

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ORDER 15-17**

Standards of Practice for Mental Habilitation Panel Attorneys

WHEREAS, the District of Columbia Family Court Act of 2001, Pub. L. 107-114 Stat. 2100 (2002) provides that the Superior Court shall establish standards of practice for attorneys appointed as counsel in matters under the jurisdiction of the Family Court of the Superior Court; and

WHEREAS, Attorney Practice Standards for Mental Habilitation Panel Attorneys have been developed by the Family Court Implementation Committee; and

WHEREAS, the Attorney Practice Standards for Mental Habilitation Panel Attorneys are intended to define the role and responsibilities of counsel in mental habilitation proceedings pending in the District of Columbia Superior Court, and to improve the quality of representation of individuals with matters under the jurisdiction of the Family Court of the Superior Court;

NOW, THEREFORE, it is by the Court,

ORDERED, that the Superior Court Attorney Practice Standards for Mental Habilitation Panel Attorneys shall take effect on the date of this order, and shall govern practice in mental habilitation proceedings in the District of Columbia Superior Court.

SO ORDERED.

BY THE COURT

DATE: September 11, 2015

/s/
Lee F. Satterfield
Chief Judge

Copies to:

All Judges
Executive Officer
Clerk of the Court
Division Directors
Judge-in-Chambers
Librarian

Superior Court of the District of Columbia
Family Court

**Attorney Practice Standards
For Mental Habilitation Panel Attorneys**

**Submitted to Lee F. Satterfield, Chief Judge
Superior Court of the District of Columbia**

By

**The Family Court Implementation Committee
Hiram Puig-Lugo, Presiding Judge, Family Court**

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ACKNOWLEDGEMENTS

The Family Court Implementation Committee (hereafter "Implementation Committee"), presently chaired by Judge Hiram Puig-Lugo, Presiding Judge of the Family Court, was established to oversee the organization and management of the Family Court of the District of Columbia (hereafter "Family Court"). Consistent with the goals of the Family Court, the Court adopted practice standards for the Counsel for Child Abuse and Neglect (CCAN) panel attorneys in February 2003 (Administrative Order 03-07) and the following year for juvenile panel attorneys (Administrative Order 04-13) and Special Education Panel Attorneys in 2009 (Administrative Order 09-03).

This document, the Superior Court of the District of Columbia Attorney Practice Standards for Mental Habilitation Panel Attorneys, continues the goal of setting standards for all Family Court practitioners and sets the standards for the Mental Habilitation Attorney Panel.

A debt of gratitude is owed to Judge Hiram Puig-Lugo whose leadership on the Implementation Committee was instrumental in ensuring that Family Court standards and training were developed and implemented to maintain the highest level of representation in all Family Court matters. The standards were drafted and approved by members of the Superior Court, the Department on Disability Services, the Mental Health and Habilitation Branch, and the Mental Habilitation Attorney Panel, and reviewed and approved by Chief Judge Lee F. Satterfield.

The Court gratefully acknowledges all the individuals whose expertise and knowledge were invaluable to the completion of this document, particularly the following individuals and organizations:

The Honorable Hiram Puig-Lugo Presiding Judge Family Court	Heather Greigg Branch Chief Mental Health & Habilitation Branch
The Honorable Carol Ann Dalton Deputy Presiding Judge Family Court	Charles Fitzpatrick, Herbert Gutterman, Ronald Mitchell, Richard Toth Private Practitioners and members of the Mental Habilitation Panel
The Honorable Aida Melendez ¹ Magistrate Judge Family Court	Jennifer Mullins, Richard A. Williams Assistant General Counsels ² Department on Disability Services

¹ The committee also acknowledges the efforts of Bianca Garcia and David Han, law clerks to the Honorable Aida Melendez, in the drafting of these practice standards.

² As of October 1, 2014, the trial attorneys that previously represented the Department on Disability Services (DDS) as part of the Office of the Attorney General (OAG) were re-assigned within the DDS Office of General Counsel as part of a re-organization of OAG in preparation for the transition to an elected Attorney General.

***Superior Court of the District of Columbia,
Family Court
Attorney Practice Standards
for Mental Habilitation Attorneys***

Executive Summary

The quality of legal representation is critical to the effective administration of justice. To render high quality representation, attorneys handling Mental Habilitation cases in the Family Court of the Superior Court of the District of Columbia must be well-trained, and informed regarding procedural and substantive law and cognizant of the issues particular to citizens with intellectual disabilities. These practice standards are intended to define the role of court-appointed Mental Habilitation Attorneys and may be used for evaluating the performance of counsel. The fundamental obligations as set forth are based on the District of Columbia Rules of Professional Conduct and the Superior Court Rules.

