 3. You cannot effectively communicate with all other entities, or expect them to communicate with you, without you providing some information about your client (such as where the client is or whether the client is participating in services). If your client does not want such information shared, or if your client has not communicated with you to outline her/his position, then you must, in my opinion, err on the side of maintaining your client's confidentiality.

10. With regard to absent clients, is it ever in the client's best interest for them to be unrepresented? Therefore, can it ever be in the client's best interest for their attorney to seek to withdraw?

With regard to incarcerated clients, the Standards recommend more communication than with non-incarcerated clients, or possibly visiting the client at prison. Not only would this be cost-prohibitive for most attorneys, as the Public Defender will not reimburse an attorney for travel costs or time, other than the actual time spent with the client. Since I currently have one client/parent in prison in Kentucky, another in jail in Florida, and several in prisons across Iowa, this could again place the attorney in the position of being ineffective by not complying with the Standards.

11. This standard potentially conflicts with Standards 4, 8, and 9, insofar as a client may be less willing to communicate with an attorney if (s)he knows that every communication will involve costs which the client may have to reimburse the State of Iowa for. This is particularly concerning to me since it is not clear to me when, if ever, the State actually seeks such reimbursement.

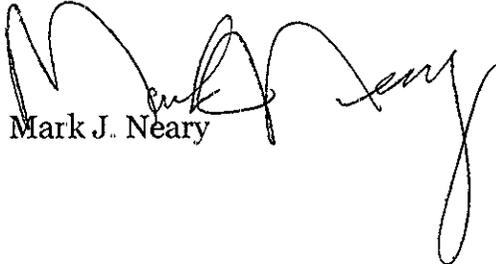
13. While unnecessarily increasing the costs of the case by requiring each attorney to either conduct her/his own investigation or by requiring the hiring of a private investigator to do so, I further believe this Standard again basically sets up an attorney for an ineffective assistance of counsel claim because the client could argue that such an investigation should have been performed if the client ultimately loses the hearing at issue.

14. While I am not clear what the term "effective discovery" means (as opposed to ineffective discovery???), I again believe that this requires an unnecessary increase in costs and work, particularly if the client is not communicating with the attorney. I believe it would incumbent on the attorney to engage in more discovery than might otherwise be necessary to protect her/himself against an ineffective assistance of counsel claim down the line, again unnecessarily increasing the costs and time involved in litigating an individual case.

20. As written, it would appear that the attorney for the parents would be required to not only subpoena her/his own witnesses, but could also be required to subpoena all possible witnesses for the State that may be of benefit to the parent, thus unnecessarily duplicating costs. It also appears that the Standard would envision some type of prehearing conference before all potentially contested hearings (which are in essence all juvenile hearings) to avoid such duplication, when in fact requiring such a prehearing conference would itself increase fees significantly.

If you have any questions or comments, please feel free to contact me. Thank you for the opportunity to bring these matters to your attention.

Sincerely,


Mark J. Neary



edward crowell
<ed.crowell.law@gmail.com>
10/22/2012 08:26 PM

To rules.comments@iowacourts.gov,
cc
bcc

FILED
OCT 22 2012
CLERK SUPREME COURT

Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
edward crowell	10/22/2012	08:26 PM	Proposed New Rule of Juver

1 attachment



rule commentary.docx

--

Edward Crowell, Attorney
PO Box 216
Cedar Rapids, IA 52406
319-895-8941
319-363-3908 (fax)



I'd like to preface this commentary with a few notes of explanation. First, work in the juvenile court is a little different than what I do, and have since opening my solo practice in February of 2007. I have a few other cases, mostly divorce and custody, but nearly all of my income is from juvenile court appointments. Most of those appointments are within CINA cases. Since the changes to appointment that put the Public Defender's office and non-profit organizations (Linn County Advocate in most of my cases) ahead of any other lawyer, I have nearly all parents. Each of these changes directly affects me and my ability to practice the law I want to be part of. I have no real interest in doing any other form of practice. The short version would be that all the things that make Juvenile practice different are all major positives for me. I like the informality, for example. In any event, these requirements and the issues involved are not just a part of what I do, they ARE what I do.

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

Has there been an actual problem with the quality of representation linked to attorneys who don't have the information?

If there's no actual problem then making requirements is pointless, at most a gesture to appease some perceived issue that won't actually do anything than inconvenience attorneys who accept appointed cases in Juvenile Court (who really don't need any more to do). Some clients will inevitably complain and blame the lawyer, just like any type of case. I have to guess, but is there some reason to believe there really is an issue in Juvenile Court?

If there is a problem, but it's not actually the quality of representation, then making changes to lawyer requirements is pointless as it won't address the problem. For example, if the issue is DHS workers who don't follow their own guidelines on safety and risk regarding removals (and many of them don't in my opinion), training the lawyers is not the best way to deal with that.

If there is an actual problem with the quality of representation, but is more due to laziness or perception that Juvenile Court is somehow lesser than other forms of practice (and there is that perception among far too many) so not given the time it deserves, having ALL attorneys deal with other requirements does not address the problem. If the problem is lazy lawyers, target the lazy lawyers rather than making a universal requirement. Also, if the problem is lawyer laziness, an education requirement does not change poor representation. Anyone can sit through a CLE and there is no way to assure that the CLE really does address where they lack information or is even part of what they actually do.

So, if there is an Actual Problem with the Quality of Representation linked to Attorneys and their lack of training/information/following practices similar to what is proposed, then maybe.

How will the rules be enforced, by who, with what consequences? What will be the safeguards to separate inadequate lawyers from lawyers who are being blamed? What will be in place for reporting, by who, to who, who investigates this, what are their guidelines, who pays for that or has to add it to their current duties? If the system of reporting or enforcement fails to actually deal with violations, then the requirements are pointless.

In effect, are these requirements actually tailored to do some good regarding a real problem, without burdening attorneys who haven't done anything wrong, or is it effectively theater, doing *something*. Something stupid is still stupid. I did not take a lot of time on it, but I simply could not find a direct statement on why this is being considered, what the precipitating event was, so I have to answer with some questions.

2. Are the proposed requirements reasonable and appropriate, and will they lead to improved representation of parents in juvenile court?

Much of my concern with the requirements go back to if they actually target a real issue, and do so in a way that does not essentially penalize lawyers doing what they should already.

2 **Rule 8.36 Qualification and Training to Represent Parents in Juvenile**
3 **Court.**

4 **8.36(1) Initial requirements for representing parents.** Before representing a
5 parent in a juvenile court proceeding in a district, an attorney must have done
6 the following:

7 a. Participated in five hours of continuing legal education providing basic
8 training in the core substantive and procedural law used in child welfare
9 proceedings in juvenile court;

10 b. Met the prior experience requirement set forth in 8.36(2);

11 c. Reviewed and agreed to comply with the Iowa Standards of Practice for
12 Attorneys Representing Parents in Juvenile Court, as made available on the
13 Iowa Judicial Branch website.

14 d. Submitted a signed certification to the district court administrator of that
15 district that the attorney has completed steps (a)-(c), together with any separate
16 certification required by 8.36(2)(b).

While I recognize that there has to be a balance for an entry requirement, I don't know that this hits that balance. Without knowing in more detail what the perceived problem is, I couldn't really say. However, a barrier to entry is inherently aimed to keep certain people out. Since this is a prior experience requirement, it must be aimed to preventing NEW practitioners to the area of Juvenile Law (which may not mean new lawyers). Is the problem bad lawyers starting in juvenile? Or new lawyers doing a bad job? If the issue is related to NEW practitioners, a barrier to entry makes sense. Now, if the problem is people who should never have entered anyway, and who would be blocked by these requirements, then the rule makes sense. However, I would seriously question if these requirements would bar many at all. They have to be easy enough to complete to not prevent everyone, but bar the ones causing problems...and I don't see how this does that. Since the CLE's will be cheap or free and regularly offered, there's already an incentive to take those CLEs rather than something that costs more just to meet the yearly requirements. Saving money could well mean many lawyers would make the 5 hour anyway, so that may not be much of a barrier. The references to additional sections will be dealt with regarding those sections, but in short the prior experience section means that no attorneys who already practice in Juvenile will be excluded. **This rule does not remove the lawyers actually, currently, causing whatever the problem is.** The standards of practice, in more detail later, are generally equivalent to ethical standards anyway, so I don't see as changing much. Lawyers willing to violate standards of practice won't hesitate to sign off on it, so I don't see what providing a paper does to help.

- 17 **8.36(2) Prior experience requirement.**
18 a. The prior experience requirement must be met in one of the following
19 ways:
20 (1) Five hours of mentoring by an individual attorney with at least three
21 years of experience representing parents in juvenile court proceedings.
22 (2) Five hours observing juvenile court proceedings conducted by a single
23 Iowa juvenile court judge.
24 (3) At least 40 hours of prior practice in Iowa juvenile court.
25 (4) Certification as a Child Welfare Specialist by the National Association of
26 Counsel for Children (NACC).
27 (5) Completion of at least one semester of a law school legal clinic
28 educational program that provides practice experience in an Iowa juvenile
29 court.
30 b. The attorney's prior experience must be certified as follows:
31 (1) For 8.36(2)(a)(1), the mentoring attorney must provide a signed
32 statement.
33 (2) For 8.36(2)(a)(2), the juvenile court judge must provide a signed
34 statement.
35 (3) For 8.36(2)(a)(3), a juvenile court judge must provide a signed statement.
36 (4) For 8.36(2)(a)(4), the attorney must provide a copy of the certification.
37 (5) For 8.36(2)(a)(5), the attorney must sign a statement confirming
38 completion of the requirement.
39 c. An attorney who provides mentoring pursuant to 8.36(a)(1), with the
40 informed consent of his or her client, may disclose or allow to be disclosed
41 confidential and privileged material relating to the representation to the
42 mentored attorney. The mentored attorney shall have the same confidentiality
43 obligations with respect to that material as if he or she were the attorney for
44 the client.

Again, while recognizing a balance has to be struck, 5 hours of mentoring is not hard to get. Unless you are starting off on your own or don't know anyone practicing in the area (new lawyer or new to the area), which has no relation to the quality of your service. Observing proceedings, again easy to accomplish, and while interesting and useful, I don't see how that addresses a problem with lousy lawyers. 40 hours of prior practice just means we aren't getting rid of anyone who already does a poor job. NACC certification is interesting, but I have to say doesn't seem that common around here so I'm not sure what the point is. Clinical is an interesting way to get new lawyers in, but not everyone does clinic (I sure didn't).

The mentoring confidentiality clause is appreciably thorough, but if it's with the consent of the client why is a rule needed and if they're under the same obligation of confidentiality (as any sub-attorney or assistant would be anyway) then why is permission needed?

1 d. An attorney's observation of juvenile court proceedings pursuant to
2 8.36(a)(1) or 8.36(a)(2), with advance notice to and permission from the judge,
3 shall not be considered public access to the proceeding for purposes of Iowa
4 Code chapter 232.

This clause, however, is needed if observation is going to be really meaningful.

5 **8.36(3) Ongoing requirements for representing parents.**

6 a. An attorney continuing to represent parents in juvenile court proceedings
7 shall participate in five hours of continuing legal education related to child
8 welfare law each calendar year. This requirement shall begin with the calendar
9 year in which the attorney submits his or her first 8.36(1)(d) certification
10 anywhere in Iowa, unless the attorney submits that initial certification after
11 July 1, in which case the requirement shall begin the following calendar year.
12 An attorney who fails to meet this requirement in a given calendar year shall
13 not be eligible to represent a parent in the following year until he or she
14 completes the previous year's continuing education requirement and files a
15 certification of compliance as required by 8.36(3)(b).

16 b. No later than March 1 of each year, the attorney shall file a signed
17 certification with the district court administrator of each district in which the
18 attorney has previously filed an 8.36(1)(d) certification, detailing how the
19 attorney met the requirements of 8.36(3)(a) in the prior calendar year.

Assuming offered cle's increase to make this manageable, I don't see that it is a huge issue in itself. However, again, and still, if keeping up with changes is not the problem then this requirement does not actually do what needs done and is pointless. Also, it creates another paperwork detail that, inevitably, someone will miss and cause lots of problems for someone who's only fault is a bit of disorganization, not being a bad lawyer.

20 **8.36(4) Prohibition on representing parents without complying with**
21 *educational and training requirements.* An attorney shall not accept
22 representation of a parent in a juvenile court proceeding, and a court shall not
23 knowingly appoint an attorney or allow an attorney to continue to represent a
24 parent in a juvenile court proceeding, unless the attorney has met the
25 applicable requirements of 8.36(1)-(3).

The consequence seems a bit severe for possibly just forgetting a new paperwork requirement. More reasonable might be that they would be unable to submit billing as an appointed attorney until their certification is on file.

26 **8.36(5)** *Required continuing legal education classes.* The Iowa Children's
27 Justice Initiative, or another entity designated by the Iowa Supreme Court or
28 the Iowa State Court Administrator, shall be responsible for sponsoring and
29 approving courses that meet the requirements of 8.36(1)(a) and 8.36(3). It is
30 anticipated that these courses will be available throughout the state in a live or
31 video format at a modest cost or no cost to the attorney. Any courses meeting
32 the requirements of rule 8.36 must be accredited by the commission on
33 continuing legal education and may be applied toward continuing legal
34 education requirements established by the commission.

Again, is the problem lack of information? Is this the solution?

45 **8.36(8)** *Effective date.* Attorneys representing parents in juvenile court
46 proceedings are expected to complete the initial requirements of 8.36(1) and (2)

Is the new requirement actually expected to remove the problem lawyers? Really?

Practice Standards, as I read them, are basically the same as the ethics standards anyway, I don't see that they add much.

8 1. Adhere to all relevant training and mentoring requirements before
9 accepting a court appointment to represent a client in a child welfare
10 case. Acquire sufficient working knowledge of all relevant federal and
11 state laws, regulations, policies, and rules.

How is this different than competence?

13 2. Avoid continuances and work to reduce delays in court proceedings
14 unless there is a strategic benefit for the client.

Also, how is this different than what is already required?

16 3. Communicate regularly with other professionals in the case.
17

How is this different than effective assistance, competence, or other requirements?

20 4. Establish and maintain a working relationship with the client.
21 Communicate with the client prior to the day of hearing and when
22 apprised of emergencies or significant events.

Again, competence.

24 5. Advocate for the client's goals. Empower the client to direct the
25 representation and make informed decisions.

Effective assistance.

- 27 6. Understand and protect the client's rights to information and decision-
28 making while the child is placed out of the home.
29

Effective assistance.

- 30 7. Act in accordance with the duty of loyalty owed to the client while
31 adhering to all laws and ethical obligations concerning confidentiality.
32 Avoid potential conflicts of interest that would interfere with the
33 competent representation of the client. Comply with all other Iowa Rules
34 of Professional Conduct.
35

Flat out repeats ethics requirements. Is this a major issue to need repeated?

- 36 8. Provide the client with all relevant contact information. Establish a
37 system that promotes regular client-attorney contact.
38

Client communication.

- 39 9. Communicate with the client in a manner that promotes advocacy and
40 adequate preparation to support the client's position.
41

Client communication and competence / effective assistance of counsel.

- 42 10. Take reasonable and necessary steps to locate and communicate with
43 absent or incarcerated clients. Develop representation strategies.
44 Establish a plan for the client's participation in case-related events.
45

Who decides reasonable and necessary? Who do I justify my lack of contact with the guy nobody can find to? On what basis is it justified? What is the standard? And, Is this the problem?

- 1 11. Communicate with and counsel the client about all matters pertaining to
2 the case, including any financial implications, to promote and protect the
3 client's interest.
4

Competence, communication, and advocacy.

- 5 12. Investigate and consider the client's background and its impact on the
6 case. Act in a culturally-competent manner and with due regard to
7 disabilities or unique circumstances of the client. Advocate for
8 appropriate supportive services with the child welfare agency and court.
9

Specific aspects of ethics rules to juvenile, but who decides when it has or hasn't been enough? How do we know?

- 12 13. Conduct an independent investigation at every stage of the proceeding as
13 reasonable and necessary.
14

Make the spd pay me for this. Seriously. There is no way I can meet this in under 5 hours between review hearings.

15 14. Use effective discovery methods according to the Iowa Rules of Juvenile
16 Procedure.
17

Has there been a problem with discovery? Usually it seems, from my experience, to be a non-issue. And the few times I have had a problem, it seems the court takes anything anyway, maybe giving us time to file an objection later. Maybe.

18 15. Consult with the client to develop a case theory and strategy. Explain
19 the statutory timeline for the case.
20

Competence.

21 16. Timely file appropriate pleadings, motions, and briefs.
22

If this needs a special rule, the offending attorneys need to have violations filed.

23 17. Engage in multidisciplinary case planning and advocate for appropriate
24 services and high quality family interaction.
25

Okay, I can make this requirement make sense, sort of. However, what is multidisciplinary (we are lawyers) what counts as appropriate, how do we measure quality, and what do you mean by family interaction? Interaction with who, what parts of the family? Frankly, I can't help but see buzzwords here.

26 18. Effectively participate with the client in family team meetings, mediation,
27 and other negotiations.
28

So, what is being done on the human services side to make lawyer participation more valued and worthwhile here? We're not the only part of the process. And what mediation? Lawyers not participating in negotiations are either incompetent or there's a problem with the negotiations.

29 19. Thoroughly prepare the client in advance for all hearings, meetings, and
30 other case events.
31

Again, make the SPD pay for this and I'd gladly do it. Of course, there'd also have to be some way to make sure my clients kept appointments and did their part too.

32 20. Identify, locate, and prepare necessary lay and expert witnesses. Prepare
33 for cross-examination and, when permissible, interview those witnesses.
34

Not only does SPD need to pay me for this, but the courts have to approve payment for the experts and witnesses. My last experts got paid about half what they billed. I'm fairly sure if I have to call them again it will not go well. If this becomes common, getting witnesses will not get easier.

35 21. Review court orders to ensure accuracy and clarity. Review orders with
36 the client. Take reasonable steps to ensure the client complies with
37 court orders.
38

Competence.

39 22. Continually evaluate whether the case should be reviewed by the court
40 prior to the next scheduled hearing date to ensure case progress.
41

Effective / zealous advocacy. It would be nice if the courts actually had the time to make this more practical as well. Frequently, there just is no court time to have much of a hearing unless it is scheduled well in advance. Getting more than about 30 minutes can be difficult, getting 3 hours for a serious matter can be months out.

42 23. Timely file reasonable and necessary post-hearing motions.
43

Self correcting, miss the deadlines and the motion is dismissed.

