



REPRESENTING THE GAL VERSUS THE CHILD

Roles, Ethics, & Strategies

THE PLAN

- The LAW
 - When GAL Attorney versus Child(ren)'s Attorney Appointed
- The CLIENT
 - GAL versus Child
- The ETHICS
 - Obligation, Duties, Privileges
- The 'HOW TO'
 - Strategies

THE LAW

Appointment of Attorneys

WHAT IS A GUARDIAN
AD LITEM?

GUARDIAN AD LITEM (GAL) PER IDAHO CODE §16-1633

- Shall advocate for the best interests of the child and shall have the following duties:
 - Conduct an **independent factual investigation** of the circumstances of the child
 - File reports with results of Investigation & Recommendations
 - Court Order re: Release of Information Language in Appointment Paperwork
 - Shall include child's Express Wishes in report* [see *I.C. §16-1633(2)*]
 - Act as advocate for the child at each stage of the proceeding
 - Participate fully in the proceedings
 - Shall have all the rights of a Party (*Idaho Code §16-1634*)
 - Monitor the circumstances, assuring terms of court's order are being fulfilled and remain in the child's best interest



GUARDIAN AD LITEM (GAL) & ATTORNEY

- ▶ Children UNDER 12, Court **shall** appoint GAL for Child AND
- ▶ **SHALL** Appoint Counsel for the GAL
- ▶ *If no GAL/Program, Court **shall** Appoint Counsel for the Child
- ▶ *Idaho Code §16-1614, Idaho Juvenile Rule 37*



CHILD'S ATTORNEY

- ▶ 12+ Years Old, **SHALL** appoint counsel to represent the Child(ren)
 - ▶ *May* appoint GAL (also)
- ▶ *If counsel not practicable/appropriate, Court *may* Appoint GAL
 - ▶ AND **shall** appoint counsel for GAL
- ▶ *Idaho Code §16-1614, Idaho Juvenile Rule 37*

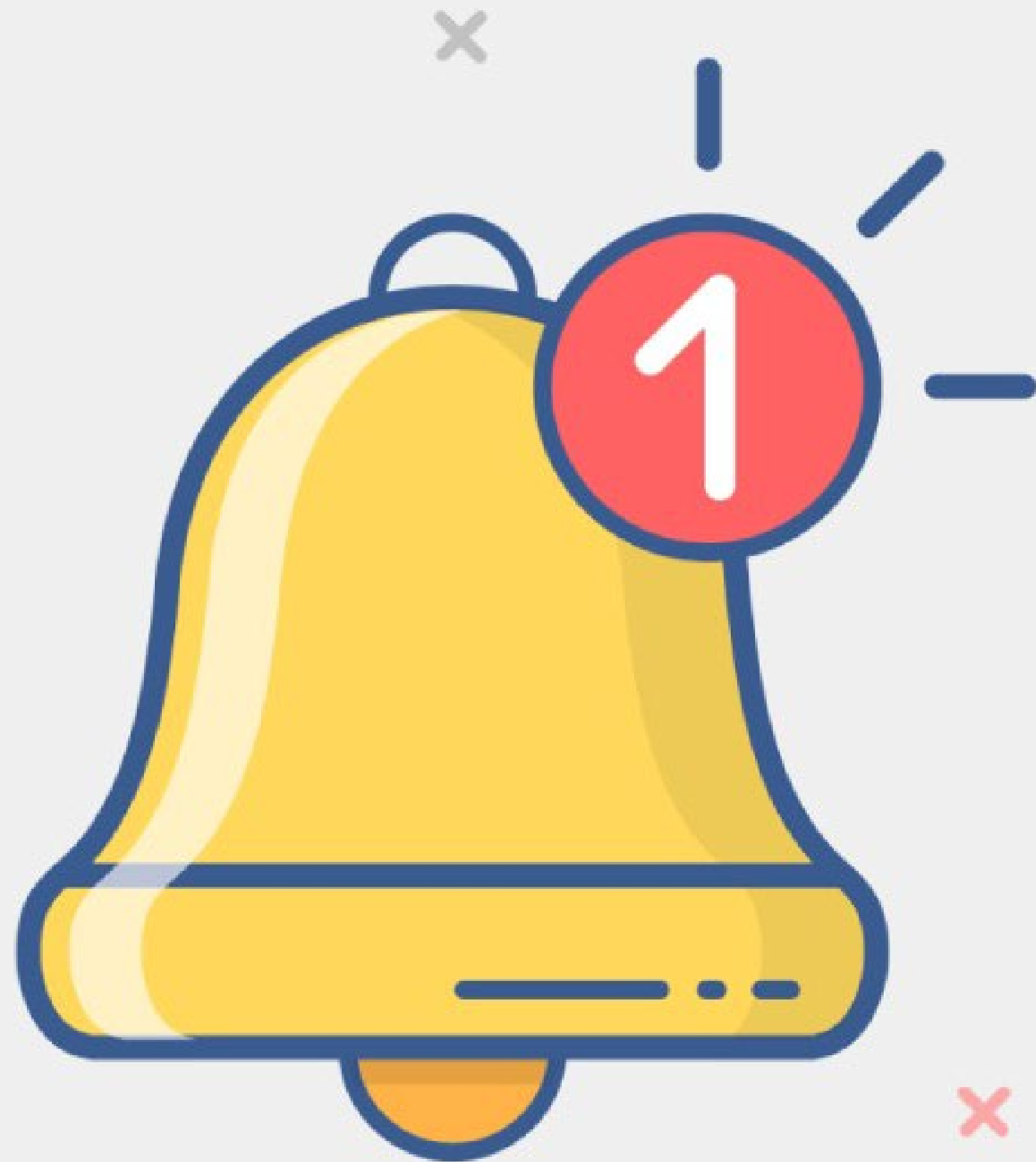
NOTE: I.J.R. 37 - COURT'S DISCRETION TO APPOINT