Basic Functions of the Mental Habilitation Attorney

The practice standards address the general authority and duties of Mental Habilitation Attorneys. Under these standards, attorneys shall only accept an appointment or otherwise appear in mental habilitation proceedings if they are knowledgeable of substantive and procedural mental habilitation laws, and have satisfied the initial training and continuing legal education requirements. Counsel must also know and adhere to all applicable ethical obligations and standards, and comply with all relevant court rules. If counsel is unclear about how to resolve an ethical issue, counsel should seek guidance from the Office of Bar Counsel (www.dcbar.org).

*Superior Court of the District of Columbia,
Family Court
Attorney Practice Standards
for Mental Habilitation Attorneys*

Statement of Intent

The District of Columbia Family Court Act of 2001, Pub. L. 107-114, provides for the Superior Court to establish standards of practice for attorneys appointed as counsel in matters under the jurisdiction of the Family Court.

A. Panels, Appointments, Certification, and Training

A-1 Application for Appointment to the Mental Habilitation Panel

Applications will be considered on the schedule set forth in Administrative Order 09-07.

After appointment to the Panel, Mental Habilitation Attorneys must comply with the initial training requirements, as set forth in Section A-2, and, once the attorney is appointed to his or her first case, the continuing legal education requirements, as set forth in Section A-3.

A-2 Mental Habilitation Attorneys Initial Training Requirements

Mental Habilitation Attorneys must complete mandatory initial training prior to receiving appointments to particular cases.³ The initial training shall be devoted to the following categories:

- (1) Statutory law and rules regarding mental habilitation cases in the District of Columbia;
- (2) The role of the guardian *ad litem* and counsel for the respondent;
- (3) Admission and commitment proceedings;
- (4) Basic case management skills.⁴

A-3 Continuing Legal Education Requirements for All Attorneys

Mental Habilitation Attorneys are required to complete a minimum of 6 hours of Continuing Legal Education (CLE) annually.⁵ However, attorneys who have not been appointed to cases are encouraged, but not required, to complete a minimum of 6 hours of CLE annually. All attorneys appointed to Mental Habilitation cases must complete 6 hours of CLE by December 31st. If, upon appointment to the attorney's first case, there are less than 6 hours of CLE opportunities

³ The initial training for new Mental Habilitation Attorneys appointed to the Panel is conducted by the Mental Health Clerk's office in conjunction with Judge Melendez's chambers and the Department on Disability Services. Attorneys also have the option to participate in ongoing trainings held throughout the year.

⁴ This list is illustrative, not exclusive.

⁵ See D.C. Rules of Prof'l Conduct R. 1.1 cmt. 6 (Competence, Maintaining Competence)

remaining, the attorney must make a good faith effort to complete the remaining CLE trainings by December 31st.

Mental Habilitation Attorneys must complete and submit the CLE Certification form included hereto as Attachment A to the Office of the Branch Chief of the Mental Health and Habilitation Branch of the Superior Court of the District of Columbia before December 31st. These hours may be fulfilled only by attending trainings approved by the Court. The attorney may take related trainings at any of the following organizations: Quality Trust, Public Defender Service-Mental Health Section, Child Abuse and Neglect Office of D.C. Superior Court, and the D.C. Bar.

B. General Duties

B-1 Reasonable Diligence and Promptness

Mental Habilitation Attorneys appointed in matters before the Mental Habilitation Court shall act diligently and promptly in the representation of respondents.⁶ Counsel should avoid unnecessary delay, take steps to inform all parties and the Court when delay is unavoidable, and be punctual when attending court or other case-related meetings. Mental Habilitation Attorneys shall prepare and file all pleadings and motions in a timely fashion, serve all filings and communications with the Court and on all parties, and obtain copies of all pleadings and relevant notices filed by other parties.⁷

B-2 Rules of Ethics

Counsel must be knowledgeable of the District of Columbia Rules of Professional Conduct. An attorney who is unclear about how to resolve an ethical issue should seek guidance from the D.C. Office of Bar Counsel (www.dcbar.org). If a conflict exists that requires withdrawal, such withdrawal should be requested expeditiously.⁸

B-3 Case Management

Counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality legal service or may lead to a breach of professional obligations.⁹ An attorney who is considering whether to act as counsel or to accept appointment by a Court must have sufficient time, resources, knowledge, and experience to offer quality legal services in the particular matter.¹⁰ If, after accepting an appointment, counsel is unable to offer effective representation, counsel should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.¹¹