46 24. Consider and discuss appeal options and deadlines with the client.
47

Competence. However, does also raise issues of frivolous appeals.

1 25. Timely file appeal documents if the client decides to appeal. Adhere to
2 the Iowa Rules of Appellate Procedure.
3

Competence.

4 26. Timely review the ruling and discuss its implications with the client.
5

Competence, complicated by frequently short deadlines and harder than usual to reach clients.

6 27. Consider and discuss further review options.
7

Competence, complicated by frequently short deadlines and harder than usual to reach clients. I'm open to suggestions on how this is to be done with clients with no phone, possibly no home, certainly no email, and possibly no reliable friends or family.

Having reviewed many of these requirements, has disqualifying the SPD been considered, because they have been given a unworkable set of conditions to actually be good lawyers? Honestly, they seem to be given an impossible set of conditions.

Are we going to have similar guidelines to provide clients? Much of these efforts would be totally useless with some clients, or prevented by their own actions (or lack of).

Because there is a lot there, some of the following are simply some issues or thoughts that come to mind in general.

Limited utility of precedent complicates decisions about appeals, but the vast majority are affirmed.

Getting services is not our job, best we can do is poke DHS.

Clients get calendars – done that, they get lost.

And pay me to do that background research!(16) I have recently, and more than once before, had to justify research time in preparation for hearings, motions, and appeals. Since research in juvenile may go well outside just case law and into DHS policy manuals, secondary "best practices" sources from DHS and legal organizations, and can bring in issues of mental health, substance abuse, poverty, employment, disability, what resources are and aren't available locally, and a host of other issues that may be very case specific. I have even had to go so far as to find peer reviewed medical articles regarding teething in support of an alternative explanation of a toddler's behavior. I have just enough background to do that effectively, but still had to have a fee review to justify it. Lawyers would be far more willing to put in that effort if we could at least be sure we'd be paid. However, I can readily see that the State would see this as a means for abuse by inflated bills. Like I need to make up work.

CLE – additional with other section requirements? Many attorneys are not primarily juvenile practitioners. They often are part of other practice sections, which may have their own requirements. Has how this requirement (1/3 of our yearly CLEs) been considered with those other sections? It would be a shame to lose good lawyers over having to decide to qualify for juvenile or a higher paying area of law. I would worry about the chilling effect of this on good lawyers who aren't specific to juvenile.

Annual certification – has this been examined if it will actually do anything? Do other areas require this and has it shown a benefit, or is it just kind of there?

CLE – scheduling and cost: with that many varied schedules, but actually a small population...actually how many are there? I for one can not reliably make CLEs in Des Moines. Travel cost alone can make even cheap CLEs not cost effective or time effective when the time lost is added in.

Modified notice of appearance – we have special appointment rules, fee rules and exceed fee rules, filing rules. Just to be appointed and paid for our work as it is. When a paperwork slip can cause that much consequence, I have to question if the result on us is worth the supposed gain. Specifically, I have to wonder if the administrative cost and hassle may actually be *worse* than the problem that started it. Also, ability to meet detailed filing guidelines has nothing to do with quality of representation. Neither do CLEs for that matter.

3. Is annual self-reporting and certification by attorneys to district court administrators the best way to administer the program?

I don't see how it could be the best. District court administrators are the most likely to actually have some knowledge of the individual attorneys, but how much? And do they need this added to their own schedules? With the cuts in judicial funding, is this a good use of their time?

4. Would it be better to require annual certifications be filed with the state court administrator rather than district court administrators?

The state administrator would know nothing of, to be specific, me. There would be virtually no way for them to decide if I was a good lawyer or a bad one. Any report that came in would have to get the same evaluation as any other. On the one hand, this is equal and nominally fair. On the other, it also wastes a lot of effort to check into baseless reports.

Often a case requires multiple experts in different roles, such as experts in medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The attorney should consider whether the opposing party is calling expert witnesses and determine whether the client needs to call any experts.

When expert testimony is required, the attorney should identify the qualified experts and seek necessary funds to retain them in a timely manner. The attorney should subpoena the witnesses, giving them as much advance notice of the court date as possible. As is true for all witnesses, the attorney should spend as much time as possible preparing the expert witnesses for the hearing. The attorney should be competent in qualifying expert witnesses.

And are we going to get better cooperation in getting them paid or rules that are less a PITA to make that happen? And who's paying me for all this, the fee limits better at least double, and how is the public defender expected to remotely keep up with that?

Any interested organization, agency, or person may submit written comments. Comments about a proposed rule must refer to the specific rule number (for example, rule 8.36(2)) and the specific numbered line or lines to which the comments are directed. Comments sent by email must be emailed to **rules.comments@iowacourts.gov**, must state **"Proposed New Rule of Juvenile Procedure 8.36"** in the subject line of the email, and must be sent **as an attachment to the email in Microsoft Word format**. Instead of submission by email, comments may be delivered in person or mailed to the Clerk of the Supreme Court, 1111 East Court Avenue, Des Moines, Iowa, 50319. **The deadline for submitting comments is 4:30 p.m. on October 29, 2012.**

Having reached 10 pages of this, as best I can between actual work, I apologize that many of the commentaries have gotten somewhat brief and choppy. I would dearly love to have the time to write a

coherent and full analysis of the proposed rules and their likely effects in the context of legal practice in general and the specific area of juvenile law, but I just don't have that time.

I do want to say that the commentary to the practice guidelines was really appreciated. There is a wealth of excellent information and guidelines in there. I don't know that they need to be mandatory. I very much don't know how those proposing the rules can remotely believe those can be completed within the fee and time limits we're given. That's just one issue, I could make others, but that one is so obvious that I have to start there. If we are given practice standards that cannot be met without ROUTINELY having to file for exceeding fees, then there are some other rules that have to be fixed as well. And I do wish I could believe that the salaried public defenders in the juvenile court would be held to these standards. Right now, they would all be disqualified, they're too loaded with cases. Either their cases would come down to something workable (which I would be fine with) or the State had better admit that this isn't really the standard.

Another concern is that juvenile practice is unlike anything else. Finality doesn't happen the same way. In most cases, once trial is over, the case is pretty well done. Sentencing, decree, whatever. Juvenile, however, inherently comes back to court repeatedly. In a way, we get multiple chances to make our clients' cases. However, no other area depends so much on what our clients do. I've had a client where, I do not exaggerate, my job was to read two lists each hearing. One list of what she had done since the last hearing. Numbered, in order. The second list of what she needed. Numbered. In order. That's it. She was just too nervous to talk to the judge. She got over it eventually and now advocates for other clients. Her case closed successfully too. I've had multiple clients that no amount of arguing, preparation, or legal finesse was going to change their failure to do basic things like show up for drug tests, test clean when they did show up, or even pretend to really follow the case plan expectations. However, the clients who I've had the most work for have had one common factor: DHS resistance to progress. My highest billing cases, the ones with the most time required, all were spent arguing with the DHS worker. Frequently this was not about case plan expectations, which I've even had admitted on the stand were being met in one case where progress was refused, but about the worker "feeling" progress was not appropriate. Again, not due to any failure to comply with the case plan. In light of that resistance, I have had to take everything to evidentiary hearing. Long ones. Some cooperation from DHS would have eliminated that. I've also had cases that, purely as a personality conflict, didn't progress like they should. Basically, the client(s) and the worker(s) or provider(s) did not like each other, and never would. This colored everything else. A mechanism for replacing workers or providers would be most useful. We can't change the clients. Lawyers can be fired (and should be able to). But there's zero to be done about the most important interpersonal interaction to a case. In theory, DHS can change the worker (and I have seen it) on request. More often DHS and providers switch up for reasons that have nothing to do with the case. Frequently changing workers and providers makes it real hard for clients to believe their cases are taken seriously. For my own example, I was GAL and attorney for a child whose parents were deceased. There were lots of other issues as well, but by the end of the case I was the most stable connection he had (he aged out). Workers changed I don't know how many times (I took over the case from another attorney). Providers, some I learned had entered the case in the same report that introduced another worker replacing them. This also makes it hard as a lawyer, since at least twice I've

worked with DHS to get an agreement or understanding in place, only to have it completely ignored by the next worker. Discouraging to me, devastating to my client.

So, are lawyers the problem or the solution to whatever the problem is? Are these requirements targeted to the problem and actually likely to solve it? I must say I have my doubts, using my own experience as a guide. This is not to say that we don't have some lousy attorneys in juvenile. We do. However (there's always a however it seems) my personal perspective is that I find fewer apparently poor lawyers in juvenile than I encounter in my other cases (but I do fewer of those, so I can't say for sure how real that difference is).

With all the extra hoops that have been added to practicing juvenile law just in the few years I have been, I am probably getting sensitive to it, but I do wonder if the claimed goal is the real reason for the rules, or if there is something else. Maybe it's just me.

I think it bears repeating: the state public defender had better be prepared to pay for the additional work these requirements make mandatory. Either by allowing us the extra hours, getting a whole lot more public defenders for juvenile cases, or possibly be prepared to admit the PD attorneys can't do this. Well, if the PD lawyers can, I'd like to know how, because I can't see how it is remotely possible. And if they won't decrease the hassle with getting paid, how do they expect attorneys to keep accepting these appointments which seem to be more and more work for less and less actual pay every year. Eventually the costs exceed the profit and lawyers with high student loans (which failing to pay can cost us our license and appointments don't count as public practice for loan forgiveness) flat out can't afford to take these cases.

I'm more than happy to discuss these comments or any details if anyone has questions. Do feel free to contact me.



Lynhon Stout
<lstout@ifapa.org>
10/24/2012 12:53 PM

To "rules.comments@iowacourts.gov"
<rules.comments@iowacourts.gov>,
cc
bcc

FILED
OCT 24 2012
CLERK SUPREME COURT

Subject Proposed New Rules of Juvenile Procedure 8.36

Who	Date	Time	Subject
Lynhon Stout	10/24/2012	12:53 PM	Proposed New Rules of Juve

1 attachment



Rules for Parents.doc

Please accept these comments on the proposed rules.

Lynhon Stout
Executive Director
Iowa Foster and Adoptive Parents Association
6864 NE 14th, Suite 5
Ankeny, Iowa 50023
515-289-4226
515-289-4567 #175
lstout@ifapa.org



Iowa Foster and Adoptive Parents Association

6864 NE 14th Street, Suite 5 - Ankeny, IA 50021

FILED
OCT 24 2012
CLERK SUPREME COURT

Proposed New Rules of Juvenile Procedure 8.36

October 24, 2012

To: Those Who May be Reviewing these Comments

I am an active member of the Children's Justice Advisory Committee and an active member of the Parents Representation Task Force chaired by Judge Susan Christensen and the State Public Defender Samuel Langholz.

I am in complete support of the passage of these proposed rules and practice standards. We worked long and hard to ensure that parents have quality representation by a trained attorney who understands the juvenile court process and the importance of parents being represented in some of the most important decisions being made about their children.

Professionally I am more involved with the GAL representation of the foster/adopt/kin children and know that there are standards to ensure quality representation of them. Why would we ask anything less of an attorney representing their parents in these major life decisions?

In response to your questions:

1. I strongly support a set of prerequisites for representing the parents due to my comments above. Family is very important to everyone and each family deserves to be represented in the most thorough, professional manner with knowledge of the laws, procedures, and their clients' interests.
2. The committee worked hard to develop reasonable and appropriate requirements. We compared rules in other states. These rules would lead to improved representation of parents in juvenile court. I understand that juvenile law is not covered in great depth in law school, the five hours are needed. Most professionals have yearly training requirements to maintain their license. This seems like a fair requirement for attorneys if they wish to practice in representation of parents in Juvenile Court.
3. And 4. Since I am not involved in this area, I do not have a comment on the way for this to be done in an efficient and non-costly way. Social work staff self-report when we apply for our license. If audited, we must provide that we have taken the 24 hours every 2 years.

Thank you for the opportunity to provide comments. This was a great committee to work on. I feel we have provided rules, standards of practice that will lead to quality representation for parents in juvenile court. They deserve the best representation.

Sincerely,

Lynhon Stout
Executive Director



"Bethany J. Currie"
<Bjcurrie@peglowlaw.com>
10/24/2012 04:42 PM

To <rules.comments@iowacourts.gov>,
cc <slangholz@spd.state.ia.us>, <info@iowajustice.org>
bcc
Subject Proposed New Rule of Juvenile Procedure 8.36

FILED
OCT 24 2012
CLERK SUPREME COURT

Who	Date	Time	Subject
Bethany J. Currie	10/24/2012	04:42 PM	Proposed New Rule of Juver

1 attachment



Comments on Proposed Juvenile Rule 8.36.docx

Attached please find my comments regarding the proposed new rule.

Sincerely,

Bethany J. Currie
Peglow, O'Hare & See, PLC
118 E. Main St., PO Box 1180
Marshalltown, IA 50158
(641) 752-8800; FAX (641) 752-8095
bjcurrie@peglowlaw.com

This e-mail contains confidential, privileged information intended only for the addressee. Do not read, copy or disseminate it unless you are the addressee. If you received this e-mail in error, please call Peglow, O'Hare & See, P.L.C. at (641) 752-8800 and ask to speak to the message sender. Also, please e-mail the message back to the sender by replying to it and then deleting it. We appreciate your assistance in correcting this error.

FILED

OCT 24 2012

CLERK SUPREME COURT

Questions posed by the Iowa Supreme Court:

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

No. This proposed rule does not appear to include guardians ad litem, or children's attorneys or juvenile prosecutors. The competent participation of all attorneys in juvenile court is important. It appears by creating an authorized list of attorneys who are allowed to represent parents, there will now be two lists – one of those individuals willing to go through the stringent additional requirements at their own time and expense in order to be appointed as parents' attorneys, and one of those individuals who are not willing to take on the extra burden but may be appointed as guardians ad litem or the child's attorney. There is no distinction that I can see. I believe the same standards (whether the new rule is enacted or the old rules apply) for all attorney participants in juvenile court.

If some attorneys are doing a poor job at representing parents in juvenile court, the judges learn quickly who those individuals are and can stop appointing them. The judges are in the best position to know which attorneys are effective advocates.

By creating a new set of standards for juvenile law, this is a slippery slope towards requiring additional training (or separate bar examinations) for all areas of the law. For example, the reasoning cited for needing the additional training is the "client's fundamental liberty interest in the care and custody of his or her child" (Commentary to Iowa Standards of Practice 1, lines 15-17). Certainly criminal law involves numerous constitutional rights but there exists no separate additional training requirement in order to defend either adults or juveniles. Family law involves similar fundamental liberty interests in the care and custody of a parent's child, and yet no additional training requirements exist in those cases.

2. Are the proposed requirements reasonable and appropriate and will they lead to improved representation of parents in juvenile court? For example, are five hours of annual juvenile law CLE needed? Will the proposed requirements deter some attorneys from practicing in the area? Is this an important concern?

The proposed requirements are unreasonable. I have spoken to several very experienced attorneys in juvenile law who have flatly stated they will stop taking juvenile cases if these requirements go into effect. Rather than weeding out those attorneys who have historically not done a good job at representing parents in juvenile court, the proposed rule will discourage good attorneys who do not need to be on the court-appointed list at all from continued practice in juvenile law. Attorneys with a well-rounded practice take all sorts of cases and do not necessarily choose to attend CLE seminars in every practice area every year. By forcing attorneys to attend juvenile law CLE seminars every year, those attorneys would have to either take additional time away from practicing or would have to forego time spent on other practice area CLE seminars.

Juvenile law does not change every year and it's unlikely an annual CLE requirement would do anything to aid the experienced attorneys.

The proposed rule also deters new attorneys from practicing juvenile law. Traditionally, taking on court-appointed work in criminal and juvenile law is a good way for new attorneys to learn various areas of the law and "get their feet wet" in court, meeting judges and other attorneys and learning to negotiate and advocate. If new attorneys have these additional requirements (in addition to the other requirements now put on new attorneys for additional CLE seminars) it is likely they will choose not to join the juvenile court bar, or their employers may choose not to spend the additional time and money in ensuring the new attorneys qualify to participate. Good lawyers and law firms already take new lawyers to watch various court proceedings before sending them out to participate in a contested termination of parental rights proceeding on their own. If the concern is proper advocacy, the judge can decide whether or not to appoint a certain attorney to a case.

Once the qualified experienced attorneys and new attorneys choose not to participate in juvenile court, those left will be overburdened with court appointments. The court appointment system we have now works well because many attorneys each take a few cases at a time. If the list of approved attorneys is very small because people choose not to participate, those remaining attorneys will not want to take many more cases at the court-appointed rate because they could be doing more private work for a much higher fee.

Furthermore, some inadequate attorneys may choose to sit (or sleep) through five hours of juvenile law CLE seminars every year and qualify for the list. Simply attending the seminars does not mean the participants will be suddenly qualified to represent parents in juvenile court. The judges will still have to avoid certain attorneys who are not adequate, making the list of available attorneys even shorter.

At this time, the State Public Defender has contracts with certain attorneys but if none are available in a county, non-contract attorneys may be appointed in various cases. Will this program run the same way? In other words, if no one in a certain county chooses to participate in the additional requirements, will the judge be able to appoint a non-certified attorney to represent a parent (evading the point of the rule) or will the judge need to find an attorney from a different county to represent the parent (making it more difficult to meet with clients, attend hearings, etc.)?

3. Is annual self-reporting and certification by attorneys to district court administrators the best way to administer the program?

4. Even if OPR is not involved, would it be better to require annual certifications to be filed with the state court administrator rather than district court administrators? Or should attorneys representing parents be required to file a notice of appearance at the outset of each case that certifies their compliance with rule 8.36?

These questions can be answered together. There may be some attorneys (e.g., in Polk County) who only practice in one district. However, many attorneys overlap districts. For example, in Marshall County, I reside in District 2B and adjacent to Districts 6 (Tama), 1 (Grundy), 5 (Jasper) and 8 (Poweshiek). Requiring an attorney to certify compliance to each of those districts every year is unduly burdensome.

At this time, the State Public Defender contracts with attorneys to provide juvenile court representation (for parents and children) and the SPD provides a list of those attorneys to the clerks of court, who provide them to the judges. If attorneys are now supposed to prove they are able to represent parents by carrying paperwork and reporting to the district (or state) court administrator, the judges will not know who they can or cannot appoint until after the appointment is done and the attorney must withdraw if unable to do so under the new rule. This will add extra continuances to the cases while the judges find attorneys who have chosen to participate. If the district court administration for each district is now going to provide a list of attorneys who have participated in the program, the judge will have to consult both the certification list and the SPD contract list in order to decide who can be appointed. Eventually this will result in judges appointing the same few attorneys each time simply because the judges know those attorneys already qualify and will not have to withdraw.