COUNSEL UNDER 12

➤ Court Considerations:

- The nature of the case
- The child's age
- Maturity
- Intellectual ability
- Ability to direct the activities of counsel
- Other relevant factors

DON'T FORGET

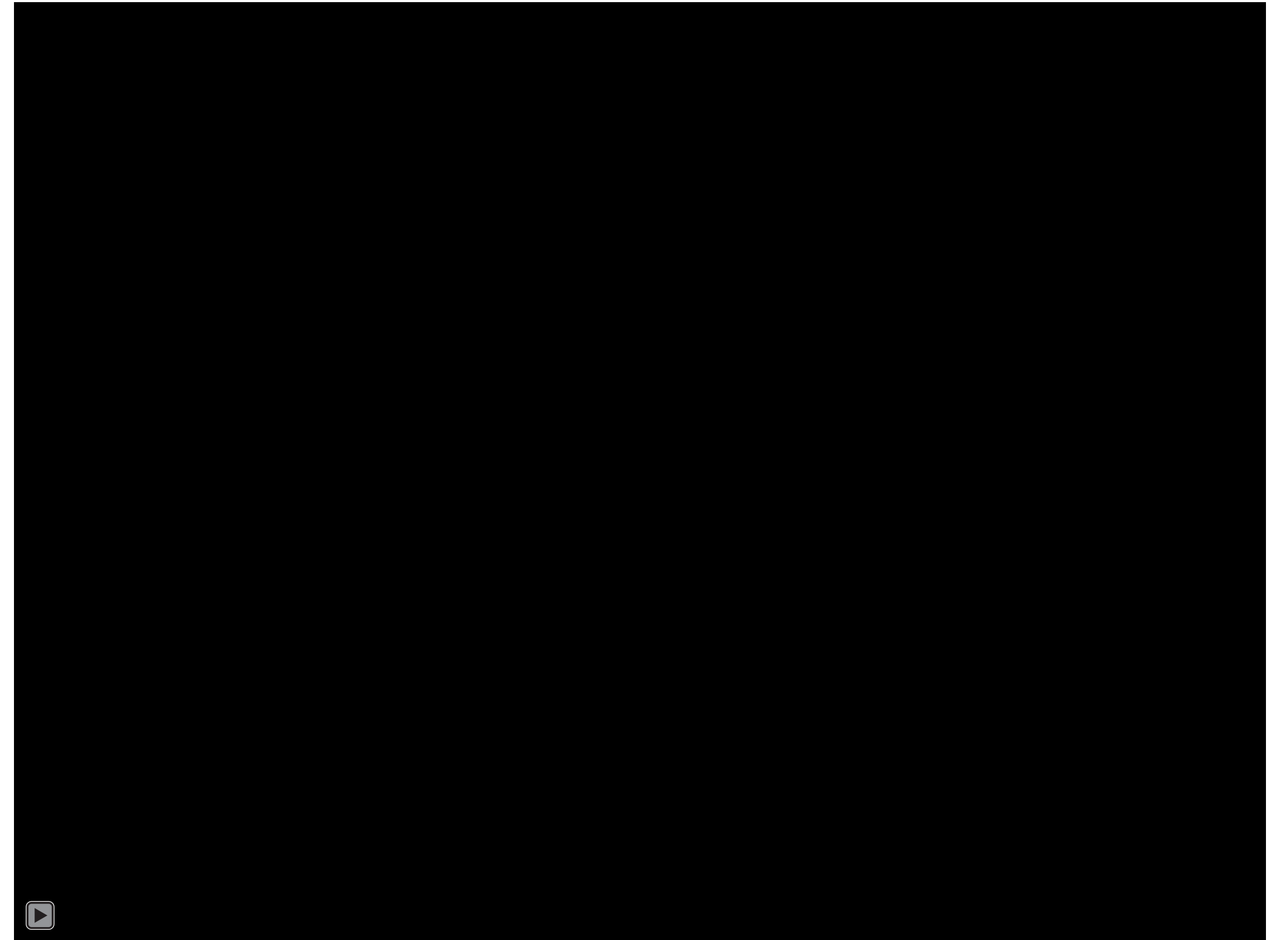


- AFTER the Adjudicatory Hearing...
 - CHILDREN 8+ have the RIGHT to be Notified (IDHW provides Notice and Confirms to the Court) and
 - The Right to be Heard at ANY further hearing
- *Idaho Juvenile Rule 40*

THE ETHICS

*Idaho Rules of Professional
Conduct*

with Practical Strategies



IDAHO RULES OF PROFESSIONAL CONDUCT (I.R.P.C.)

➤ PREAMBLE

➤ Basic Principles Underlying the IRPC [1] & [9]:

- 1. As an advocate: to zealously protect and pursue a **client's** legitimate interests within the bounds of the law
- 2. As an officer of the court: to preserve the integrity of the legal system's search for the truth while maintaining a professional, courteous and civil attitude toward all persons involved in the process
- 3. As a public citizen: having special responsibility for the quality of justice



KNOW YOUR CLIENT

GAL AS CLIENT

- GAL is an ADULT Volunteer [Often CASA (Court Appointed Special Advocate)]
- Attorney Represents the GAL
 - THEIR Determination of Best Interests of the Child(ren)



CHILD AS CLIENT

- **Expressed/Direct Interest Advocate for the Child**
- **Per American Bar Association: “Child’s attorney” means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client**





IRPC 1.2 :SCOPE OF

REPRESENTATION

- (a) a lawyer shall abide by a client's decisions concerning the objectives of representation and,
 - as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.
 - A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.
 - A lawyer shall abide by a client's decision whether to settle a matter.

IRPC 1.2

