

# NEWSLETTER

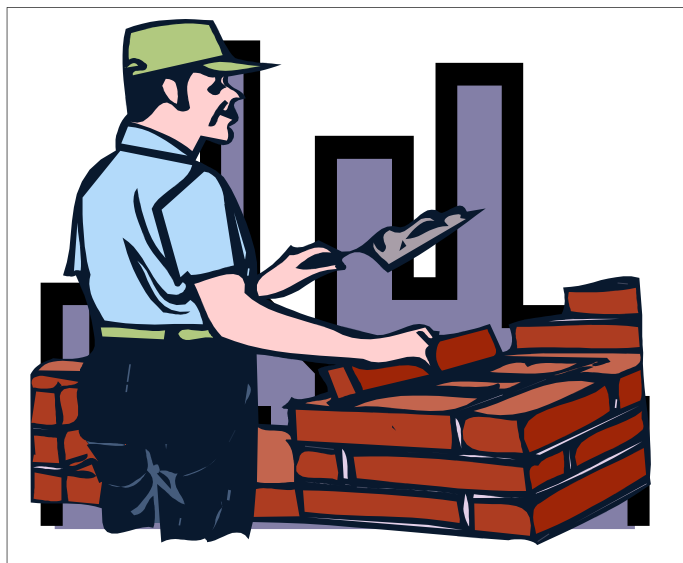
*“Teaming”* means the process of developing, having, and maintaining a child and family team with families, resource systems, and agencies to assist families in solving their problems and addressing their challenges through a strengths-based program.

DCFS Practice Guidelines, definitions, Out of Home Care, 304.1.



## PRACTICE MODEL PRINCIPLES AND PRACTICE GUIDELINES CREATE EXPECTATION OF “REASONABLE EFFORTS”

DCFS must make “reasonable efforts” at virtually every stage of their involvement with a family. After an investigation and its decision to involve itself further in a family, DCFS must make “reasonable efforts” to provide services that will enable a child to remain with its family. U.C.A. 62A-4a-203. If the Division seeks removal, it must demonstrate to the court—and the court must so find—that the Division made “reasonable efforts” to prevent the removal. If a child is removed from its family and the court orders reunification, the Division must make—and the court must so find—that the Division made “reasonable efforts” to provide reunification services. UCA 78-3a-311. If the Division seeks termination of parental rights and claim reunification efforts were not successful, the court must make a finding that the Division made reasonable efforts



Building upon Practice Model Principles, Practice Guidelines are tools for child welfare workers to use to implement the Division’s programs

to provide reunification services before it may enter an order terminating a parents rights. U.C.A. 78-3a-407(3).

But what effort on the part of the Division is “reasonable?” Where can defense counsel look to seek court assistance

to compel the Division to make “reasonable efforts?”

DCFS adherence to its Practice Model principles and Practice Guidelines should be the least DCFS can do to make “reasonable efforts.”

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## ANNUAL PARENTAL DEFENDERS CONFERENCE MAY 4-5 2006 AT THE HOMESTEAD RESORT IN MIDWAY

If you have not already registered, we urge you to consider attending the Annual Parental Defender’s Conference on May 4-5, 2006. The conference will be held again this year at the Homestead Resort in Midway, Utah. Attendee’s to last

year’s conference enjoyed the tranquil location while benefiting from the educational topics presented. This year’s topics include:

- ▶ Preventing and Punishing the Abusive Mis-Interviewing of Children Using Legal Challenges & Experts;

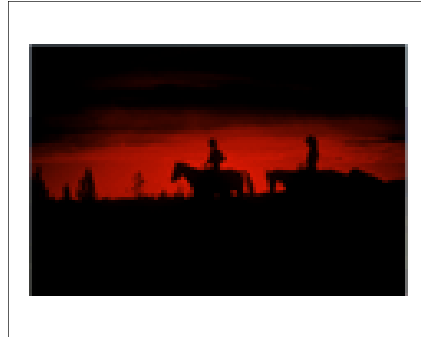
- ▶ Excluding Improper Expert Testimony using Daubert/Kumho/Rimmasch Hearings;

- ▶ Debunking the bad science of Reactive Attachment Disorder;

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## ANNUAL PARENTAL DEFENSE SEMINAR, CONTINUED...

▶ Petitions on Appeal;  
▶ Legislative and Case Law Update.  
▶ Ethics presentation



The Homestead Resort offers a variety of recreational opportunities.

▶ The affect of removal on children.  
In addition, a representative from the National Child Abuse Defense and Resource Center will explain their organization and

the services they can provide to parent's attorneys. The DCFS Practice Model and State Ombudsman's office will be also be discussed.

The conference has received approval for 13 hours of CLE plus 3 hours of ethics credits.

It's not all hard work and no play,

however. In addition to the recreational opportunities available at the resort, the Parental Defense Alliance and State Office of Parental Defenders will sponsor a Desert Bar reception from 6:00 to 7:00 p.m. on Thursday evening. One of the presenters, Dr. Pennington, will be available to chat with parental defenders on topics related to the defense of parents and mental health.