Additional comments:

Rule 8.36(8) (lines 1-3) requires any attorney beginning a new juvenile case on or after January 1, 2014 to be in full compliance with the rule. If an attorney has an open CINA case now or within the next year, it is likely to still be ongoing after January 1, 2014. What if an attorney representing a parent in a CINA prior to January 1, 2014 chooses not to participate in the new program, but the termination of parental rights petition is filed January 2, 2014? The court cannot appoint the CINA attorney to represent the parent, so the parent must start with new counsel at a very important stage in the proceedings. Because CINA and TPR cases are handled with separate case numbers and separate appointment orders, the prior attorney would not be "grandfathered in" under the proposed rule. If the parent wants to keep the same attorney for the TPR, he or she should be able to do so.

The Commentary to Iowa Standard of Practice 1 (lines 31-20) sets forth many federal and state laws which may have some impact on juvenile court. Certainly ICWA comes into play in Tama County frequently and Marshall County occasionally, but most of the cited laws have never been an issue in the case, or if they were, the issues were not labeled by the law. For example, I am not familiar with all of the ins and outs of HIPAA but I know a parent needs to sign a release for DHS to get a copy of her drug screens. Most of the cited laws have never been mentioned in court or at any of the juvenile CLE seminars I have attended. Again, to require attorneys now to become familiar with these various laws that may not be involved in many cases in a particular area of the state will deter attorneys from wanting to participate in the program.

Iowa Standard of Practice 4 requires the attorney to “establish and maintain a working relationship with the client. Communicate with the client prior to the day of hearing and when apprised of emergencies or significant events.” The Commentary (lines 5-14) again presumes the attorney is the party failing to keep in touch with the client. It is nearly impossible to meet with a client regularly throughout the case and to meet well before the hearing rather than at the courthouse just minutes before the case is called. In my experience, the attorneys are not the ones out of contact prior to hearings. The parents in CINA and TPR cases are not typically ideal clients – otherwise their rights would not be at stake. Frequently mail is returned to me because a client has moved without leaving a forwarding address and phone calls are either unanswered or I receive a message that the number has been changed or disconnected. Again, competent attorneys already keep in touch to the best of their ability given client cooperation but the Standard of Practice should reflect this distinction. (I realize this is addressed to some extent by Iowa Standard of Practice 10, lines 32-5, but it happens more frequently than the standards seem to reflect.)

I have practiced juvenile law since 2005. I do not need court-appointed work and could have plenty of other work at a much higher private pay rate, but I remain on the court-appointed list because I enjoy the process of trying to improve families so they can do what is in their child’s best interest. I have a good working relationship with the juvenile judges, prosecutors, DHS workers, in-home providers and other attorneys in juvenile cases. I am concerned the proposed rule will make the juvenile system worse rather than better for all of the reasons set forth. If the court adopts the proposed rule, I hope it will also consider increasing the hourly rate for those attorneys who choose to participate in the program in order to offset the additional burdens and to recognize the expertise those attorneys have. I hope the recommendations in the Commentary, such as visiting clients in jail or prison (Commentary to Standard 10, lines 11-13), having regular meetings (Commentary to Standard 4, lines 5-6), or conducting an independent investigation at every stage of the proceeding (Commentary to Standard 13, lines 29-6) will propel the State Public Defender to recognize additional time spent preparing for hearings will require higher fee limitations in order to adequately prepare. If the proposed rule is implemented but no additional time is allotted for fee claims (or excess fee claims must be sought in every case), the rule does a disservice to attorneys who want to do their best but are not adequately compensated for their work.

Overall, I believe that while the proposed rule seeks to improve the representation of parents in juvenile court, the proposed rule is both overly broad and not broad enough. There are many excellent advocates in juvenile court already and requiring annual CLE attendance will not improve their skills. As a practical matter, many poor advocates will continue to appear in juvenile cases and many exceptional attorneys will choose not to participate. Guardians ad litem and children’s attorneys do not appear to be part of this program, so there could be two sets of attorneys in a case – one which has complied with all of the court requirements to prove he or she is capable of representing a parent, and the other who is to do what is in the child’s best interest and conduct independent investigations, meet with counselors, teachers, children, parents, foster parents, providers, doctors and ultimately report back to the child (if old enough) to explain what is going

on. Under the proposed rule, the child's attorney and/or guardian ad litem does not need to have the additional training. Given that in many counties, attorneys are frequently appointed in both capacities (in different cases), it is confusing and nonsensical that the attorneys may appear qualified on paper to represent one party but not another in the same case. Judges will have a difficult time determining who is qualified to accept these appointments for parents and as a result, cases will have delays while the judge finds someone who is able to accept the appointment. In counties that only have a juvenile judge once a week, it could take a very long time to find an appropriate attorney under the rule as it is proposed.

Thank you for your consideration of my comments. I appreciate your time. Please feel free to contact me if you have any questions or concerns.

Sincerely,

Bethany J. Currie
Peglow, O'Hare & See, P.L.C.
118 E. Main St., PO Box 1180
Marshalltown, IA 50158
(641) 752-8800; Fax (641) 752-8095
bjcurrie@peglowlaw.com

FILED
OCT 25 2012
CLERK SUPREME COURT



Gail Barber/SCA/JUDICIAL
10/25/2012 03:17 PM

To: Rules Comments/SCA/JUDICIAL@JUDICIAL
cc
bcc
Subject: Comments on Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
Gail Barber	10/25/2012	03:17 PM	Comments on Proposed New

I was copied on these comments and wanted to be sure that they were submitted to the correct email. Please disregard if I submitted them in error.

Thanks,
Gail

Gail Barber, Director
Iowa Children's Justice, State Court Administration
1111 East Court Avenue
Judicial Building
Des Moines, IA 50319
515 281-6209
866 927-4636 toll free
gail.barber@iowacourts.gov

"Inspiration and enthusiasm are of little value unless they move us to action and accomplishment." - Jim Casey

----- Forwarded by Gail Barber/SCA/JUDICIAL on 10/25/2012 03:15 PM -----

From: Brian Michaelson/District3/JUDICIAL
To: Supreme Court@JUDICIAL
Cc: Larry Eisenhauer/District5/JUDICIAL@JUDICIAL, Terry Huitink/District3/JUDICIAL@JUDICIAL, Stephen C Clarke/District1/JUDICIAL@JUDICIAL, Alan D Allbee/District1/JUDICIAL@JUDICIAL, William S Owens/District8/JUDICIAL@JUDICIAL, David K Boyd/SCA/JUDICIAL@JUDICIAL, Gail Barber/SCA/JUDICIAL@JUDICIAL, Duane Hoffmeyer/District3/JUDICIAL@JUDICIAL, Leesa A McNeil/District3/JUDICIAL@JUDICIAL
Date: 10/25/2012 03:01 PM
Subject: My Comments on Proposed New Rule of Juvenile Procedure 8.36

Dear Justices:

For the last 27 plus years I have sat on the bench as a Juvenile Court Referee/Associate Juvenile Judge for the State of Iowa. It has been both a challenge and a privilege. Tomorrow I will become a Senior Judge for this state. I am proud of the Iowa Judicial System and the Juvenile Courts in this state.

When I began my tenure the Juvenile Court had a third world status in our judicial system. Notwithstanding the gravity/complexity of the cases (e.g. Sexual abuse, physical abuse, and neglect of our children, removal of children from their parents/families, out of home placement's of both CINA,s and delinquents, TPR,s, etc. within the fabric of numerous federal/state constitutional issues, laws and

regulations) the courts were often faced with the dilemma of appointing young and/or inexperienced attorneys to represent parents who were often times at risk of losing their parental rights. Juvenile Courts were used as training grounds by some law firms for their young associates only to see these attorneys, once "trained", move on to more lucrative clients/cases or as retirement grounds for others. Over the last 27 years I have presided over thousands of cases and I have seen (much to the credit of the Supreme Court, the Children's Justice Initiative, and the Juvenile Judges in this state) a significant elevation in the status of Juvenile Court with a resulting improvement in the quality of representation which parents and our children are receiving from their attorneys. However, there is always room for more improvement --- but at a cost. With this in mind I offer the following comments.

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

YES. Representation of parents in Juvenile Court is unique. Not only does an attorney need to know the law but he/she needs to understand the ins and outs of a myriad of social/treatment/service issues such as family dynamics, cultural, mental health, domestic abuse, codependancy, addictions, socio-economics, reasonable efforts, RTF.s, PMIC;s, FSRP services, to name a few. Ongoing training in these areas are , in my opinion, imperative.

2. Are the proposed requirements reasonable and appropriate? Will they lead to improved representation of parents in juvenile court? Will they deter some attorneys from practicing in juvenile court?

YES, YES, and MAYBE. I answer these questions with the assumption that the CLE,s can be provided to our attorneys at a nominal cost. The consensus of the attorneys I have consulted with on this rule is that the training should be at little to no cost, localized, and on a Friday. It has also been made very clear to me that in exchange for the additional training AND "hoops" recently adopted at the request of the State Public Defender that they should be compensated more for their representation of indigent parents in juvenile court. If not, these additional requirements may result in a shortage of attorneys to represent parents in juvenile court, especially in the rural counties, The SPD should realize that quality legal representation not only results in justice but also in a reduction in court costs, court time and attorney fees by avoiding unnecessary litigation.

3. Is annual self-reporting and certification by attorneys to district court administrators the best way to administer the program?

MAYBE, It is difficult to answer this question without knowing the workload involved. Could this be done in conjunction with the Iowa State Bar Association? It needs to be made as simple as possible.

4 .Even if (the Office of Professional Regulation) is not involved, would it be better for to require annual certifications filed with the state court administrator rather than the district court administrator?

YES. My concern is what is the court to do with an attorney who has been appointed to represent a parent in a Juvenile Court case, which more often than not will last a year and oftentimes several years, and that attorney fails to meet the annual educational requirements under this proposed rule?

In summary, I think the Court, after the initial five hour basic training, would be wise to reduce the number of CLE hours to three (localized and on a Friday morning/afternoon) at no or minimal cost to the attorneys and/or with an increase in the attorneys fees in juvenile court cases. And --- make the certification process as simple as possible. It may also be a good idea to put "Best Practice" information on the Judicial Branch website.

With my respect,

BLM



Fw: My Comments on Proposed New Rule of Juvenile Procedure 8.36

Supreme Court to: Kathy Anthofer
Sent by: supreme.court@iowacourts.gov
Cc: Molly Kottmeyer
Please respond to supreme.court

FILED
OCT 25 2012
CLERK SUPREME COURT

10/31/2012 09:01 AM

----- Forwarded by Supreme Court on 10/31/2012 09:00 AM -----



Brian Michaelson/District3/JUDICIAL
10/25/2012 03:01 PM

To Supreme Court@JUDICIAL
cc Larry
Eisenhauer/District5/JUDICIAL@JUDICIAL, Terry
Huitink/District3/JUDICIAL@JUDICIAL, Stephen C
Clarke/District1/JUDICIAL@JUDICIAL, Alan D
Allbee/District1/JUDICIAL@JUDICIAL, William S
Owens/District8/JUDICIAL@JUDICIAL, David K
Boyd/SCA/JUDICIAL@JUDICIAL, Gail Barber/SCA/JUDICIAL@JUDICIAL, Duane
Hoffmeyer/District3/JUDICIAL@JUDICIAL, Leesa A
McNeil/District3/JUDICIAL@JUDICIAL

Subject My Comments on Proposed New Rule of Juvenile Procedure 8.36

Dear Justices:

For the last 27 plus years I have sat on the bench as a Juvenile Court Referee/Associate Juvenile Judge for the State of Iowa. It has been both a challenge and a privilege. Tomorrow I will become a Senior Judge for this state. I am proud of the Iowa Judicial System and the Juvenile Courts in this state.

When I began my tenure the Juvenile Court had a third world status in our judicial system. Notwithstanding the gravity/complexity of the cases (e.g. Sexual abuse, physical abuse, and neglect of our children, removal of children from their parents/families, out of home placement's of both CINA,s and delinquents, TPR.s, etc. within the fabric of numerous federal/state constitutional issues, laws and regulations) the courts were often faced with the dilemma of appointing young and/or inexperienced attorneys to represent parents who were often times at risk of losing their parental rights. Juvenile Courts were used as training grounds by some law firms for their young associates only to see these attorneys, once "trained", move on to more lucrative clients/cases or as retirement grounds for others. Over the last 27 years I have presided over thousands of cases and I have seen (much to the credit of the Supreme Court, the Children's Justice Initiative, and the Juvenile Judges in this state) a significant elevation in the status of Juvenile Court with a resulting improvement in the quality of representation which parents and our children are receiving from their attorneys. However, there is always room for more improvement --- but at a cost. With this in mind I offer the following comments.

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

YES. Representation of parents in Juvenile Court is unique. Not only does an attorney need to know the law but he/she needs to understand the ins and outs of a myriad of social/treatment/service issues

such as family dynamics, cultural, mental health, domestic abuse, codependancy, addictions, socio-economics, reasonable efforts, RTF.s, PMIC;s, FSRP services, to name a few. Ongoing training in these areas are , in my opinion, imperative.

2. Are the proposed requirements reasonable and appropriate? Will they lead to improved representation of parents in juvenile court? Will they deter some attorneys from practicing in juvenile court?

YES, YES, and MAYBE. I answer these questions with the assumption that the CLE,s can be provided to our attorneys at a nominal cost. The consensus of the attorneys I have consulted with on this rule is that the training should be at little to no cost, localized, and on a Friday. It has also been made very clear to me that in exchange for the additional training AND "hoops" recently adopted at the request of the State Public Defender that they should be compensated more for their representation of indigent parents in juvenile court. If not, these additional requirements may result in a shortage of attorneys to represent parents in juvenile court, especially in the rural counties, The SPD should realize that quality legal representation not only results in justice but also in a reduction in court costs, court time and attorney fees by avoiding unnecessary litigation.

3. Is annual self-reporting and certification by attorneys to district court administrators the best way to administer the program?

MAYBE, It is difficult to answer this question without knowing the workload involved. Could this be done in conjunction with the Iowa State Bar Association? It needs to be made as simple as possible.

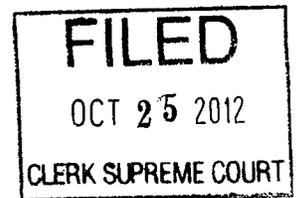
4 .Even if (the Office of Professional Regulation) is not involved, would it be better for to require annual certifications filed with the state court administrator rather than the district court administrator?

YES. My concern is what is the court to do with an attorney who has been appointed to represent a parent in a Juvenile Court case, which more often than not will last a year and oftentimes several years, and that attorney fails to meet the annual educational requirements under this proposed rule?

In summary, I think the Court, after the initial five hour basic training, would be wise to reduce the number of CLE hours to three (localized and on a Friday morning/afternoon) at no or minimal cost to the attorneys and/or with an increase in the attorneys fees in juvenile court cases. And --- make the certification process as simple as possible. It may also be a good idea to put "Best Practice" information on the Judicial Branch website.

With my respect,

BLM



PHIL R. CANIGLIA
ATTORNEY AT LAW
OMNI CENTRE BUSINESS PARK
300 WEST BROADWAY, SUITE 108
COUNCIL BLUFFS, IOWA 51503

Telephone (712) 322-0958

Facsimile (712) 322-2251

October 25, 2012

The Honorable Mark S. Cady
Chief Justice of the Supreme Court of Iowa
1111 East Court AVE
Des Moines, IA 50319

Re: Proposed New Rule of Juvenile Procedure 8.36

Dear Chief Justice Cady:

I am writing this letter in opposition to the Proposed New Rule of Juvenile Procedure 8.36. I believe that this new rule will have a negative impact upon the Iowa Juvenile Court system. I do not believe that there exists significant problems within the Juvenile Court system that require these drastic changes.

I am a private attorney in Council Bluffs, Iowa, having been admitted to the Bar in 1976. I have been involved in numerous Juvenile Court cases since that time in representing both parents and children in Child In Need of Assistance matters and delinquency cases. I have also handled numerous termination of parental rights cases, both at the trial level and at the appellate level. While there is always a need for improvement in the Juvenile Court system, I believe that Proposed Rule 8.36 will have an adverse effect and will discourage attorneys from practicing in Juvenile Court. Your order of August 30, 2012, asks that commenters focus on four areas of interest:

- 1) Should there be separate prerequisites for representing parents;
- 2) Are the requirements reasonable and appropriate;
- 3) Is annual self reporting to district court administrators the best way to administer the program; and
- 4) Should the state court administrator be involved or should attorneys file a notice at the outset of each case?

Issue #1. Should there be separate prerequisites for attorneys representing parents?

In my opinion, the answer is no. The Iowa Rules of Professional Conduct already regulates the practice of law by requiring that attorneys must be competent within a particular area to practice in that area. I do not believe that the existing Iowa Rules of Professional Conduct are lacking in the area of Juvenile Court and I do not believe that a certification process would enhance the legal services being offered to parents. To alter the current system and require additional certification, specific standards of practice, as well as additional CLE requirements would cause a negative impact to the Juvenile Court System. The rule would reduce the number of qualified attorneys representing parents in Juvenile Court, increasing delays and negatively impact the children who should be the focus of the Juvenile Court process.

Issue #2. Are the proposed requirements reasonable and appropriate?

I do not believe that the proposed rules are reasonable nor appropriate. To require an additional 5 hours of CLE each year will not raise the level of competency in practicing before the Juvenile Court. The Supreme Court's adoption of the Iowa standards of practice for attorneys representing parents in Juvenile Court is unwarranted and unnecessary. The adoption of said standards would require court-appointed private attorneys in many cases to exceed the fee guidelines in order to comply with said standards, which would dramatically increase the costs of an already strained state budget. These rules are not needed. In my opinion, the private attorneys who represent parents in Juvenile Court have done so competently and are neither lacking in experience nor require additional CLE requirements.

Issue #3. Is annual self-reporting and certification to District Court administrators the best way to administer the program. Should the OPR handle this?

I do not believe this program should be administered by either the OPR or the District Court administrators. As you are aware, there are significant budgetary concerns currently being experienced by the judicial system. Additional reporting and tracking requirements would neither be fiscally sound nor needed at this time.

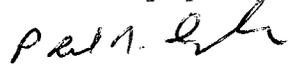
Issue #4. Should annual self-reporting and certification be made to the state court administrator or should attorneys be required to

file a notice at the outset of each case?

I do not believe that added state tracking and reporting is necessary nor fiscally a wise decision. Additional notice and filing requirements for attorneys may cause numerous attorneys to avoid this field of practice.