- [1] ...confers upon the client the ultimate authority to determine the purposes to be served by legal representation
- START: What are the Legal Goals/Objectives? How are you going to pursue them?



GAL AS CLIENT

- Generally, easy to establish (adult client with training and experience)
- Review rights of GAL, what you can help with, gain consent for you to take action without further consultation (document requests)
- Get as much information as possible for client: IDHW records (PRR), police reports, school records, medical records, Google search, social media, etc.
- Attorney most active at beginning of case and 'end' (with support throughout, especially 'emergencies')



CHILD AS CLIENT

- Same duty owed; work with child to establish “legal goals/objectives” but don’t call them that
- Rapport-building a priority
- Build trust, Demonstrate non-judgmental support
 - Defer to child as the expert on their own life/family
- Seek to understand the client as a **WHOLE PERSON**



ESTABLISHING CHILD'S LEGAL OBJECTIVES

- Meet Client Prior to Court (if possible)
- **Advise** client of attorney's role, responsibilities, and limitations
- **Advise** clients of rights
 - DUTY OF CONFIDENTIALITY*** (you are the ONLY one)
- **Educate** them about the Legal Process (in terms they can understand)
 - Use flowcharts, draw a photo, get creative
- **Counsel** their Decision-making

MOTIVATIONAL INTERVIEWING

➤ Think & Feel:

- 1. Hear concern
- 2. Perspective Take; Get to Empathy + Normalize
- 3. Consider ... what is opposite of concern

- 4. Repeat concern (so client feels heard)
- 5. Offer empathy + Normalize (validating, engagement)
- 6. Suggest partnering to work on a goal that would be the opposite of the concern (and plan for alternatives)

➤ EXAMPLE: “I have no control over my life.”