⁶ See D.C. Rules of Prof'l Conduct R. 1.3(a), (c) (Diligence and Zeal)

⁷ See D.C. Rules of Prof'l Conduct R. 1.3 cmt. 8 (Diligence and Zeal, Unreasonable Delay)

⁸ See D.C. Rules of Prof'l Conduct R. 1.16(a)(1) (Declining or Terminating Representation, Violation of Rules of Professional Conduct)

⁹ See D.C. Rules of Prof'l Conduct R. 1.3 cmt. 1 (Diligence and Zeal, Workload)

¹⁰ See D.C. Rules of Prof'l Conduct R. 1.1 cmt. 1 (Competence, Legal Knowledge and Skill)

¹¹ See D.C. Rules of Prof'l Conduct R. 1.16 (Declining or Terminating Representation)

Counsel's obligations include, but are not limited to, the following:

1. Maintaining a working knowledge and familiarity with The Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978,¹² Chapter 19 of Title 29 of the D.C. Municipal Regulations, as well as relevant federal and local mental habilitation laws;
2. Maintaining a case file on each active case;
3. Conferring with respondents in matters relating to their cases;¹³
4. Conducting a thorough review of all necessary and relevant information pertaining to the respondent's habilitation needs;
5. Requesting evaluations as appropriate to the respondent's habilitation needs;
6. Attending and participating in team meetings and conferences as appropriate;
7. Acquiring a working knowledge of potential residential and day program placements and secure facilities;
8. Developing a timeline for each case that identifies the actions to be taken and their deadlines;
9. Pursuing appropriate legal remedies for the benefit of the respondent and permissible by law;¹⁴
10. Preparing and filing all pleadings and motions in a timely fashion and in the proper format as prescribed by the rules of the Court;¹⁵
11. Preparing and filing quarterly counsel status update reports, including one no later than 10 days prior to the annual review hearing, in accordance with Administrative Order 00-06;
12. Securing appropriate support services as needed for hearings, such as video conferencing,¹⁶ court reporter services, sign language interpreters, and language translators in a timely fashion,;
13. Participating in all court proceedings;
14. Promptly providing the case file to successor attorneys;¹⁷ and
15. Following rules of decorum and civility when communicating with other professionals and parties in the case.

B-4 Case Organization

The Mental Habilitation Attorney shall maintain a case file for each respondent. The attorney should maintain information about the case history and all relevant hearings and meetings within the case file so that it is readily discernable. The case file should contain all relevant documents

¹² D.C. Code § 7-1301 *et seq.*

¹³ *See* D.C. Rules of Prof'l Conduct R. 1.4(a) (Communication)

¹⁴ *See* D.C. Rules of Prof'l Conduct R. 1.3(a) (Diligence and Zeal)

¹⁵ *See* D.C. Rules of Prof'l Conduct R. 1.3(c) (Diligence and Zeal, Promptness)

¹⁶ Video conferencing technology, such as WebEx, must be requested through the Courtroom Technology Branch of the Superior Court of the District of Columbia.

¹⁷ *See* D.C. Rules of Prof' Conduct R. 1.16(d) (Declining or Terminating Representation, Surrendering Papers)

received or produced by the attorney in connection with his or her representation of the respondent in the case.¹⁸

B-5 Continuity of Representation

Mental Habilitation Attorneys appointed to represent an individual whose commitment to a facility is sought pursuant to D.C. Code § 7-1303.04 are expected to continue such representation from the initial commitment hearing through annual review hearings, related status hearings, and appeal until the case is closed.¹⁹ Attorneys appointed to represent individuals voluntarily seeking admission to a facility pursuant to D.C. Code § 7-1303.02 are expected to continue such representation from the initial admission hearing through any court proceeding relating to the respondent's competency or voluntariness of the admission and appeal, until the case is closed. If the attorney determines that he or she can no longer represent the respondent, the attorney must request the Court's permission to withdraw in a manner that seeks to avoid prejudice to the respondent, and must provide written notification of the withdrawal request to the respondent.²⁰

B-6 Court Appearances

At all hearings, counsel has an obligation to be prepared and to provide information to the Court on the status of the mental habilitation matter. Additionally, counsel should make efforts to avoid schedule conflicts that prevent counsel from attending a court hearing. If counsel is unable to attend a court hearing, he or she shall notify the Court, the government, and any other relevant parties by filing a timely request for continuance. Counsel should coordinate with the Court, the government, and any other relevant parties to propose a new hearing date.