I would urge the Supreme Court of Iowa to reject Proposed New Rule of Juvenile Procedure 8.36.

Sincerely yours,



PHIL R. CANIGLIA

J. Joseph Narmi

Attorney at Law

222 South 6th Street
Council Bluffs, IA 51501
(712) 322-2002
jnarmi@iabar.org

October 26, 2012

The Honorable Mark S. Cady
Chief Justice of the Supreme Court of Iowa
1111 East Court Avenue
Des Moines, Iowa 50319



Re: Proposed New Rule of Juvenile Procedure 8.36

Dear Chief Justice Cady,

I am writing to formally object to the Proposed New Rule of Juvenile Procedure 8.36.

I have practiced in the Juvenile Court System in the past as an Assistant Pottawattamie County Attorney, and now I represent both children and parents in the Juvenile Court System. I appreciate the work and good intentions of the Parents Representation Task Force, but we already have in place the Iowa Rules of Professional Conduct.

I would urge the Supreme Court of Iowa to reject the Proposed New Rule of Juvenile Procedure 8.36.

Have a great week!

Sincerely,

A handwritten signature in black ink, appearing to read "J. Joseph Narmi". The signature is fluid and cursive.

J. Joseph Narmi
Attorney at Law



Stephanie Brown
<Stephanie.Brown@polkcoun
tyiowa.gov>
10/26/2012 09:40 AM

To "rules.comments@iowacourts.gov"
<rules.comments@iowacourts.gov>,
cc
bcc
Subject Proposed New Rule of Juvenile Procedure 8.36

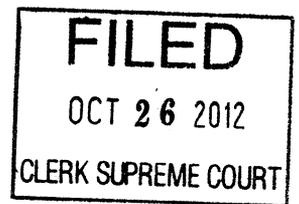
FILED
OCT 26 2012
CLERK SUPREME COURT

Who	Date	Time	Subject
 Stephanie Brown	10/26/2012	09:40 AM	 Proposed New Rule of Juver

1 attachment



Proposed New Rule of Juvenile Procedure 8.36.docx



TO: The Iowa Supreme Court

From: Assistant Polk County Attorney Stephanie Brown

RE: Comments to Proposed New Rule of Juvenile Procedure 8.36 and Proposed New Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court

Date: October 26, 2012

1. Should there be a separate set of prerequisites for representing parents in juvenile court?

I do not believe there should be a separate set of prerequisites. Juvenile Court is a specialized area of law; however, the practice standards are already spelled out in the current Iowa Rules of Professional Conduct and the Iowa Standards for Professional Conduct. Just as I don't believe that a separate set of standards be required for attorneys representing parents in juvenile cases, I don't believe there should be separate standards for attorneys that practice in the areas of criminal defense, insurance, workers compensation, divorce or medical malpractice.

If there is a concern about the quality of attorneys representing parents in juvenile court I believe that it could adequately be addressed on an individual basis rather than a blanket requirement that all attorneys practicing in this area need additional training.

2. Are the proposed requirements reasonable and appropriate? Will they lead to improved representation of parents in juvenile court? Will they deter some attorneys from practicing in juvenile court?

I believe that requiring the completion of 5 hours of such training every year as a prerequisite to practicing in juvenile court, will likely deter many skilled and experienced attorneys from accepting juvenile court work. Additionally, in rural areas, where an attorney has a wide range of practice areas, they may decide that it is not worth their effort, and a valuable attorney could be lost to the juvenile court arena.



"Christina M. Gonzalez"
<Chris.Gonzalez@polkcounty
iowa.gov>

10/26/2012 12:24 PM

To "rules.comments@iowacourts.gov"
<rules.comments@iowacourts.gov>,
cc

cc

bcc

Subject Proposed New Rule of Juvenile Procedure 8.36

FILED
OCT 26 2012
CLERK SUPREME COURT

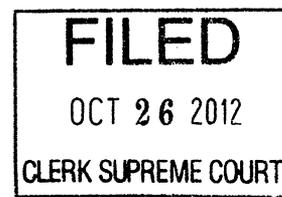
Who	Date	Time	Subject
 Christina M. Gonzalez	10/26/2012	12:24 PM	 Proposed New Rule of Juver

1 attachment



comments.docx

Attached is my comment to the Proposed New Rule of Juvenile Procedure 8.36.



To: Iowa Supreme Court
From: Christina M. Gonzalez
Date: October 26, 2012
RE: Public Comment on Proposed New Rule of Juvenile Procedure 8.36

I have been practicing law for seventeen years, seven of which have been primarily in juvenile court. The current Iowa Rules of Professional Conduct and the Iowa Standards for Professional Conduct addresses the expectations, skills, competency, knowledge, ethics and practice standards necessary to represent a parent in a Child in Need of Assistance and Termination of Parental Right proceedings. Thus, there is no need for a separate set of prerequisites for representing parents in juvenile court.

Additionally, there are Model Court programs, within the State of Iowa, that promotes and holds CLE training specifically on issues regarding juvenile court. Each year the Drake Legal Clinic conducts a Juvenile Law Seminar. Further, DEC conducts a course regarding Child Abuse, Neglect and Exposure to Drugs. Recently, there has been CLE training regarding Adverse Childhood Experiences. I have attended these seminars and training and observed attorneys who represent parents in juvenile court. These attorneys are fulfilling the requirements of professional conduct and standards without the need for a required completion of five hours of specialized training every year as a prerequisite for representing parents in juvenile court.

The proposed requirements will deter some attorneys from practicing in the area of juvenile court. Attorneys who represent parents in juvenile court also practice in other areas of the law to include, probate, criminal, bankruptcy, family law, and other civil law matters. Because the current Rules and Standards addresses these areas, it should solely be the decision and discretion of the attorney to ascertain whether they are competent to practice in those areas of law and determine what training they need in order to be competent to practice in those areas. To require that attorneys allocate annually 1/3 of the CLE requirements solely to juvenile law will have an adverse impact on their independent and professional decisions and deter attorneys from practicing in juvenile law. Furthermore, the Court has the discretion to ascertain if an attorney is competent to practice before it, including the Juvenile Court.

Finally, I have observed attorneys who represent parents in juvenile court. They are knowledgeable and professional and advocate for their clients' rights and goals. These attorneys ensure that the parents are receiving reasonable services and are informed of the proceedings. These attorneys are knowledgeable of the current laws and rulings that apply to juvenile court.

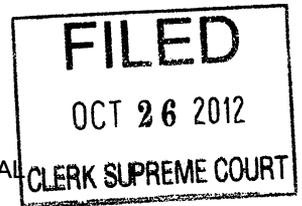
Respectfully submitted,

Christina M. Gonzalez



Beth
Baldwin/District5/JUDICIAL
10/26/2012 12:26 PM

To Rules Comments/SCA/JUDICIAL@JUDICIAL
cc
bcc
Subject Proposed New Rule of Juvenile Procedure 8.36



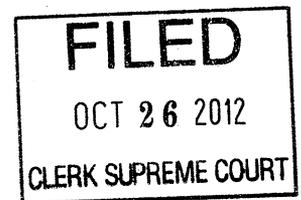
Who	Date	Time	Subject
Beth Baldwin	10/26/2012	12:26 PM	Proposed New Rule of Juver

Please accept the following comments on the new proposed Rule of Juvenile Procedure 8.36:



Comments on Rule 8.36.docx

Elizabeth J. Baldwin, District Court Administrator
Fifth Judicial District, Polk County Courthouse
500 Mulberry Street, Room 411
Des Moines, IA 50309
Phone: (515) 286-2074, Fax: (515) 286-2141
E-Mail: beth.baldwin@iowacourts.gov



TO: The Honorable Justices and Chief Justice of the Iowa Supreme Court

SUBJECT: Comments on the Proposed New Rule of Juvenile Procedure 8.36

DATE: 10/26/12

From: Elizabeth J. Baldwin, District Court Administrator, 5th Judicial District

Please note that I am making my comments as one of the eight DCA's in the state. I am also a member of the Children's Justice State Council and the Children's Justice Advisory Committee.

1. I support the recommendation that there be specific prerequisites for representing parents in juvenile court. Sometimes it is the newer attorneys who practice in juvenile court as well as a number of attorneys who sign up to do contract work through the State Public Defender's Office. Newer attorneys and attorneys who do SPD contract work generally (though of course not always) are less experienced in representing clients, in working with them outside the courtroom, and in courtroom litigation practice.

Juvenile CINA and TPR cases involve extremely important constitutional as well as basic human rights and fundamental human relationships in respect to emotional, psychological, physical and even spiritual issues of critical importance to a child's life as well as the parent's life. If the Iowa Judicial Branch is going to start mandating prerequisites for any type of legal practice in Iowa, I think juvenile parental representation is a key, high stakes area to do so. I think generally other areas of the law have other checks and balances in place to foster high quality of representation – e.g., reputation in the legal community, expertise essential to even practice in certain areas, and financial incentives – to cause attorneys to become experts in their areas in order to be successful and make a living practicing law. A majority of lawyers who represent parents of children in CINA and TPR cases do not have the same type of financial and other incentives to become experts. They are quite often appointed from a contract list, so reputation, expertise and financial incentives are not really part of the equation.

2. Having read, review and debated the proposed prerequisites on many occasions I think they are fair. The prerequisites are not onerous or unachievable. There are opportunities to accomplish them in rural areas as well as urban areas as far as the CLE training goes. The Children's Justice program (statewide and local district committees), the State Public Defender's Office, the Bar Associations (state and local) across the state offer lots and lots of training for attorneys annually in juvenile court. I truly do not believe access to necessary CLE's is a problem anywhere in the state – at least in Election Districts 5A and 5B and Polk County.

I believe there are so many areas of training that an attorney could benefit from for representing parents that 5 hours is an achievable minimum in the grand scheme of things. Subjects such as dealing with persons addicted to alcohol or drugs; recognizing substance abuse indications; knowing about drug testing for court evidentiary use; learning about how trauma affects individuals' ability to cope, tell the truth, describe events, cooperate with services in the short and long term; being up to date and understanding the detailed Iowa Code Sections; having yearly legislative updates; knowing the federal laws that also apply to juvenile welfare cases; knowing what the different services available to a client might be generically and then in your geographic area; learning to identify when your client might have a mental health conditions;

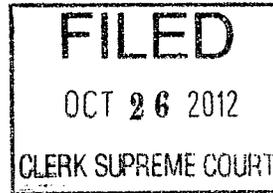
learning about mental health conditions generally; learning how to work with a mentally ill client; keeping up with all the appellate court rulings on child welfare cases; learning how DHS works...These are just a few of the areas that a juvenile parent's attorney would need to know to zealously and competently represent their client(s). If someone who practices seriously in juvenile parental representation cannot take the time to spend 5 hours of their CLE time learning to navigate a highly complex and detailed area of law I would think we probably do not want them to be practicing in juvenile court.

3. Regarding the self-reporting and certification process to the DCA's, I think it is a system that would need to be run on trust and it is affordable. Ideally, the Office of Professional Regulation would monitor and administer a more robust program of compliance, but I don't think we have the money to do so. The self-reporting system offers some measure of compliance and requires the attorney to, potentially, put their license on the line, so to speak, if they file false documents with the DCA or in the courtrooms on their compliance.
4. As a DCA, it would be fine with me to have the SCA's Office handle the self reporting and certification program documents/record keeping. But, I am really neutral on where this needs to be housed. I do not believe it would be a huge burden on the DCA's as the requirements have been explained to me. It might be better to have a statewide, uniform one stop repository of all the certifications and annual self reports however. Attorneys do practice in more than one district, and ideally should only have to file one time a year, not a couple times in several districts. I do feel strongly that attorneys should have to file their appearance in each case (which they will need to do by rule and through EDMS anyway). It would be quite simple to incorporate a certification of compliance with rule 8.36 on that appearance. I think this does not add any additional burdens to the Clerk's Offices or the attorneys who should be filing an appearance document anyway.

Thanks-you for the opportunity to submit these comments.

Philip L. Garland
Attorney at Law

Post Office Box 134
200 State Street
Garner, Iowa 50438-0134



Phone (641) 923-3792
FAX (641) 923-2693
garlandlawfirm@gmail.com

October 24, 2012

Donna Humpal
Clerk of the Supreme Court
1111 East Court Avenue
Des Moines IA 50319

Re: Comments to Proposed Rule of Juvenile Procedure 8.36
and Iowa Standards of Practice for Attorneys Representing Parents
in Juvenile Court

Dear Ms. Humpal:

The following are my comments on the proposed Rule on Juvenile Procedure 8.36.

First of all, I rarely comment on rule changes as generally speaking, I agree with most if not all of the proposed changes. That is not the case in regard to this proposed rule.

I've been practicing law for 40 years and in the juvenile court system for most of that time. In the early years, most juvenile work was in the area of delinquency. In the early 80's, I was involved in a termination of parental rights matter where the court terminated the parental rights of two parents to their 7 children. On appeal, there was a split vote in affirming the termination, although I don't remember the exact split.

Perhaps that case tempered so much of what I have done in the thirty years or so since. I did not handle any of the original hearings and was only appointed when the Petition to Terminate was filed. I believe the original court appointed attorney "bailed out" and refused to represent the people any longer, although it may have been at their request.

Factually, the department had been trying for reunification for well over two years. The department had done about everything reasonable to work with the parents for reunification of some if not all of the children. Unfortunately, the parents were almost totally incapable of being good parents, especially the father, and incapable of doing

even the simplest of tasks to effect reunification. When I first met the father, his form of discipline was that which he had experienced as a child and he truly thought that was the way it should be and no department of human services was going to tell him differently. While the wife was somewhat culpable in this abusive discipline, it was mostly by way of passiveness and not by performance. She was of a mind that the father made the rules and carried out the discipline.

I was somewhat critical of the original lawyer. Some of that was based upon him being resistant to the department and trying to advocate on his client's behalf. However, more of it was the matters testified to in the various hearings by his clients and the findings of fact in those hearings. By the time termination rolled around, my clients had made so many inconsistent statements, promises to comply that weren't kept, and other evidence that it was impossible for me to overcome in the termination. While I fought diligently on my client's behalf, even taking the matter to the Supreme Court, the record of my clients' testimony, so many hearings and reports was absolutely devastating to them.

In a juvenile proceeding we are first about not disturbing the parent/child relationship and if separated, reunification. While I believe the department sometimes does misfire, rarely to the extent that it rises to the level of "jack boot diplomacy", as one of my colleagues likes to state.

Admittedly, clients feel the department is the "enemy". Strong advocacy on their behalf as is promulgated by the proposed rule only solidifies that position. Our clients already think the department is guilty of "jack boot" diplomacy. These rules would have us to do everything possible to prove same. How does that even begin to effect rehabilitation or reunification? I'm out to prove that the parents have done nothing to have the children taken from them and to do that I have made the department look bad. That's the same people they have to work with. Any evidence of incompetency by the department is merely a fortification of what my clients already feel. While these aren't criminal proceedings, it would be somewhat like me going through a criminal trial and arguing that the police are wrong and that no crime has been committed and the cops are actually the bad guys. That doesn't help the criminal understand the nature of his act, give him any rehabilitation, and if successful would only encourage him to continue his conduct and in a criminal case the defendant doesn't have to work with the police.

Most juvenile proceedings should not be adversarial, but more by way of mediation to effect improving parenting techniques and/or reunification. How does the department accomplish that when everyone is out to make them be the "bad guy"?

Admittedly in my corner of Iowa we have stellar social workers. Also admittedly, I would not have said that thirty years ago and I know that other counties that occasionally I do juvenile work where I'm not nearly as impressed with those social workers. That is not to say that I have not been in juvenile cases that were dismissed early on due to lack of evidence or nearly a single incident and a quick turn around by the parent. I can only think of one occasion where the department was "way off base" and no action should

have been taken. Most of what these rules contemplate, or at least my opposition to them, is they do seemingly indicate that the department is guilty far too often, which is simply wrong.

You also ignore the cost. Unlike attorneys who more often than not get paid about the cost of their overhead, court reporters get paid their normal rate for depositions. My meager fees in these cases would be probably five to ten times what they ordinarily are if this rule is approved and to what avail? To re-enforce my client's thoughts about the DHS and its workers, all counter productive to the necessary goal. That money could be well spent on more services for the parents and children.

I recognize that there are occasions when these efforts would prove necessary. But you are asking me to put full faith in my clients, who I hardly know until well into the proceedings, possibly put them in an adversarial role causing them to testify and then having to live with that testimony and potentially contradictory statements at a termination proceeding. It is contrary to my two goals in juvenile cases: reunification with the parents and keeping a good record should we ever have termination proceedings.

Additionally, asking that I take one day a year for continuing legal education for something that probably doesn't comprise two percent of my practice borders on the ridiculous. I'm already receiving slave wages! Why make it any worse? I only do juvenile cases because I consider them important and receive some gratification in cases where there is reunification and the parents became better suited to "parent". However, in most cases when there has been reunification, I feel sorry for the child or children having to go back to only a slightly improved home environment. So any pressure I can put on the parents myself, I do.

There are cases that come along where I ask that the department keep me informed of any issues that my client should be doing and is not doing in the four to six months between hearings. When the department notifies me, I notify my clients and they almost never get back to me and if they do, it is always with the attitude that things are not as bad as the department is stating, which almost always is untrue. The department is doing just exactly what it should be doing, it is my client or clients that are not.

Finally, as indicated, I've been at this a long time. It absolutely disgusts me that we have cases come along where the department doesn't get involved because of rules and regulations. These are cases that ten or fifteen or twenty years ago would have been CINAs. Yet they don't meet the criteria today and the funding is not available to even have the department provide services. As already indicated, the funding for what you propose could be better served for more rehabilitative services for the existing cases and perhaps to expand certain services that would avoid CINAs all together.

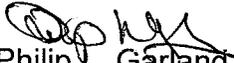
In short, the rules remind me of an attorney who used to do CINA cases and whose first words to his parent clients were "I want you to know that I don't like the Department of Human Services". That is what this rule basically says in addition to stating that most of

us practicing in the juvenile arena are not competent. That is an insult and to me and so many of my colleagues that take the same position that I do and that is the importance of juvenile work for pay that doesn't cover the overhead.

Finally, while juvenile cases are important, the CLE requirement is ridiculous. What about a murder trial? Sex abuse? Vehicular homicide?

Do not pass this rule or even attempt to modify.