➤ Say:

I.R.P.C. 1.4: COMMUNICATION

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent...is required
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter...



GAL AS CLIENT

- Make sure to have good contact information for client
- Forward all requested documents (records, reports, etc.)
- Forward all court filings to them (and their office, if necessary)
- Regular check-ins throughout the life of the case to ensure they (and you) share information well
- Review reports prior to filing
- Prepare before court, Debrief afterwards

CHILD AS CLIENT

- Regular Contact and Communication (out of court)
 - Know how/when they prefer to communicate
 - In-person contact should be in a “safe” environment
 - Routine questioning of emotional and physical safety
- Allow them access to any and all documents
 - Know when to go over reports in person/together

ENSURE OPPORTUNITY FOR CHILD'S MEANINGFUL PARTICIPATION

- ▶ Advocate for date/time that works for client
 - ▶ Transportation secured, asking them where they would like to sit, etc.
 - ▶ Prepare before court
 - ▶ Review reports together
 - ▶ Debrief afterwards
 - ▶ Alternative means to “participate” (letters, etc.)
-
- ▶ *from the National Association of Counsel for Children's Recommendations for Legal Representation of Children and Youth*

I.R.P.C. 1.6: CONFIDENTIALITY OF INFORMATION

- (a) A lawyer **shall not reveal information** relating to representation of a client **unless** the client gives **informed consent**, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b)(2) to prevent reasonably certain death or substantial bodily harm;
- **VERSUS Idaho Code §16-1605:** (1) Any ...other person having reason to believe that a child under the age of eighteen (18) years has been abused, abandoned or neglected or who observes the child being subjected to conditions or circumstances that would reasonably result in abuse, abandonment or neglect shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to the proper law enforcement agency or the department.

I.R.P.C. 1.7: CONFLICTS OF INTEREST

- As a note, you MAY represent a sibling group or more than one child UNLESS:
 - (1) the representation of one client will be directly adverse to another...
 - EXAMPLE: Children in (alleged) abuse situation

I.R.P.C. RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, **whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client- lawyer relationship with the client.**
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take **reasonably necessary protective action**, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.



...a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.

-Comment 1, I.R.C.P. Rule 1.14



ABA MODEL ACT

LANGUAGE

- ▶ “When the child is capable of directing the representation by expressing his or her objectives, the child’s lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct. In a developmentally-appropriate manner, the lawyer shall elicit the child's wishes and advise the child as to options.”

ABA MODEL ACT ***

- A child having a different opinion than the lawyer or insisting upon a course of action that the lawyer considers unwise is not diminished capacity. The determination should focus on the decision-making process rather than the decision.
- Do all you can to avoid substituting judgment (note that it is not the same as becoming a best interest advocate; may request one if unavoidable)
- https://niwaplibrary.wcl.american.edu/wp-content/uploads/aba_model_act_2011.pdf



I.R.C.P. 2.1: ADVISOR

- In representing a client, a lawyer shall exercise independent professional judgment and render **candid advice**. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.
- Comment 1: A client is entitled to straightforward advice expressing the lawyer's honest assessment (Adults and Children- in appropriate language)

OVERVIEW

- Know Your Client
- Communicate Early & Often
- Advise & Counsel Effectively
- Any specific ethical questions, reach out to Bar counsel!

QUESTIONS?



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RESOURCES

- Idaho Supreme Court Website
 - Idaho Child Protection Manual, Bench Cards, Termination of Parental Rights, Mini Rule Book: <https://isc.idaho.gov/child-protection/resource>
- Health & Welfare Policies and Procedures; Annual Reports: <https://healthandwelfare.idaho.gov/about-dhw/policies-procedures-and-waivers>
- State of Idaho Office of Performance Evaluations (OPE): <https://legislature.idaho.gov/ope/reports/>
- ABA Center on Children and the Law (Resources Page): https://www.americanbar.org/groups/public_interest/child_law/resources/
- National Association of Counsel for Children (NACC): <https://naccchildlaw.org>