C. Attorney-Client Relationship

C-1 Role of Counsel

The Mental Habilitation Attorney's duty is the representation of the respondent's civil and legal rights and interests in any proceeding relating to the respondent's commitment or admission before the Mental Habilitation Court. The potential for conflict of interest should be recognized, acknowledged, and avoided.²¹

¹⁸ Relevant documents include, but are not limited to, Findings of Fact, annual and quarterly provider's status reports, counsel's status reports, psychological reports, individual support plans ("ISP"), and any orders issued by the Court.

¹⁹ See D.C. Rules of Prof'l Conduct R. 1.3 cmt. 9 (Diligence and Zeal, Termination of Relationship)

²⁰ See D.C. Rules of Prof'l Conduct R. 1.16(d) (Declining or Terminating Representation)

²¹ In particular, attorneys should avoid serving in dual roles that may result in a conflict of interest. For example, attorneys should avoid serving as both counsel in the mental habilitation matter and as limited guardian in a probate matter, as it may result in a conflict of interest. *In Rene Dorriano Atwater*, Case No. 08 PR 1075 (D.C. Court of Appeals, September 30, 2010).

C-2 Role of Guardian ad Litem

A guardian *ad litem* (GAL) is an attorney that may be appointed by the Court for the purpose of filing a petition for commitment²² pursuant to D.C. Code § 7-1303.04, when that person is not a parent or guardian of the individual whose commitment is being sought. If the appointment is approved by the Court, the GAL may proceed as if he or she were a parent or guardian. The GAL shall file a report with the Court prior to the commitment hearing.²³

If the Court finds that an individual seeking admission to a facility is not competent to admit himself or herself to said facility, pursuant to D.C. Code § 7-1303.02, the Court may appoint a GAL to represent the individual in a hearing determining the appropriate placement, if any, for the individual.²⁴

Furthermore, the Court may appoint a GAL to represent an individual found incompetent to participate in criminal proceedings. If a GAL is appointed in such a matter, the government shall serve the petition, any material accompanying the petition, an order containing notice of the hearing date, and notice of the assignment of counsel to the GAL and any other parties as required by the rules.²⁵

C-3 Protecting Confidentiality of Communication and Proceedings

As Mental Habilitation proceedings are closed to the public, during the course of representation, counsel must not discuss the proceedings with persons not involved in the court hearing. Moreover, before speaking with the attorneys of the other parties about confidential information that may be necessary to share in the course of representation, counsel must have the respondent's permission to the extent possible or, where applicable, the permission of the respondent's court-appointed guardian. Counsel must be familiar with the appropriate procedures for obtaining records and must be aware of and comply with the federal and local confidentiality statutes and rules of professional conduct relating to the dissemination of confidential information concerning mental habilitation and Family Court matters. Counsel must comply with all privacy statutes.²⁶

During the course of representation, counsel will be required to speak with numerous professionals and obtain many records relating to the respondent's psychological, educational,

²² Entities other than a guardian *ad litem* may file a petition for commitment, such as a guardian or parent.

²³ See D.C. SCR-MR Rule 4A(b) regarding the appointment of a guardian *ad litem* to file a petition of commitment of individuals who are not competent to refuse commitment.

²⁴ See D.C. SCR-MR Rule 3(d)(2) regarding the appointment of a guardian *ad litem* to represent individuals seeking admission to a facility.

²⁵ See D.C. SCR-MR Rule 4B regarding the appointment of a guardian *ad litem* to represent individuals found incompetent to participate in criminal proceedings and have been petitioned for commitment to a facility, pursuant to D.C. Code § 7-1303.04(b-1).

²⁶ See Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d-6; D.C. Mental Health Information Act of 1978, D.C. Code § 7-1201.04; the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, D.C. Code § 7-1305.12; and D.C. Rules of Prof'l Conduct R. 1.6 (Confidentiality of Information).

social, mental health, and medical histories. Counsel must follow all requirements with respect to confidentiality and re-disclosure as noted above. Counsel will ensure that only parties who are permitted to attend the hearing are present in the courtroom, and alert the Court to any parties in the courtroom whose access to the proceedings is unclear.

C-4 Meeting with the Respondent

Counsel shall meet the respondent and his or her team as soon as practicable and sufficiently before any proceedings. Additionally, counsel shall make periodic visits with the respondent, pursuant to Administrative Order 00-06.