Respectfully yours,


Philip L. Garland

PLG:sw

FILED
OCT 26 2012
CLERK SUPREME COURT

**Kathleen
Kilnoski/District4/JUDICIAL**
10/26/2012 01:16 PM

To Rules Comments/SCA/JUDICIAL@JUDICIAL
cc
bcc
Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
Kathleen Kilnoski	10/26/2012	01:16 PM	 Proposed New Rule of Juver



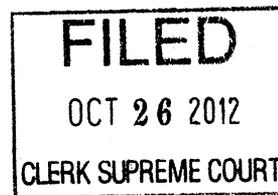
Proposed Juv Rule 8-36-KKilnoski-10-26-12.doc

Kathleen Kilnoski
District Judge
227 South 6th Street, 4th Floor, Room 413
Council Bluffs, IA 51503

(712) 328-5863
(712) 328-5891 (fax)



IOWA DISTRICT COURT
FOURTH JUDICIAL DISTRICT
227 SOUTH SIXTH STREET, FOURTH FLOOR
COUNCIL BLUFFS, IOWA 51501



KATHLEEN KILNOSKI, JUDGE
(712) 328-5863
Kathleen.Kilnoski@iowacourts.gov

DIXIE RASH, REPORTER
(712) 328-4824
Dixie.Rash@iowacourts.gov

October 26, 2012

RE: Proposed New Rule of Juvenile Procedure 8.36

Dear Justices of the Iowa Supreme Court:

I offer the following comments regarding proposed rule 8.36 as a champion of the vital importance of our work in juvenile court. Having served as a district associate judge for eleven years, during which I estimate that two-thirds of my case load involved juvenile cases, I applaud the supreme court's leadership in improving outcomes for our state's abused and neglected children and their families. One primary means to achieve that end has been improved training opportunities for attorneys practicing in juvenile court and for the juvenile court bench.

I believe that these training opportunities have improved the practice of attorneys in juvenile court, including counsel for parents, children, and the state. I support continuing efforts to bring low-cost, relevant, and juvenile-specific education to all attorneys practicing before the juvenile court.

However, I do not believe that a rule mandating practice standards or certification for attorneys representing parents in juvenile court is wise or necessary. Singling out attorneys for parents as needing enhanced supervision or training seems to ignore the equally important duties of attorneys for children and for the state. Parents do face serious consequences in these cases. Parents must have zealous advocates who know the law and procedure in juvenile court. But surely we ask no less of any other attorney representing any other client in our courts.

Mandating prerequisites, practice standards, mentoring or other certification only for parents' attorneys seems constricted. If such requirements are in the offing in other sub-specialties of the law, then I am concerned that many general practice attorneys, particularly in rural counties, will simply choose not to practice in juvenile court, where remuneration is low.

I do not support proposed rule of juvenile procedure 8.36.

Sincerely,
/s/Kathleen A. Kilnoski



Bill Bracker
<justcrouse@aol.com>
10/26/2012 02:53 PM

To Rules.comments@iowacourts.gov,
cc
bcc
Subject Proposed New Rule of Juvenile Procedure 8.36

FILED
OCT 26 2012
CLERK SUPREME COURT

Who	Date	Time	Subject
 Bill Bracker	10/26/2012	02:53 PM	 Proposed New Rule of Juver

1 attachment



Ltr_from_Pott_Co_Bar_Assoc_v2.docx

October 23, 2012

The Honorable Mark S. Cady
Chief Justice of the Supreme Court of Iowa
1111 East Court Avenue
Des Moines, IA 50319



RE: Proposed New Rule of Juvenile Procedure 8.36

Dear Chief Justice Cady:

On behalf of the Pottawattamie County Bar Association, I am writing to lodge our formal objection to Proposed New Rule of Juvenile Procedure 8.36.

Our members do not believe that there exists a problem warranting these drastic and far reaching changes. We do not believe that our existing Iowa Rules of Professional Conduct are lacking in the arena of juvenile court nor do we believe that a certification process would enhance the legal services being offered to parents. We are very concerned with the fiscal implications of this new rule. We believe that this rule will actually reduce the number of qualified attorneys representing parents in juvenile court, increasing delays and negatively impact the children who should be the focus of the juvenile court process. We are concerned with the impact this rule will have on juvenile courts in more rural communities where there is already a shortage of qualified attorneys willing to work in juvenile court. We believe that the Supreme Court's adoption of the Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court is unwarranted and disconcerting. We are also concerned with Rule 8.36 infringing upon an individual's right to retain the counsel of their choice.

The Pottawattamie County Bar Association urges the Supreme Court of Iowa to reject Proposed New Rule of Juvenile Procedure 8.36.

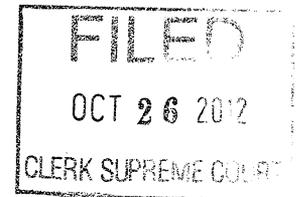
Sincerely,

WILLIAM BRACKER
PRESIDENT OF THE POTTAWATTAMIE COUNTY BAR ASSOCIATION



"Marti Nerenstone"
<mdnerenstone@iabar.org>
10/26/2012 04:13 PM

To <rules.comments@iowacourts.gov>,
cc
bcc
Subject Proposed New Rule of Juvenile Procedure 8.36



Who	Date	Time	Subject
Marti Nerenstone	10/26/2012	04:13 PM	Proposed New Rule of Juver

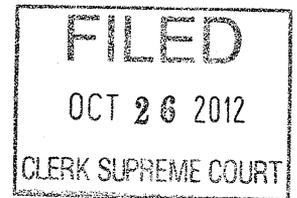
1 attachment



comments to proposed juvenile procedural rules.docx

attached please find my comments

Marti D. Nerenstone
Attorney at Law
Council Bluffs, Iowa



MARTI D. NERENSTONE
Attorney at Law
Park Building
500 Willow Ave. - Ste. 311
Council Bluffs, Iowa 51503
mdnerenstone@iabar.org

(712) 328-2283

(fax)(712) 322-1118

October 26, 2012

The Honorable Mark S. Cady
Chief Justice, Iowa Supreme Court
1111 East Court Avenue
Des Moines, Iowa 50319

Re: Comments to the Proposed New Rule of Juvenile Procedure 8.36

Dear Justice Cady:

Please accept these comments which reflect my concern and opposition to the proposed new rule and proposed standards of practice in juvenile court. These comments are not exhaustive, but reflect some major concerns I have. My silence on a particular piece of the proposal does not implicate any agreement with that particular suggestion.

I have been a practicing attorney for 30 years. I spent 21 years as a legal aid attorney, with specialties in such areas as public benefits, federal and state housing, and domestic violence. In October 2003, I opened a solo practice. One of my main areas of practice is in juvenile court, representing parents as well as children, in both CINA and delinquency matters. I have handled hundreds of cases in juvenile court, and have represented both parents and children in appeals. Most of my juvenile court work is as a court-appointed attorney, as a contract attorney with the state public defender.

Proposed Rule

8.36(1), 8.36(3), 8.36(5). As the Court itself points out in its Order, it is unprecedented to impose additional requirements for practicing in a particular area. The rationale is that these cases implicate important constitutional rights. However, the same argument can certainly be made regarding other areas of the law, perhaps most notably, criminal law. I am not advocating additional CLE requirements for anything. Five hours is a significant requirement within a CLE requirement of 15 hours annually. This proposal is more than the number of ethics required. Like many other sole practitioners, I do not practice exclusively in juvenile court. My other areas of practice include criminal defense cases, (most of which are court-appointments), family law mediation, and Social Security disability work.

To require practitioners to dedicate one-third of their CLE solely to juvenile law will be burdensome on myself and others who need to attend a wide-range of CLE events for the various areas of law in which we practice. Indeed, the proposed Standards of Practice (General, #1)

suggests that those of us who practice in juvenile court should be knowledgeable about a multitude of federal and state laws. Such expertise I believe, is frankly, impossible to meet, but if we are to know, for example, criminal law, and domestic relations, why wouldn't CLE related to those fields be acceptable for practicing in juvenile court?

Another concern of the CLE requirement is the question of the ability to fulfil the requirement. The comments suggest federal funding would be available to support the required classes. The idea that there would be federal funding, given the federal budget/debt situation and the political rhetoric around it, seems quite unrealistic. Furthermore, as an attorney in southwest Iowa, I question where such presentations would take place. Free CLE in central or eastern Iowa is still burdensome and will cost real time and money to try to attend. Will such CLE be available online? How will this impact the limit on online CLE that can be used?

I have talked with other attorneys who do not practice in juvenile court, and we wonder whether this is the beginning of a slippery slope. Will the Supreme Court now require 5 hours of annual CLE for a variety of areas of practice? This could quickly add up to more than a 15 hour requirement for general practitioners who engage in a wide-range of legal representation, especially small-town and solo practitioners like myself. And frankly, just because someone attends CLE classes doesn't mean they become competent.

Proposed rule 8.36(3) forbids an attorney who does not meet the CLE requirement in any given year to represent a parent until the requirement is fulfilled. This could create chaos as parents might have to obtain or be appointed different attorneys, creating delay in the system. Furthermore, current court rules require that the same attorney in a CINA or TPR case be the attorney on appeal. Ia. R. App P. 6.201(1). If an attorney in juvenile court is disqualified because of this CLE requirement, it could throw appeals and the Court's rules into disarray.

8.36(2) Prior experience requirement. I believe that attorneys practicing in any area should have some experience or at least get some assistance from someone who has experience in that area. Many of my concerns regarding this section are the same as my concerns in the previous section. For example, we don't require attorneys to have any experience or mentoring before they are allowed to appear in criminal court, divorce court or small claims court. Indeed, the Court doesn't even make specific knowledge of Iowa law a requirement for newly licensed attorneys, but allows one year from the date of admission for attorneys to complete a basic skills course. Iowa Rule of Continuing Legal Education 41.12.

I believe that the proposed rule is an attempt to have competent representation in juvenile court. That is certainly appropriate, although not solely in juvenile court, and frankly, should not be limited to parents' attorneys. But just because someone has experience in juvenile court does not mean that they are skilled or even competent. Furthermore, the proposed rule requires a signed statement from a mentoring attorney or judge - will those people be on the hook if the attorneys for whom they are proving signed statements commit errors or malpractice? As an experienced attorney who, under the proposed rules, would be eligible to be a mentoring attorney, I would not be willing to risk my reputation or liability for someone else's mistakes.

8.36(5) *Required continuing legal education classes.* This provision seems to give a single entity the power to sponsor and approve courses required under these provisions. I refer back to the proposed standards of practice, to suggest that if attorneys are to be held to be knowledgeable in so many fields, that CLE in those fields should be acceptable.

It should also be noted that we have other CLE events sponsored by local entities in southwest Iowa, including, but not limited to, the Pottawattamie County Bar Association, Kids' First Committee, the Southwest Iowa Lawyer League and the Fourth Judicial District. If these additional CLE requirements are going to be imposed, then these sponsors, and others, should be able to designate and submit appropriate CLE.

Proposed Iowa Standards of Practice

My initial reaction to these is that they recite what could be considered basic good legal practice. However, why do we need special, separate standards since we already have the Iowa Rules of Professional Conduct? If those rules are somehow insufficient, then perhaps they need to be revisited.

Some of the proposed standards, such as #8 and #10, are only aimed at court-appointed attorneys. Although my experience in juvenile court is that most of the attorneys are court-appointed, some are privately retained. Will those attorneys not be subject to the same standards?

Standard #1 This requires a working knowledge of a multitude of federal and state laws, regulations, policies and rules. As a practical matter, it is not feasible for someone to know all of these laws, and keep up with changes which may occur. What are the ramifications if an attorney does not know the substantive details of these or other laws? If an attorney should be familiar with all of these laws, why isn't CLE aimed at these fields good enough?

Standard #2 This requires the attorney to avoid continuances. However, if attorneys are held to other standards as set out (e.g., conduct independent investigation in Standard #13, using discovery in Standard #14, preparation of opposing expert witnesses, in Standard #20), then delay will become the norm. This belief comes from my experience and reality of being a practicing attorney, as well as other attorneys who have talked with me. We know that many events in juvenile court happen at the last minute, that reports are often prepared less than a week prior to hearing, etc.

Standard #10 This requires attorneys to locate missing parents for whom they are appointed. This standard cannot be met by any court-appointed attorney, since the state public defender's rules do not allow an attorney to be paid unless and until a parent files a financial application.

Standard #14, #16 Often, documentation is not available until the last minute. This reality, combined with the consideration that attorneys should use formal discovery, will necessarily delay cases, and add to the cost of these cases. It is unclear whether, or under what circumstances, the state public defender is going to be willing to reimburse these costs.

Standard #18 I often attend these meetings, and know of other attorneys who do as well. However, the Department of Human Services often calls early meetings prior to attorney involvement, or has interactions with families, that they count as family team meetings, without notifying attorneys. Furthermore, often these meetings are scheduled when attorneys simply are not available to attend, because of court hearings or other commitments. Not allowing clients to attend meetings without their attorneys will add to delays in cases.

Standard #20 This standard presumes that these cases can be prepared well in advance, similar to a work comp, disability or personal injury case- that simply is not the reality of juvenile court. For example, chemical dependency evaluations and drug screen results are often not available in advance and are handed out immediately prior to court. Furthermore, drug counselors, psychologists, etc, rarely appear in-person, but submit reports, which reports are often not provided until the last minute. Thus, this standard will undoubtedly lead attorneys to demand delays and continuances, to deal with these reports and potential witnesses.

Standard #25 This suggests that the appellate attorney may be a different person than the trial attorney. That runs contrary to the current rule of appellate procedure 6.201. Furthermore, given the short deadlines for juvenile appeals, this appears to be impractical. Or perhaps the Court is going to expand the appeal deadlines for juvenile appeals.

General Comments

It is unclear what the impetus is behind these proposals. Perhaps in some parts of the state, there are attorneys practicing in juvenile court who are not doing a good job. That is certainly a problem, but there are ways to handle that. For example, the juvenile judges could not allow those attorneys to receive court appointments.

The Rules of Professional Conduct should cover these standards of practice. If the belief is that those Rules are insufficient, then we should look at them. Certainly, if a judge, or anyone else believes that an attorney is acting unethically (e.g., representing conflicting parties, *Standard #7*), then there is already a mechanism in place to deal with those issues.

These proposed requirements also limit, unconstitutionally I believe, the ability of parents to hire an attorney of their choice, if the chosen attorney has not met these requirements. This is especially troublesome for a parent in a small town who has limited choices in local attorneys. If parents cannot hire someone nearby, then these standards potentially impose on them even more cost to go further afield to hire a "certified" attorney. Furthermore, if the parent is also involved in a criminal or custody matter, which is not an unusual situation, and that other attorney is not "certified", then the parent must deal with the cost and inefficiency of multiple attorneys trying to deal with inter-related matters. Any idea that there will be two standards, one for court-appointed attorneys and one for privately-hired attorneys, is also unconstitutional, I believe.

These requirements all focus on parents' attorneys. Juvenile court is supposed to be about the children. Although I am against any of these proposals, if the idea is to ensure competent attorneys represent parents, I am curious as to why there are no requirements to

ensure that competent attorneys represent children, or that competent attorneys are appointed as guardians ad litem for children.

I am concerned about the monitoring of these requirements and the consequences of non-compliance. Many of these "standards" are simply good practice standards. Are such standards going to be set out, and somehow monitored, in other areas of the law? Who and how will monitoring be done? Who is going to make an after-the-fact decision that an attorney should have attended a family team meeting, or that an evaluating psychologist should have been called to substantiate her report? Will the offending attorney be subject to ethical complaints? Will the attorney or judge who "mentored" or "certified" the offending attorney be subject to some sort of sanction?

Some of these proposed requirements impact factors which are beyond the control of the attorneys, and even the juvenile judges. The Department of Human Services has control over their family team meetings, their providers, their reports, etc. Private agencies have control over the scheduling of chemical dependency evaluations, control over their reports, etc. The Department of Human Services is a key player in the equation of juvenile court. That agency's budget and the amount of resources is limited. Asking or even demanding services, evaluations, etc, is not necessarily feasible.

Similarly, the budget and resources of the State Public Defender are limited. Given the restrictions and rules that have been placed and increased on court-appointed attorneys, I question whether expenses will be approved or reimbursed, or what documentation we will need to prove necessity. Applications to exceed fee limits will increase significantly, and costs to obtain documents, witness fees, hire interpreters for office visits, etc, will increase. Will the State Public Defender's Office pay those extra costs? If not, or if it is questionable, court-appointed attorneys are not in a position to absorb those costs. Even privately-hired attorneys will hesitate to burden their clients with such costs.

I believe that many good, experienced juvenile court attorneys will simply withdraw from representation as opposed to agree to these new rules. Those of us who accept court appointments are only paid \$60 an hour, and often feel as if we have to fight to receive our fee for work already completed. Furthermore, many events happen after the dispositional phase of court proceedings, when the fee cap is \$300 in-between hearings. Attorneys need to obtain court approval to exceed the fee limitations of the State Public Defender - will that agency willingly pay those fees and extra costs? I am concerned that it will become financially impractical and a time burden to practice in juvenile court. Such a sentiment has already been expressed to me by judges and attorneys. This will have a negative impact on the system, both in the short term and the long term.

It is the ideal of the judicial system to have competent representation in all areas of the law. The court system, and the Iowa State Bar Association, argue that our system is ranked among the best in the country. Certainly there is room for improvement, but such improvement cannot, and indeed, may not, occur with these proposals. Arguably, such proposals could be made for every area of the law. But just because an attorney attends a CLE, or has experience, does not mean that the attorney is competent. Our system has requirements in place to address

improper conduct. If the Supreme Court feels the need for more requirements, then perhaps it should look at addressing those, as opposed to singling out one specific area of the law. (e.g., the ethical requirement was recently raised from 2 to 3 hours).

Finally, the budget and resources of the court system are limited. The reduction of personnel, including court reporters, limited court service days and limited clerk hours, all contribute to crowded court schedules - formal discovery, expert testimony, etc, will exacerbate that situation. Unless and until there is a restructuring of the system as a whole, to allow for the increase of resources, including financial resources, as well as time, it is improper and impractical to expect juvenile court attorneys to bear the responsibility of effectuating significant changes. If these standards and requirements go into effect, then the Court needs to seriously reconsider the administration of the entire system.

I believe that juvenile court is an important part of the Iowa court system, and has a profound impact on many lives. However, singling out juvenile court parents' attorneys as needing more CLE credits, more rules, etc, seems disingenuous. Perhaps the Court would be better served by a broader discussion of juvenile court, or the court system in general, or our CLE system, or our Rules of Professional Conduct. Any discussion, however, needs to include a broad spectrum of players, and, by necessity, must account for the reality of real-life legal practice in the state. It must also include consideration of resource availability and allocation, including, but not limited to, reimbursement rate for court-appointed attorneys, DHS resources, and the court system's resources.

I appreciate the opportunity to submit these comments for consideration.

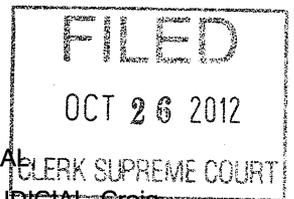
Sincerely,

Marti D. Nerenstone
Attorney at Law



Chuck
Fagan/District4/JUDICIAL
10/26/2012 04:18 PM

To Rules Comments/SCA/JUDICIAL@JUDICIAL
cc Susan Christensen/District4/JUDICIAL@JUDICIAL, Craig
Dreismeier/District4/JUDICIAL@JUDICIAL, "Scott Strait"
<scott@scottstrait.com>, rmeigel@spd.state.ia.us, Gary K
bcc
Subject Proposed New Rule of Juvenile Procedure 8.36



Who	Date	Time	Subject
Chuck Fagan	10/26/2012	04:18 PM	Proposed New Rule of Juver

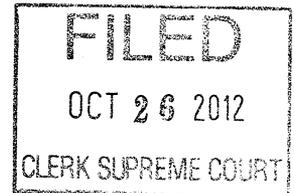


Proposed Rule 8.36.docx

These are my thoughts as to the proposed rule.

Hon. Charles D. Fagan
(712) 328-5793
chuck.fagan@iowacourts.gov

IOWA DISTRICT COURT
FOURTH JUDICIAL DISTRICT
227 SOUTH SIXTH STREET, FOURTH FLOOR
COUNCIL BLUFFS, IOWA 51501



CHARLES D. FAGAN, JUDGE
(712) 328-5793
Chuck.Fagan@iowacourts.gov

October 26, 2012

RE: Proposed New Rule of Juvenile Procedure 8.36

Dear Justices of the Iowa Supreme Court:

As a district associate judge for the last 4 years, during which I estimate that two-thirds of my case load involved juvenile cases, I have been at the forefront of the many changes brought about by the supreme court's leadership in improving outcomes for our state's abused and neglected children and their families. Many training opportunities have been developed at the state, district and local level. Many attorneys have had training opportunities sponsored by the state through Children's Justice and the State Public Defender's Office. At the district and county level Local Brown Bag seminars have also provided ample opportunity for continued education. These opportunities have improved the practice of attorneys in juvenile court, including counsel for parents, children, and the state.

However, I do not believe that a rule mandating practice standards or certification for attorneys representing parents in juvenile court is warranted. Attorneys who work in juvenile court are dedicated individuals, who work hard for their clients, while being paid very little. The inherent conflicts in these cases already limit the pool of attorneys available to the court. The costs associated with these new requirements are burdensome and unfair. The additional requirements placed on juvenile attorneys' will decimate the ranks of available counsel in many counties. It simply is not necessary to require these mandates. As a Judge I see attorneys who initially lack the skills needed to accomplish the job commonly seek the guidance and counsel of more learned colleagues and become accustomed to the juvenile court process.

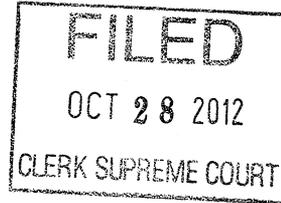
The proposed rule seeks to fix a problem that does not exist and singles out attorneys for additional scrutiny and costs that are not warranted. I do not support proposed rule of juvenile procedure 8.36.

Sincerely,
/s/Charles D. Fagan



"Kevin Maughan"
 <maughanlaw@iowatelecom.net>
 10/28/2012 07:00 PM

To <rules.comments@iowacourts.gov>,
 cc
 bcc
 Subject Proposed New Rule of Juvenile Procedure 8.36



Who	Date	Time	Subject
Kevin Maughan	10/28/2012	07:00 PM	Proposed New Rule of Juver

1 attachment



Comment on proposed rules.docx

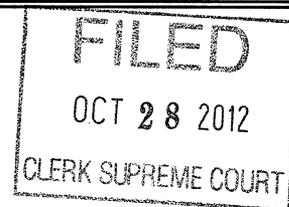
Please see attached comments on Proposed New Rule of Juvenile Procedure 8.36

Kevin S. Maughan

Kevin S. Maughan, Attorney at Law; 22 North Main, P.O. Box 413, Albia, Iowa 52531; 641-932-3133

This electronic message transmission contains information which may be confidential or privileged. The information is intended for the use of the individual or entity named above. This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 USC Sections 2510 - 2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is prohibited. If you have received this electronic transmission in error, please notify us immediately by telephone at 641-932-3133.

October 29, 2012



Honorable Supreme Court

Re: Proposed New Rule of Juvenile Procedure 8.36

Comment to New Rule of Juvenile Procedure 8.36.

I have been involved with the representation of both parents and children in juvenile court proceedings for over 24 years. I have attended numerous trainings in the juvenile law area, have participated in the State permanency summits, District permanency summits, and chaired a local team to implement improvement projects. I have been involved as a "master practitioner" for the Department of Human Services permanency round tables conducted in conjunction with the Casey foundation.

I was a faculty member for the Juvenile Basic Training course in 2010 and 2011 sponsored by Children's Justice, State Court Administration, and the State Public Defender. As a faculty member, I was part of the team that developed the curriculum and conducted the trainings. including small group work.

I was also part of a team that visited the Cornerstone Institute at the Center for Family Representation in New York City in December 2011 to look at implementing that practice model of parent representation in some form in Iowa.

I only provide the above information to show my commitment to quality representation of parents and children in juvenile court. That being said, I have to say that I am opposed to the proposed standards with regard to qualification and training as well as the proposed Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court.

I will try first to address the Court's questions as set forth in the Order dated August 30, 2012:

Should there be a separate set of prerequisites for representing parents in juvenile Court?

No. As I stated above, I have always been committed to quality representation of parents and children in juvenile court. However, if standards are adopted for this area of law, should there then be standards for just about every other area of the law. Would this then require or force attorneys to specialize in narrow areas of law?

I agree that child in need of assistance and parental termination cases implicate important constitutional rights. However, other types of cases also implicate important constitutional rights. Representation of defendants in criminal cases as well as many other cases only require bar membership and compliance with general ethical duties for representation. With bar membership

an attorney is allowed to represent defendants in murder cases, dissolution of marriage, and civil matters that concern money judgments in the millions of dollars etc.

I understand the need for separate standards with regard to guardian ad litem duties. However, this can be distinguished from parent representation in one very important way. The client of a guardian ad litem is not able to complain to the court about the services provided by the guardian ad litem. Representation of a parent in court is representation of a competent client who should have the ability to complain to the court if adequate representation is not being provided. If not, then that parent should be assigned a guardian ad litem.

Though most parents in juvenile court are represented by court appointed counsel, the proposed regulation of practice of parent representation could deny the parent client's ability to hire and be represented by the attorney of their choice.

Are the proposed requirements reasonable and appropriate and will they lead to improved representation of parents in juvenile court?

The proposed qualifications to practice in juvenile court are not that cumbersome, but I do not think that sitting in court for 5 hours initially and attending 5 hours of continuing education per year will do much to improve the quality of representation in juvenile court.

If the court really wants to improve the quality of representation of parents in juvenile court, there should be concern about retention of good attorneys in juvenile court. The vast majority of parents in juvenile court are represented by court appointed contract attorneys. The compensation rate today is the same as it was 24 years ago. As a result of the low compensation rate, experienced attorneys will move away from practice in juvenile court and concentrate on areas of practice where the private compensation rate is 3 to 4 times the contract compensation rate in juvenile court. Juvenile court then becomes an opportunity for a new or inexperienced attorney to cut their teeth and gain courtroom experience before moving on to more lucrative work.

Those that remain long term in juvenile court are attorneys who stay because of a love for or commitment to juvenile law even at a low compensation rate. I would submit to you that these attorneys are not the ones that need to be targeted for regulation of practice and further education requirements.

I believe that true improvement would come, not from the general regulation proposed, but from a structure within the Public Defender's claim procedure that would allow compensation at a higher rate for more experienced attorneys if that attorney participates in yearly training as proposed.

Is annual self-reporting and certification by attorneys to district court administrators the best way to administer the program?

I believe that it would make more sense to have any reporting requirements part of the annual report to the Office of Professional Regulation. However, if an approach was taken as I

proposed under the answer to the previous question, it would make sense that the State Public Defender would keep track of continuing education obligations as part of a tiered structure for higher compensation for those who undertake further training. Regardless of who keeps track of yearly continuing education compliance, there will need to be communication between that entity and the State Public Defender regarding maintenance of contract attorney rosters and processing of claims. Therefore, it makes sense that the State Public Defender would be responsible for keeping track of the continuing education obligations.

Would it be better to require annual certifications to be filed with the state court administrator rather than district court administrators?

Yes. See discussion to previous question.

DISCUSSION REGARDING SPECIFIC RULES

8.36(2)(a) Initial requirements for representing parents

I see inequity in the options for proof of prior experience. Five hours of mentoring (option 1) and five hours observing juvenile court proceedings (option 2) do not come close to the experience and knowledge obtained by 40 hours of prior practice in Iowa juvenile court (option 3) or certification as a Child Welfare specialist (option 4) or Completion of a semester of a law school legal clinic (option 5). It is my opinion that five hours of observing juvenile court proceedings does nothing to improve the quality of representation of parents in juvenile court. The vast majority of work representing parents is done outside court proceedings. The vast majority of work representing parents and children is done through consultations, contact with providers, and attendance at staffings and family team meetings.

8.36(3) Ongoing requirements for representing parents

If an attorney fails to comply with the five hour yearly continuing education requirement, what happens to the parent currently being represented. Will they be required to obtain a new attorney, appointed or otherwise? How will the break in continuity of representation affect their case? The court is using the premise that failure to complete 5 hours yearly of continuing education equals inadequate representation. The parent may well be well represented and penalized or have their case harmed due to having to switch attorneys mid stream.

8.36(5) Prohibition on representing parents without complying with educational and training requirements.

Please see discussion under 8.36(3). In addition, it appears that we are ignoring or limiting a person's ability to hire counsel of their choice if they can afford to do so. Parents must be assumed to be competent to make complaint if their attorney is not performing to their expectations.

8.36(7) Potential sanctions.

I will address comments concerning the proposed Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court further at a different point. However, I will

generally state that I do not think the proposed standards set forth any standards would not otherwise be covered under the Iowa Rules of Professional Conduct.

The language "or otherwise" is vague. What does this cover? Will it be different under each judge that presides over juvenile court? What is the procedure? Would sanctions be the response to complaint by the parent client or something the court would or could initiate on its own motion?

Standards of Practice for Attorneys Representing Parents in Juvenile Court

Generally I would state that after review of the proposed standards I think everything addressed by the proposed standards is addressed by the Iowa Rules of Professional Conduct. Therefore, there is not a need for additional standards for juvenile court representation.

1. Acquire sufficient working knowledge of all relevant federal and state laws, regulations, policies and rules.

See Iowa Rule of Professional Conduct 32:1.1

2. Avoid continuances and work to reduce delays in court proceedings.

See Iowa Rule of Professional Conduct 32:1.3

3. Communicate regularly with other professionals in the case.

See Iowa Rules of Professional Conduct 32:1.1 & 32:1.4

4. Establish and maintain a working relationship with the client. Communicate with the client prior to the day of hearing and when apprised of emergencies or significant events.

See Iowa Rule of Professional Conduct 32:1.4. I agree with the need for communication and a working relationship. The court also needs to be mindful that often times meeting the client just prior to hearing to review matters is a function of court reports not being filed timely or being timely distributed to counsel and the parent client. Also there are often times further reports etc that are not distributed until the day of court. There are often communication issues representing parent clients with constantly changing phone numbers and physical addresses.

5. Advocate for the client's goals: Empower the client to direct the representation and make informed decisions.

See Iowa Rules of Professional Conduct 32:1.1, 32:1.4, 32:2.1

Without going through each standard and pointing out the corresponding Iowa Rule of Professional Conduct, I believe that a separate set of standards with regard to Juvenile Court is redundant to the Iowa Rules of Professional Conduct and unnecessary.

CONCLUSION

To conclude, I have been representing parents and children in juvenile court for over 24 years and have participated in programs and continuing education to improve representation of parents in juvenile court. As part of the faculty for the Juvenile Basic Training course we developed and implemented a rigorous 3 day training curriculum that addressed knowledge of

juvenile law, procedure, and advocacy skills. Unfortunately, funding for that training has been discontinued. It is also my understanding that there was some backlash from at least a few judges who did not like participants of that training program coming back to court and zealously advocating for parents as it caused more evidentiary hearings.

I support efforts to improve parent representation in juvenile court. However, I do not support adoption and implementation of proposed rule 8 and the proposed Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court. I do not believe that the proposed rule and standards will do anything to increase competent representation of parents in the State of Iowa.

The key to competent representation of parents, and children, in juvenile court is to concentrate on retaining experienced attorneys to practice in juvenile court, which will set a higher standard and raise the bar of representation. In order to retain experienced attorneys, compensation rates must increase. It is simple economics that an attorney, as they gain experience, will turn towards and concentrate on areas of practice that promise compensation two to four times that of representing parents in juvenile court.

It is possible through the Public Defender contracting mechanism to establish a two or three tiered rate structure that provides better compensation for experienced attorneys. As part of that structure continuing education requirements could be implemented to allow payment at a higher tier. This could be done without the court's involvement and without further taxing court administration resources whether on a State or District level.

Thank you for your consideration.

Very truly yours,
MAUGHAN LAW OFFICE

A handwritten signature in cursive script that reads "Kevin S. Maughan".

by Kevin S. Maughan

**Constance Cohen
Associate Juvenile Judge
Polk County Juvenile Court
500 Mulberry
Des Moines, Iowa 50325**



October 28, 2012

TO: Iowa Supreme Court
RE: Proposed New Rule of Juvenile Procedure 8.36
FROM: Constance Cohen

I write to express my support for the adoption of New Rule of Juvenile Procedure 8.36. The only exception to adopting the rule as proposed would be to allow self reporting for the "Prior experience requirement" documentation as outlined in 8.36(2). This would be consistent with the manner in which we rely on the members of our profession to accurately self report CLE and other matters.

As a member of the Task Force which met numerous times and engaged in spirited debate under the leadership of Judge Susan Christiansen and State Public Defenders Tomas Rodrigues and Samuel Langholz, I am proud of our diverse group's work product. It was advised, in large part, by the American Bar Association standards. Also instructive were the federal Child Abuse Prevention and Treatment Act training requirements for attorneys prior to representing children in dependency proceedings as well as our own codification of Guardian ad Litem duties as set forth in Iowa Code Section 232.2(22). Because most of our attorneys who represent parents in CINA proceedings often represent children in other CINA cases, the training already required of our Guardians ad Litem will significantly overlap much of the new rule's requirements.

In determining the number of annual CLE hours to require, we surveyed attorneys representing parents in each of the eight judicial districts. The selection of five hours was less than the average proposed by current practitioners. A substantial number of respondents recommended well over five hours per year.

Requiring five hours of CLE relating to dependency matters is not burdensome. First, it is not in addition to the fifteen hours already required. Second, five hours are easily accessible without travel via webinars and telephone seminars. The Children's Justice Initiative is committed to providing quality distance learning opportunities to satisfy the requirements in addition to supporting traditional training events for little to no cost. Third, the eight district teams routinely provide regional conferences for their legal community at no cost. Fourth, the Iowa State Bar Association's Juvenile Court Committee is collaborating with the Children's Justice Initiative to provide a statewide day-long annual training. Finally, several counties already hold routine "brown bag lunch and learns" at no cost and Children's Justice Initiative will continue to support expansion of these events.

Nowhere are the stakes higher for Iowa families than in dependency cases. Informed advocacy can make the difference between termination of parental rights and reunification. The need to understand federal and state requirements unique to dependency cases, as well as critical subject areas that impact these cases cannot be underestimated. These areas of study are not generally included in the normal course of legal education, e.g., substance abuse, education, domestic violence, brain development,

mental health, and family systems. An attorney who does not understand the difference between adequate family contact for a three month old as compared to an eight year old cannot effectively advocate for reasonable efforts for maintaining and/or building healthy attachment and bonding. Time lost to the parent not well served can never entirely erase the damage of losses to the child.

I have been a part of the Children's Justice Advisory Committee, formerly Court Improvement Project, since its inception. In fact, Jerry Beatty and I wrote the original grant together circa 1995. Our first task was to assess our strengths and weaknesses in achieving timely permanency. Many assessments have followed. Each time improvement of parent representation has been an area identified as needing support. We have tried numerous approaches, which have supported quality representation. But, each year experienced attorneys move on to other work, and new attorneys begin this work. Adequate preparation for new attorneys and predictable expectations for ongoing refreshing and updating are critically important. The recommendations of this task force will consistently ensure these advancements. They are courageous but not unique. The ABA and other states have adopted similar rules. In adopting these standards, Iowa will proudly join the ranks of those who have institutionalized excellence.

It occurred to me that if I were a patent attorney, I would have had to earn a particular undergraduate degree relevant to my practice, such as engineering. As a Juvenile Court Judge or practitioner, I could have majored in Business, Broadcast Journalism, or any subject matter I chose. As a patent attorney, I would have to pass a specialty bar exam in addition to the general bar exam before I could represent a client who may want to protect the intellectual property associated with a new and improved kitchen appliance. Adoption of Rule 8.36 not only gives us the opportunity to make a statement as to how we value the importance of parent advocacy in dependency cases, but to truly raise the bar and standardize excellence.

Thank you for your consideration of this important matter.

Respectfully submitted,

Handwritten signature of Constance Cohen, consisting of a large, stylized 'C' followed by 'ohen'.

Constance Cohen
Associate Juvenile Judge
Fifth Judicial District of Iowa



Linda
<lifelaw@mahaska.org>
10/29/2012 11:35 AM

To rules.comments@iowacourts.gov,
cc
bcc

FILED
OCT 29 2012
CLERK SUPREME COURT

Subject Proposed New Rule of Juvenile Procedure 8.36

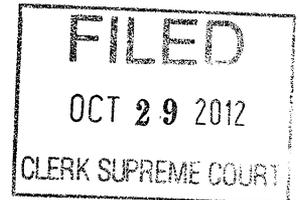
Who	Date	Time	Subject
 Linda	10/29/2012	11:35 AM	 Proposed New Rule of Juver

1 attachment



Rule comments.rtf

GREG A. LIFE
LIFE LAW OFFICE
102 FIRST AVE. EAST
OSKALOOSA, IA 52577



Proposed New Rule of Juvenile Procedure 8.36

A Court Service Judge recently mentioned the above proposed new rule and after a discussion which included other attorneys I indicated that I would forward my comments for consideration.