C-5 Barriers to Communication with the Respondent

At all interviews and proceedings, counsel should ensure that specific barriers to communication, such as differences in language or literacy or in mental or physical disability, are addressed. An attorney encountering such barriers to communicating with a respondent shall take whatever steps are necessary to ensure effective communication with the respondent and to ensure that the respondent understands the proceedings.²⁷ To this end, counsel must be mindful of any special needs of the respondent and should secure appropriate expert services, such as an interpreter or translator.

C-6 Duty to Keep the Respondent Informed

The Mental Habilitation Attorney shall maintain regular contact with the respondent throughout the duration of his or her appointment, especially before court hearings. The attorney shall respond promptly to telephone calls or other types of contact from the respondent, within one business day or a reasonable time thereafter. The attorney shall inform the respondent of any developments that affect the respondent's civil and legal rights as they relate to the respondent's commitment or admission to a facility. The attorney must promptly comply with all reasonable requests from the respondent for information.²⁸

When on vacation or otherwise unavailable for a considerable length of time, the attorney shall make reasonable efforts to provide emergency contact information and/or arrange to have back-up counsel available to respond to emergencies.

C-7 Distinguishing Between Respondent and Attorney Decisions

Certain decisions relating to the conduct of the case are ultimately the province of the respondent, whereas others are ethically the responsibility of counsel. The respondent's decisions, after consultation with counsel, include but are not limited to, those that are habilitative in nature (such as providing consent for evaluations, accepting or rejecting a recommendation for Day Program services, the recommendations, goal and objectives contained in the ISP, placement and the location where services are to be delivered). Strategic and tactical

²⁷ See D.C. Rules of Prof'l Conduct R. 1.14 cmt. 1 (Client with Diminished Capacity, Client-Lawyer Relationship)

²⁸ See D.C. Rules of Prof'l Conduct R. 1.4(a) (Communication)

legal decisions should be made by counsel after consultation with the respondent, to the extent that such consultation is feasible and appropriate.

Open, candid and ongoing communication with the respondent is essential to effective representation. Counsel is not free to substitute or impose counsel's own judgment as to what is in the best interest of the respondent for that of the guardian or the respondent's team of professionals. As such, counsel must be mindful of any barriers to communication between counsel and the respondent and take measures to clearly and effectively communicate with the respondent.²⁹

D. Stages of the Mental Habilitation Case

D-1 Information, Investigation, and Evaluation

Upon appointment to a case, counsel shall obtain a thorough understanding of the respondent's habilitation history. Counsel shall meet with the respondent, the respondent's team, and any other relevant parties.

D-2 Testimony

Counsel is obligated to prepare the respondent and all witnesses who may testify (either for direct or cross-examination) at the hearing. Counsel must explain to the respondent and the witnesses in clear, appropriate language what is likely to happen before, during, and after the hearing.

D-3 Motions and Objections

Counsel must be fully informed of and comply with the procedural rules for court hearings. Counsel shall make timely, appropriate motions to protect the respondent's statutory rights. Counsel must also file appropriate motions in accordance with the rules.

E. After the Annual Review Hearing

In every case, Counsel shall file a Proposed Findings of Fact, Conclusions of Law, and Order of the Court ("FOF") for the Court to review.

E-1 Reviewing Order with the Respondent

To the extent practicable, counsel should review the FOF for inaccuracies promptly after the hearing. Counsel should discuss any required actions and advise the respondent's provider, Department on Disability Services (DDS) Service Coordinator, or day program case manager to complete such actions in accordance with any timelines established in the FOF.

²⁹ See D.C. Rules of Prof'l Conduct R. 1.2 cmt. 2 (Scope of Representation, Mental Disability)

E-2 Implementation of the Order

Counsel must monitor the FOF requirements and other court orders to ensure timely and appropriate implementation by the appropriate party (e.g., DDS Service Coordinator, provider). If timely and appropriate implementation is not achieved, counsel should communicate with the Office of the General Counsel for DDS to facilitate implementation. If, after consulting the DDS attorney assigned to the case, implementation still does not occur in a timely and appropriate manner, counsel should promptly file an appropriate motion with the Court.

F. Effective Date

These practice standards will take effect by Administrative Order of the Court.

Attachment A

Mental Habilitation Attorney Panel CLE Certification

I, _____, hereby certify that I have completed the following training programs/courses that comply with the training requirements of the Attorney Practice Standards for Mental Habilitation Panel Attorneys.

Attorney's Signature

Date

Training Course Title	Sponsoring Organization	Date of Training	Number of Hours Completed

Total Hours Completed: _____