I would first state that I have been in private practice since 1974 and did for many years handle juvenile cases. The last six or eight years I am only involved in juvenile cases when a client, usually a dissolution of marriage action or client involved in paternity action, becomes involved in a juvenile action. I have two such cases now where a juvenile action was filed due to the mother's involvement with drugs after the dissolution of marriage action had been filed and in the other case after the final order had been filed in a paternity action. If, and I presume it will be when, the new rule is imposed I will no longer be able to represent my client in the juvenile action since I will no longer be "qualified" to appear in juvenile court. I will have knowledge of the case and the parties that a new attorney (for the juvenile action) who would appear for the father in juvenile court would not have. Hopefully I will have developed a relationship with the client in which he has developed a trust in my representation being in his best interest. A new attorney will result in added expense for my client or the Court if the attorney has to be appointed to represent my client in the juvenile action. My client then will be dealing with a new attorney whom he is not acquainted with. I will have to be involved with the new attorney so that I am adequately informed to continue to represent my client in the dissolution or paternity action.

As an attorney I have a concern as to what certification is next going to be required by the Court. A certification to handle probate matters, real estate matters, dissolution of marriage actions, etc. The sole practitioner may not be able to maintain a general practice. The "family attorney" may become a thing of the past. I am only thankful that I am the age that I am as the proposed rule and future similar rules will be limiting an attorney's ability to be in sole practice and/or have a general practice. Attorneys will have to specialize.

A comment was made in our discussion that the reason for the proposal of the rule was due to attorneys not being prepared when appearing in juvenile court. In the perfect world that should not happen but I know on occasion I have experienced an attorney not being prepared. It has happened to me when a client has failed to keep in contact with me or I have not been able to find my client. The presiding judge should be able to handle this in a number of ways including, but not limited to, removing the attorney from the appointment list.

As a sole practitioner I am not in favor of the proposed rule. I have debated for sometime as to whether I should forward this email, however after this matter came up during a lunch discussion with attorneys attending a recent family law seminar I felt I should do so.

Greg A Life



"Benjamin Pick"
 <bpick@mcginnlawfirm.com>
 10/29/2012 02:28 PM

To <rules.comments@iowacourts.gov>,
 cc
 bcc

FILED
 OCT 29 2012
 CLERK SUPREME COURT

Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
→ Benjamin Pick	10/29/2012	02:28 PM	Proposed New Rule of Juver

1 attachment



Letter Re. Proposed Rule.docx

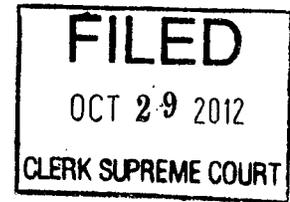
See attached.

Benjamin J. Pick
 McGinn, McGinn, Springer & Noethe
 20 North 16th Street
 Council Bluffs, IA 51501
 Telephone: 712-328-1566
 Fax: 712-328-3707

Notice of Confidentiality: If you received this email in error, use or disclosure is prohibited. Please notify us of the error by email and delete this email.

October 29, 2012

Chief Justice Cady
Clerk of the Supreme Court
1111 East Court Avenue
Des Moines, Iowa 50319



RE: Proposed New Rule of Juvenile Procedure 8.36

Dear Justice Cady,

Our firm would like to voice our concerns over the proposed new rule of juvenile procedure 8.36. As two members of our firm practice in juvenile court these proposed changes will have a significant impact on them and their practices if implemented.

Although important constitutional rights are implicated in parental termination and child-in-need-of assistance cases, it is unclear how the additional prerequisites and the annual juvenile law CLE will result in better legal representation of the parents. The current requirements of bar membership and the general ethical duties, along with the annual general CLE requirement provide enough safeguards to ensure competent representation of parents.

Furthermore, it is unclear what has prompted these proposed new rules. If there are concerns about an attorney's ability to provide competent legal representation of a parent, those issues should be taken up with that attorney personally, rather than implement some costly and time consuming pre-requisite and CLE program for all attorneys practicing in that field. It has been our firm's experience that parents we've represented in juvenile court have had their parental rights terminated on multiple grounds under I.C.A. section 232.116, most often because of their own failures to follow through with the recommendations. When a parent fails to take an active role in his/her own case, no amount of CLE classes or pre-requisites will result in a different outcome.

It is also our firm's position that creating more time consuming administrative work for attorneys will significantly deter solo-practitioners and attorneys from smaller firms from wanting to engage in the practice area. Currently, attorneys are expected to provide an ever increasing number of administrative functions, just to practice law. Adding more such functions like self-reporting and certification creates duplicitous work that in the aggregate substantially limits the amount of time attorneys at small firms can dedicate to representing clients.

Although our firm respects and commends Judge Christensen and Mr. Langholz's efforts to improve the quality of legal representation in Iowa's juvenile courts, we simply don't agree that the proposed new rule will achieve the intended outcome.

Sincerely,

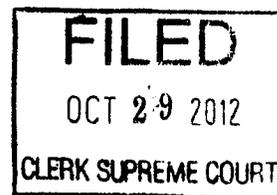
McGinn, McGinn, Springer & Noethe

/s/ Benjamin J. Pick



"Lawrence, Jean C"
<jean-c-lawrence@uiowa.edu
>
10/29/2012 03:15 PM

To "rules.comments@iowacourts.gov"
<rules.comments@iowacourts.gov>,
cc
bcc



Subject Proposed New Rule of Juvenile Procedure 8.36

Who	Date	Time	Subject
→ Lawrence, Jean C	10/29/2012	03:15 PM	Proposed New Rule of Juver

1 attachment



Letter re Proposed Rule 10-29-12.pdf

See attached comments.

Jean C. Lawrence
Director - Family Representation Clinic
Clinical Law Programs
College of Law - University of Iowa
380 Boyd Law Building
Iowa City, Iowa 52242-1113
319-335-9023; FAX 319-353-5445



COLLEGE OF LAW
CLINICAL LAW PROGRAMS

COMMENTS REGARDING PROPOSED NEW RULE OF JUVENILE PROCEDURE 8.36

Via e-mail only to: rules.comments@iowacourts.gov

Dated: October 29, 2012

Dear Honorable Justices:

I am writing in regards to proposed Rule of Juvenile Procedure 8.36. I believe that this Rule appropriately and reasonably implements a laudable goal – improving the quality of parent representation in juvenile court. I urge you to approve this proposed Rule.

I have been practicing law in Iowa for more than 30 years. Most of my legal career has been spent in small law firms doing a very general practice. As with most new attorneys at that time, I started out doing a substantial amount of court appointed work – both juvenile and criminal. While my juvenile court caseload decreased over the years, I found that I really enjoyed this type of work and continued to carry a juvenile court caseload.

In July, 2011, I became the Director of the Family Representation Clinic (FRC) at the University of Iowa College of Law. This position was initially funded primarily by Iowa Children's Justice as one means of addressing their concern that the quality of parent representation in Iowa needed improvement. The FRC is now funded jointly by the College of Law and Iowa Children's Justice. The mission of FRC is to represent parents involved in CINA proceedings in juvenile court. I supervise approximately 8 students per semester who represent parents in CINA and termination cases out of Johnson and Linn Counties.

This background has given me the opportunity to observe the problems with attorney representation of parents and the time to carefully consider what constitutes adequate training for attorneys doing this type of work. Based on this background, I believe that there should be a separate set of prerequisites for attorneys working in this field. This conclusion is based on the following: 1) parent representation implicates important rights, 2) the current quality of parent representation in Iowa is uneven, 3) adequate training will improve the quality of representation, 4) there is not the incentive within the juvenile system to improve one's skills that exists in other areas of law, and 5) the parent population in juvenile court is not effective, as a whole, in advocating for quality representation.

Quality representation in this area is crucial due to the fact that every CINA case has a potential to become a termination of parental rights case. There are few rights which people value more highly than their right to a relationship with their child. Statistics show that Iowa has one of the highest rates in the country of children removed from their homes. A brief glance at the Iowa Court of Appeals docket gives some indication of the large number of termination of parental

380 Boyd Law Building
Iowa City, Iowa 52242-1113
319-335-9023 Fax 319-353-5445
law-legal-clinic@uiowa.edu

rights cases that are tried across the State on a regular basis. At this time, appeals of those cases constitute approximately one third of the Court of Appeals caseload. Statistics also show that effective representation of parents in juvenile court results in quicker family reunification and better outcomes for families.

Over the years, I have seen some excellent representation in juvenile court. Particularly in the Guardian ad Litem role, I think advocacy has improved a great deal. However, I believe that there are more problems with poor representation of parents in juvenile court than with any other area of law that I have observed. Partly this is due to a system that puts such a low value on this type of work by paying very low hourly rates. Attorneys who want to practice primarily in this area are forced to have extremely high caseloads and cannot devote as much time to each case as they would like. Over and over we are told that the main work of effective parents' attorneys is done outside the courtroom; yet many parents' attorneys do not have the time to do much more than meet with their clients briefly in the hallway outside the courtroom right before a hearing. Another problem is the perception of many attorneys that juvenile court work is "easy" and not like practicing "real" law. A third problem is a lack of understanding or empathy for parent clients. Lastly, parents' attorneys often lack effective tools to help parents overcome the barriers to successfully navigate through the juvenile court system. Proposed Rule 8.36 addresses the latter three problems. Perhaps passage of this rule this will lead to a greater respect for this type of work, which will translate into better pay.

Adequate training for attorneys will go a long way towards addressing the problems of disparaging attitudes, lack of understanding and lack of effective tools for representation. I have thought a lot about what training goes into a good parent's attorney in developing a training program for my student interns. Such training must go far beyond simple familiarity with Iowa Code Chapter 232. An effective parent's attorney must be familiar with many other areas of law, both state and federal. They must have trial skills, which they can call upon with very short notice at times (parent's attorneys generally get no more than 48 hours notice of a Temporary Removal hearing). Attorneys have to be familiar with Department of Human Service policies and regulations, as well as services that their clients may need to be successful. Parent representatives have to have the necessary understanding of poverty, mental illness, substance abuse and domestic violence, as these issues impact most of our clients. Lastly, good parent attorneys need extraordinary client skills. Much of these necessary skills/knowledge are set out in the proposed Standards for Parent Representation. Many of these things are not taught in most law school curriculum; therefore, many attorneys must acquire them in trainings after graduation. Thus, clearly there is a substantial amount of training that needs to be done to develop a good parent's attorney.

At this time, there is little incentive for parents' attorneys to participate in juvenile court-related trainings. In other areas of law, attorneys specialize in order to increase their expertise, and thus their clientele in that area. In order to hold themselves out as specialists, they have to obtain a certain amount of CLEs in that substantive area of law. On the other hand, the vast majority of parent representation cases are court appointed. There is little benefit or motivation to holding oneself out as a specialist in this area, therefore, little incentive to attend specialized juvenile trainings. By endorsing a rule that requires a certain amount of CLEs per year, the Supreme Court is acknowledging the importance of this work, the diverse knowledge that is necessary to

be an effective parent's attorney, and the fact that, without such a requirement, few attorneys will obtain adequate training in this area.

Lastly, there is one other fact that distinguishes this type of work from others in terms of a need for training requirements. In many other areas, if an attorney is not adequately trained, his/her clients will either find another attorney or file a complaint in some manner against that attorney. Word will spread, and that attorney will no longer get clients. However, in juvenile court, the vast majority of parents are indigent and have attorneys appointed for them. They have little or no choice in the matter. Furthermore, parents in juvenile court are often not equipped to effectively complain about the quality of their representation. They either do not know how to effectively lodge a complaint or they do not realize they are being poorly represented because they have an inadequate knowledge of the system and how it should work. While judges could step into these situations and remove attorneys (and have done so), they typically do not like to be put in the position of policing the adequacy of representation by attorneys.

I do believe that the proposed regulations are reasonable and appropriate and will lead to improved representation in juvenile court.

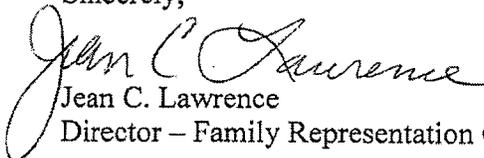
As indicated above, there is a good deal of training that is necessary to make an effective parent's attorney. Requiring 5 hours per year is more than reasonable.

In implementing this rule, it is crucial that attorneys across the State have access to free/low cost CLEs in the area of juvenile law. I understand that there has been some skepticism about the availability of easily accessible training in order to achieve this goal. I know that many counties offer "CLEs over Lunch" programs in the juvenile law area, whereby an attorney can pick up 5 hours of CLE simply by attending a luncheon 5 times over the year. It is my understanding that one of the reasons behind requiring no more than 5 hours was to ensure that an attorney could obtain his/her CLE hours through webinars, if necessary. In addition, Iowa Children's Justice is committed to ensuring that there are adequate low cost/free CLE opportunities across the state such that accessibility will not be an issue.

The Standards themselves are very good. They are based on the ABA Standards, and set out a detailed blueprint for exactly what a parent's attorney should master in order to do his/her job effectively.

There is a recognized need in this State for improvement in the quality of parent representation in juvenile court. Proposed Rule 8.36 sets out to accomplish this goal with a combination of specific Standards of Practice and mandatory CLEs. Passage of this rule sends an important message by acknowledging the importance of this work and the high degree of expertise required to do it well.

Sincerely,


Jean C. Lawrence
Director – Family Representation Clinic



"Mona Knoll"
<mknoll@nazettelaw.com>

10/29/2012 03:36 PM

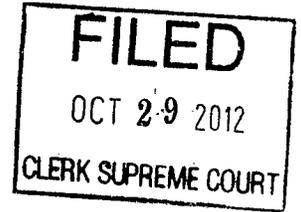
Please respond to
<mknoll@nazettelaw.com>

To <rules.comments@iowacourts.gov>,

cc

bcc

Subject Proposed New Rule of Juvenile Procedure 8.36

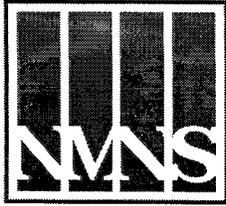


Who	Date	Time	Subject
→ Mona Knoll	10/29/2012	03:36 PM	Proposed New Rule of Juver

1 attachment



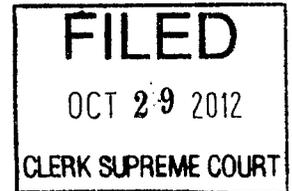
LTR TO SUPREME COURT RE JUVENILE COURT CLE 10.23.12.doc



**NAZETTE · MARNER
NATHANSON · SHEA**
LLP

Richard F. Nazette (1919-2007)
David L. Marners, Sr.
Randall A. Nazette
Henry E. Nathanson
Mona Knoll
David L. Marners, Jr.
Crystal L. Usher
Kevin P. Shea
Marty Hagge
Caitlin L. Slessor
Daniel J. Nathanson

October 30, 2012



CLERK OF THE SUPREME COURT OF IOWA
1111 EAST COURT AVENUE
DES MOINES, IA 50319

VIA email: rules.comments@iowacourts.gov

RE: Proposed New Rule of Juvenile Procedure 8.36

The Supreme Court has requested public comment on the Proposed New Rule of Juvenile Procedure 8.36. I have practiced in juvenile court, mostly in Linn County and Benton County since 1988. Before that, I practiced as an Assistant Linn County Attorney for eight years. I am no longer on the court appointed list for juvenile court but do represent parents as part of my private practice. I have reviewed the Proposed New Rule of Juvenile Procedure 8.36 as well as the Iowa Standards of Practice for Attorneys Representing Parents in juvenile court and the commentary accompanying them more than once. My comments follow.

1. I do not believe there should be a separate set of prerequisites for representing parents in juvenile court. Your request for comment states that Termination of Parental Rights and Child in Need of Assistance cases “implicate important constitutional rights. There are many other areas of law which implicate important constitutional rights and, to my knowledge, there are not separate sets of prerequisites for representing clients in each area. Most attorneys, new or just branching out into a new area, have enough sense to avail themselves of counsel from their fellow more experienced attorneys and to seek advice from those attorneys when they need it or to orient themselves in some other way such as sitting in on cases before they accept appointments or clients in their private practice. If the implication of important constitutional rights should generate a separate set of prerequisites for any area of law in which they are involved, that would mean many different prerequisites that an attorney wishing to practice in those areas would have to meet.
2. I certainly think it would be useful to offer Continuing Legal Education to educate those practicing in juvenile court, I believe that Continuing Legal Education opportunities should be available in all areas of representation.

615 2nd Street SW
P.O. Box 74210
Cedar Rapids, IA 52407-4250
T 319.366.1000
F 319.364.1116
mknoll@nazettelaw.com

3. I do not think that the proposed requirements will lead to improved representation of parents in juvenile court. Those few attorneys who do a poor job in juvenile court are not lacking classes or seminars. They are lacking guidance from their peers and the court. For the most part, those attorneys doing a poor job in juvenile court are doing a poor job everywhere else. Many times, they are sole practitioners who do not have partners or associates with more experience than they or do not avail themselves of the advice and counsel of experienced attorneys in their community who, for the most part, would be happy to sit down with them and help them. I have no objection to the offering of five or any other number of hours of annual juvenile law continuing legal education. I think that the attorneys who understand juvenile law and do a good job in juvenile court will willingly avail themselves of Continuing Legal Education if they believe that it will further enhance their abilities in juvenile court. Requiring five hours of juvenile law Continuing Legal Education every year for everyone who practices in juvenile court will result in many experienced attorneys just "sitting through" the Continuing Legal Education in order to continue to practice in court. I believe that the proposed requirements may very well deter some attorneys, some good attorneys, from practicing in juvenile court. A good example of this is the practice of requiring guardian ad litem reports. Attorneys who were doing a good job in juvenile court did not need to be required to do guardian ad litem reports in order to keep up their duties as guardians ad litem. The reports may point out the attorneys who are doing a less than adequate job but, of course, we all knew who they were and I am sure the judges all knew who they were before the requirement of guardian ad litem reports. Part of the problem, I believe, is the unwillingness of the judges to sit down with an attorney who is doing an inadequate job and tell them so. Some of the best education I received when I was a new attorney was from judges who pointed out what I could do better. Many talented juvenile court attorneys have quit practicing in juvenile court or gotten off the court appointed list due to many factors, one of which is the feeling in juvenile court, the attorneys are actually treated in a juvenile-like manner. On my trips to juvenile court, these days, I am struck by the lack of many very competent family law attorneys who are no longer practicing there, depriving parents and children of their excellent representation.
4. Since I do not believe there should be an actual requirement for annual Juvenile Law Continuing Legal Education, I, of course, do not believe that the Office of Professional Regulation should be involved. Certainly, the juvenile court judges are aware of who is doing a good job and who is not in juvenile court so, if there is to be any kind of requirement for Continuing Legal Education, I think self-reporting and certification to district court administrators with some oversight by the court would be enough.
5. I cannot imagine why we would need to have additional documents filed in every case certifying compliance with Rule 8.36 or any other rule concerning the adequacy of an attorney to work in a particular court. Why should juvenile court be treated differently from representing parties in family law cases, criminal cases, personal injury cases or any other kind of case? There seems to be an assumption here that all parents in juvenile court are represented by attorneys that they did not choose. My representation is limited to parents who retain me to represent them in juvenile court. They are going to do that based upon my reputation or word of mouth, not whether I have attended a recent Continuing Legal Education. Most attorneys keep themselves abreast of recent law, rules and practices in any area in which they practice. This proposed rule seems to assume that, for some reason, that juvenile court attorneys are unlike attorneys in other areas, that they need to attend forced education and have more oversight because they practice in juvenile court. I simply do not agree with this.

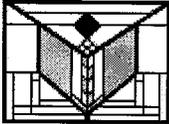
6. The Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court is a very thorough list of directives for representing clients in juvenile court and, really, most of the list could serve as a guide in any kind of case. I cannot believe most attorneys need this in addition to already existing directives, in the Code of Professional Responsibility, for instance. My reaction in reading this was to wonder what kind of behavior has prompted its inclusion. On the other hand, these standards state the ideal while failing, perhaps, to understand that many of the parents attorneys represent frequently fail to keep in contact with their lawyer, miss appointments, miss court and can be moving targets generally. Attorneys hesitate to explain these problems to the court in individual cases as it they feel it paints their clients in a bad light in court. The result is that the attorney, not wanting to place blame on the client, may look like he or she has not maintained contact when the truth is that the client is the one who has not kept in touch. No amount of CLE or standards can overcome this chronic problem.

Sincerely,
NAZETTE, MARNER,
NATHANSON & SHEA, L.L.P.

MONA KNOLL

MK/nrs

FILED
OCT 29 2012
CLERK SUPREME COURT



Craig
Dreismeier/District4/JUDICIAL
L
10/29/2012 04:10 PM

To Rules Comments/SCA/JUDICIAL@JUDICIAL,
cc
bcc
Subject Proposed New Rule Of Juvenile Procedure 8.36

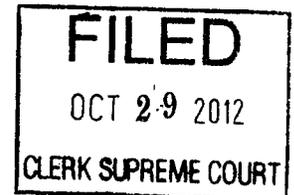
Who	Date	Time	Subject
Craig Dreismeier	10/29/2012	04:10 PM	Proposed New Rule Of Juver



Proposed rule 8.36 comments.docx

Craig M. Dreismeier
District Associate Judge
Fourth Judicial District
712-328-5795

IOWA DISTRICT COURT
FOURTH JUDICIAL DISTRICT
227 SOUTH SIXTH STREET, FOURTH FLOOR
COUNCIL BLUFFS, IOWA 51501



Craig M. Dreismeier
District Associate Judge
Craig.Dreismeier@iowacourts.gov

October 29, 2012

Re: Proposed New Rule of Juvenile Procedure 8.36

Dear Justices of the Iowa Supreme Court:

I am writing in response to proposed rule 8.36. I am a district associate judge having served in this capacity for nearly two years. During this time, juvenile work has comprised approximately seventy percent of my docket. Prior to serving on the bench, I was in private practice for eighteen years.

I do not believe that a rule mandating practice standards or certification for attorneys representing parents in juvenile court is necessary. Although I strongly believe zealous advocacy is important for parents in juvenile court, I believe any litigant in any case is entitled to zealous advocacy. How is it that the rights of a criminal defendant or those of a parent in a divorce or custody case are any less important? Our current rules set high standards for all practicing attorneys. Further, I have not seen anything which shows our current system is not already working as intended. As such, I don't believe this proposed rule needs to be implemented.

Under our present system, litigants are free to choose who represents them. The implementation of these rules will impede their ability to make this choice.

I'm further concerned that these proposed certification requirements are viewed by attorneys who regularly practice in juvenile court as too cumbersome and as such, choose not to be certified. If that occurs, we potentially lose those qualified, competent, zealous advocates.

If the ability exists to make continuing education available for little to no cost and widely accessible to attorneys, then, let's make it available. I don't believe we need a rule change for this to occur and in return, we will meet the goal of a more educated bar.

I do not support proposed rule of juvenile procedure 8.36.

Sincerely,
/s/ Craig M. Dreismeier



"Langholz, Samuel [SPD]"
 <slangholz@spd.state.ia.us>
 10/29/2012 04:21 PM

To "rules.comments@iowacourts.gov"
 <rules.comments@iowacourts.gov>,
 cc "Barber, Gail [JB]" <gail.barber@iowacourts.gov>,
 "Christensen, Susan [JB]"
 <susan.christensen@iowacourts.gov>

FILED
 OCT 29 2012
 CLERK SUPREME COURT

bcc

Subject Proposed New Rule of Juvenile Procedure

Who	Date	Time	Subject
Langholz, Samuel [SPD]	10/29/2012	04:21 PM	Proposed New Rule of Juver

2 attachments



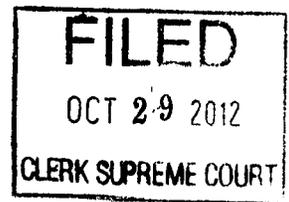
Supreme Court - Comment on Parents Standards.pdf Supreme Court - Comment on Parents Standards.docx

Please find attached my comments to the Proposed New Rule of Juvenile Procedure 8.36.

Sam Langholz
 State Public Defender
 Lucas State Office Building
 321 E. 12th Street
 Des Moines, IA 50319
 (515) 242-6158



OFFICE OF THE
STATE PUBLIC DEFENDER



TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR
SAMUEL P. LANGHOLZ, STATE PUBLIC DEFENDER

October 29, 2012

Supreme Court of Iowa
1111 East Court Avenue
Des Moines, Iowa 50319

RE: Proposed New Rule of Juvenile Procedure 8.36

Dear Honorable Justices of the Supreme Court:

I write to support, in principle, the adoption of the Proposed New Rule of Juvenile Procedure 8.36 and the proposed Iowa Standards of Practice for Attorneys Representing Parents in Juvenile Court. As discussed in greater detail below, however, I have substantial concern with the method of reporting compliance with the ongoing training requirements currently set forth in the proposed rule. I would urge the Court to consider instead using one of the options proposed by the Parents Representation Task Force, namely reporting through the Office of Professional Responsibility or attorney certification in the attorney's appearance in each case. I would also encourage the Court to consider applying the rule to all attorneys representing a private party in juvenile court.

I commend the Court for its continued commitment to elevating the importance of children's justice issues and juvenile court practice. I have been honored to participate on the Children's Justice State Council and to serve as co-chair with Judge Susan Christensen of the Parents Representation Task Force. I know that this proposed rule is the culmination of several years of efforts by dedicated stakeholders throughout the judicial branch and the broader legal community. And I am cautiously optimistic about the possibilities for improving the quality of parents' representation through the adoption of this rule.

Since the Court requested comment, I have heard from numerous attorneys who have contracts with our office for the representation of indigent persons in juvenile court. A significant majority express concern about the difficulty of complying with the training requirements of the rule, and some have threatened that they will no longer contract to handle juvenile cases. I have also heard, however, from some attorneys and judges who have experienced poor parents' representation in cases and are pleased to see a fair method of improving the pool of attorneys handling such cases.

I agree that it is critical that we have a sufficient number of contract attorneys willing to handle juvenile cases, and I share some concern about the impact that this rule may have on that number. I expect that some attorneys will decide to stop handling juvenile cases. But we currently contract with more than 950 attorneys around the state to handle juvenile cases. And I suspect that a majority of those attorneys who are unwilling to take even five hours of juvenile-

related training in a year are those who do not care very much about their juvenile practice. They are also likely those who a parent would not want to have as an attorney representing them in juvenile court. Accordingly, while a potential concern, this consequence would actually be furthering the intended goal of the rule.

If the rule is adopted, we will be closely monitoring the impact on our contracting process with private attorneys. Juvenile judges can also assist by alerting our office to issues arising with the availability of counsel so that we can consider ways to address, such as encouraging attorneys to consider relocating to areas with higher needs for counsel. Ultimately, we will never know if this rule can be a force for positive change unless we try it out. And I encourage the Court to proceed with this endeavor and adopt the rule.

I would, however, urge the Court to further modify the rule from the version proposed in two respects.

First, proposed rule 8.36(3)(b) requires that an attorney file a certification each year with the district court administrator detailing how the attorney complied with the annual training requirement. I am concerned that this would become an unmanageable method of enforcement. The practices of where the certifications are filed, how they are organized or summarized (if at all), and other details are likely to vary by district, and perhaps even county. It would be very difficult for an interested organization, such as the State Public Defender or the Attorney Disciplinary Board, to locate and use these filings to determine if an attorney is in compliance. And it will take administrative resources in each judicial district to implement effectively.

The Task Force recommended as the preferable choice, and I still support, updating the continuing legal education ("CLE") website maintained by the Office of Professional Regulation and the Commission on Continuing Education to permit the reporting of the required juvenile-focused training. This would elevate the importance of the report to the same as regular CLE reporting, keep the report electronic and with a centralized agency, and be simplest for attorneys to remember to complete in a consolidated manner with their annual CLE reporting.

With the understanding that the Court may determine that updating the CLE website is cost prohibitive, the Task Force recommended as an alternative that attorneys include a certification on their appearance in each juvenile case that they have complied with the requirements of Rule 8.36. I continue to believe that this method remains a better choice than the current version of proposed Rule 8.36(3)(b). This is a simple process that places the responsibility for ensuring that an attorney is complying with the rule on the attorney. It appears from claims submitted to our office that many, if not most, attorneys already file an appearance in juvenile cases. And adding a single line to that document is a minimal change that would remind attorneys at the start of each case of their ongoing need to comply with the rule.

Ultimately, if the Court concludes that neither of the options proposed by the Task Force are appropriate, I would suggest that the annual report be submitted to some statewide entity, such as the State Court Administrator, rather than the district court administrators. This would provide greater uniformity and centralization. It would also be more convenient for attorneys practicing in more than one district. But this option still creates a new, manual, paper process that will require administrative support to maintain and additional effort on the part of attorneys to ensure compliance. Assuming that incorporation in the online CLE reporting is not possible, a certification on the appearance continues to appear the simplest and most efficient option.

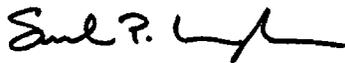
Second, I would recommend that Rule 8.36 be broadened to apply to all attorneys representing a party other than the State in juvenile court proceedings. The Parents Representation Task Force came to the same conclusion and expressed its support for applying the training and experience requirements to other attorneys in juvenile court. High quality representation and legal services is just as necessary serving as a guardian ad litem (“GAL”) or representing a child. Expanding the scope of the rule would eliminate the concern, which a number of attorneys have raised with me, that parents’ attorneys are being singled out and held to a higher standard when an inexperienced GAL can be equally problematic.

Practically speaking, even if the current version of the rule is adopted, it will affect all attorneys seeking court appointments in juvenile court. The State Public Defender contracts with attorneys to provide representation to indigent persons in all juvenile court proceedings. We do not have separate contract lists of those attorneys representing parents, serving as guardian ad litem for a child, or representing a child in a delinquency. If this rule is adopted, we will require all attorneys contracting with us for juvenile court proceedings to comply with the rule. Accordingly, the rule may as well by its terms apply to all such attorneys.

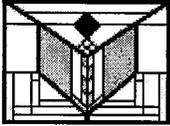
In addition, a broader rule is more defensible from the criticism that the Supreme Court should not add additional requirements beyond bar admission for a single practice area. Some attorneys have expressed a concern that there are many other areas of the law that are also complex or involve the adjudication of substantial rights. But under Iowa Code § 602.7101, juvenile court is a distinct court, not just an area of practice. If these requirements apply to all attorneys appearing in juvenile court, not just those representing parents, the basis for the requirement can be tied to practice in this special and unique court, not just the area of law. Given the importance that the Supreme Court has placed and continues to place on juvenile court, it is entirely appropriate that the Court also strive to ensure that all attorneys representing private parties in juvenile court are well qualified. This proposed rule is a positive step in this direction, and I encourage its adoption.

If I can be of any further assistance on this or any other matter, do not hesitate to contact me.

Sincere regards,



Samuel P. Langholz
State Public Defender



Susan
Christensen/District4/JUDICIAL
AL
10/29/2012 05:56 PM

To Rules Comments/SCA/JUDICIAL@JUDICIAL,
cc slangholz@spd.state.ia.us
bcc
Subject Proposed New Rules of Juvenile Procedure

FILED
OCT 29 2012
CLERK SUPREME COURT

Who	Date	Time	Subject
Susan Christensen	10/29/2012	05:56 PM	Proposed New Rules of Juve

As co-chair of the committee for Parents' Task Force, I wholeheartedly adopt the comments and concerns raised by Sam Langholz.

Suzy Larson Christensen

Susan Larson Christensen
District Associate Judge
4th Judicial District
P.O. Box 431
Harlan, IA 51537
Tel: (712) 755-5543
Fax: (712) 755-2667
Susan.Christensen@iowacourts.gov



Karen Volz
 <KVolz@akklaw.com>
 10/30/2012 08:19 AM

To "rules.comments@iowacourts.gov"
 <rules.comments@iowacourts.gov>,
 cc
 bcc

FILED
 OCT 29 2012
 CLERK SUPREME COURT

Subject Comments to Proposed New Rule of Juvenile Procedure
 8.36

Who	Date	Time	Subject
→ Karen Volz	10/30/2012	08:19 AM	Comments to Proposed New

1 attachment



SKMBT_60112102909520.pdf

Please see my comments attached.
 Thanks
 Karen Volz

From: administrator@akklaw.com [mailto:administrator@akklaw.com]
Sent: Monday, October 29, 2012 10:23 AM
To: Karen Volz
Subject: Message from KMBT_601

FILED
OCT 29 2012
CLERK SUPREME COURT

ACKLEY, KOPECKY & KINGERY LLP

ATTORNEYS AT LAW

Warren C. Ackley (1918-1989)
Eugene J. Kopecky (Of Counsel)
Gregory D. Kingery
Karen A. Volz
Larry J. Thorson
James L. Sines
Daniel L. Seufferlein
Elizabeth C. Deegan
Laura A. Kamienski

4056 Glass Road N.E.
Cedar Rapids, Iowa 52402
Phone: 319-393-9090
Fax: 319-393-9012

BRANCH OFFICES
Central City, Iowa
Phone: 319/438-6117

Center Point, Iowa
Phone: 319/849-2499

October 29, 2012

Clerk of the Supreme Court
1111 East Court Avenue
Des Moines, Iowa 50319

RE: Comments to the Proposed Rule of Juvenile Procedure 8.36

Dear Justices:

I have practiced law in the State of Iowa for 29 ½ years. For almost 20 of those years, I practiced in juvenile court. I stopped practicing in juvenile court, in part, because I could no longer afford to do so. Many of my cases in juvenile court involved representing parents as their court appointed counsel. Very often, these clients did not show up for court or the appointments necessary to prepare for court. They refused to follow the case plan and expected me to miraculously restore custody of their children. It broke my heart to see families torn apart and parental rights terminated, but never once did I see any evidence that untrained or incompetent counsel caused that result.

The members of the bar who practice in juvenile court in Iowa take their jobs very seriously and they know what is at stake every time they walk into the courtroom. The few who may not belong in juvenile court are soon weeded out by the juvenile court judges. That being said, juvenile court does not involve constitutional rights that are any more important than the rights of the accused in a criminal case, the rights of parents in a divorce, the rights of a patient in a mental commitment or other civil litigation.

I feel very strongly that these proposed Standards of Practice for Attorneys Representing Parents in Juvenile Court are unnecessary. During the seven years that I served on the Iowa Supreme Court Attorney Disciplinary Board, there were very few ethical complaints involving inadequate or incompetent representation of parents in juvenile proceedings and of those complaints, many were dismissed after investigation. The current Iowa Rules of Professional Conduct cover all of the proposed practice

standards. If attorneys representing parents in juvenile court are required to follow an additional set of ethical rules, then why not establish practice standards for attorneys representing defendants in criminal actions, attorneys representing parents in family law cases, attorneys representing clients in personal injury actions, etc.? Then, with all of those separate practice standards, why would we need general Rules of Professional Conduct? The proposed rules seem to be a drastic remedy for a problem that does not exist.

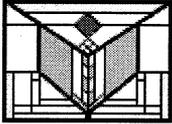
Even if the proposed standards are implemented to prevent *future* problems with representation, it is unlikely that they will result in fewer children being removed from the parental home, shorter periods of separation from parents, fewer terminations or safer living environments for children. In fact, they will most likely cause many attorneys to stop practicing in juvenile court and make it harder for juvenile court judges to appoint counsel for the parents, especially in smaller, rural counties.

Perhaps because I am not privy to the all the reasons why the Court feels that these practice standards are necessary, my opinions are ill-advised. However, from my vantage point, I think that we already have a well-functioning disciplinary process in place to make sure that attorneys, no matter who they represent, perform to the high standards of our Rules of Professional Conduct and are punished appropriately when they do not.

Respectfully submitted,



Karen A. Volz



Kent Wirth/District4/JUDICIAL

10/30/2012 02:51 PM

To Rules Comments/SCA/JUDICIAL@JUDICIAL,

cc

bcc

Subject Proposed Juvenile Rules



Who	Date	Time	Subject
Kent Wirth	10/30/2012	02:51 PM	Proposed Juvenile Rules

1. No there should not be a separate set of prerequisites for representing parents in juvenile court. Each area of the law can be complicated and has its own level of importance to the parties involved.

2. The proposed requirements could deter attorneys from practicing in this area. Several local attorneys have indicated this would discourage them from taking juvenile appointments. Both the additional CLE and the mentoring proposal are good concepts perhaps these could be incorporated in existing educational programs. Perhaps the CLE could be offered locally as part of the Bar Associations traveling CLE program and the individual districts encouraged to develop mentoring programs for new attorneys.

3. My office lacks both the staff and technical resources necessary to take on the additional responsibility of collecting and monitoring the CLE's of attorneys practicing in juvenile court..

Kent Wirth
District Court Administrator
Pottawattamie County Courthouse
712/328-5733