If you have not registered, you can do so on line by clicking on the link from the Parental Defense website: [www.parentaldefense.utah.gov](http://www.parentaldefense.utah.gov) or call John Norman, 1-801-718-6468.

*"In relationships with clients and the public, employees shall respect and protect the civil and legal rights of clients." (emphasis added).*

*Utah Department of Human Services Policies and Procedures, Ref. 02-03. Code of Ethics.*

## DEPT. OF HUMAN SERVICES CODE OF ETHICS ANOTHER WEAPON IN ARSENAL TO DEMAND WORKERS MAKE "REASONABLE

DCFS CPS workers, ongoing workers, and fostercare workers, are each obligated to "protect the rights of clients... while exhibiting **exemplary behavior as state employees.**" Utah Dept Human Svs, Policy and Procedures, Ref. 02-03. The Department's Code of Ethics "applies to all work-related activities of employees." Id.

Conduct that violates professional standards or other laws may be unethical and subject to discipline even if not specifically listed in the Department's Code of Ethics. Id. The Code of Ethics goes beyond specific laws and regulations.

It is the Policy of the Department that employees have an obligation to foster good client relations and public trust. Id. To that end, DCFS employees must "RESPECT and PROTECT the civil and legal rights of clients." Id. They must

"treat clients...with respect and in a professional manner and not ...engage in any...activity which is demeaning, belittling...."

DCFS workers shall not "falsify or ...cause to be entered any false or improper information in Department records." Id.

DCFS workers shall not "**purposely withhold from clients accurate and complete information regarding the extent and nature of the Department services available to them.**" Id.

Workers shall not engage in conduct on or off the job that compromises the ability of the agency to fulfill professional responsibilities. Id.

Violation of an ethical rule by a caseworker is yet another weapon with which defense counsel can and should challenge the "reasonable efforts" finding.

What is the benefit to our clients to challenge the "reasonable effort" findings sought by the Division? The State's obligation to make "reasonable efforts" in child welfare cases is directly tied to its ongoing ability to receive federal funding. For families, however, the immediate impact is the resultant Court Order compelling DCFS to do its job.

Defense counsel should not hesitate to bring caseworker misconduct to the court's attention. It may be enough to set forth the nature of the misconduct in the parent's court report submitted prior to each review hearing. It may be necessary, however, to compel the Division to show cause why it should not be held in contempt of the court's order for reunification.



## PRACTICE MODEL PRINCIPLES AND PRACTICE GUIDELINES CREATE EXPECTATION OF “REASONABLE EFFORTS”

According to DCFS in its 2005 Annual Report, “a well trained caseworker who understand Child and Family Services Practice Principles and can effectively use Child and Family Services Practices skills to engage the family members, build a trusting relationship, assess the needs of the family, and plan for their success is invaluable. Our training aims for this goal with each child welfare worker.” [Utah’s Dept. of Human Services Child and Family Services Annual Report 2005, pg 27.](#)

In 1999—six years before DCFS released its annual report indicating it is still waiting to realize its goal for trained child welfare workers—DCFS released the “Performance Milestone Plan “The Plan”). “This Plan is prepared according to the September 17, 1998 order of United States District Court Judge Tena Campbell and is intended to fulfill the March 17, 1997 order of Judge David Winder.” Performance Milestone Plan, page 5.

The Plan calls for “front-line staff members and their supervisors design service plans for children and families, **and provide services through which families are able to effectively change.** Id. Pg 8. “A Practice Model will **create clear performance expectations.**” Id.

The Practice Model creates clear performance expectations against which defense counsel must argue welfare worker must be measured in determining whether reasonable efforts have been made. For example, the Practice Guidelines—the “tools” for child welfare workers to use to implement practice in each of the Division’s program areas— requires ongoing assessment of the family’s strengths and needs, with

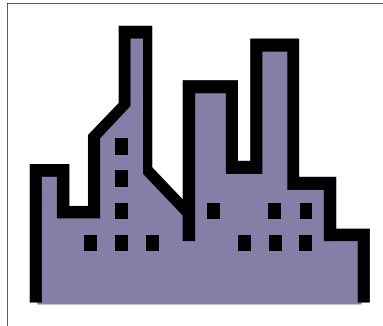
modification of the service goals and plans by the “changing needs, circumstances, progress towards achievement of service goals.” Practice Guidelines, 301.1. By law, DCFS must “provide services” to a parent when reunification is the goal. UAR 512-300-3. Out of home services to families must be available in all geographic regions of the state. Id.

One clear expectation for reasonable efforts, then, is that the caseworker will regularly assess the parents needs and strengths, and depending upon the circumstances, modify the service plan to reflect the family’s needs and strengths, and provide services identified by the changing needs and strengths. According to the Practice Guidelines, the service plan **shall be** adapted “when the team identifies that new steps are needed to make progress.” Practice Guidelines, 302.1.

For example, mental health assessments are often sought at the dispositional hearing. Results of the assessment are rarely returned prior to the completion of the first service plan. The first service plan simply states that the parents will complete the assessment and follow through with any recommendations.

If the mental health assessment indicates a recommendation for mental health treatment, the service plan must be amended to reflect the type of treatment recommended, where the parents can obtain the recommended treatment, and how progress with treatment will be measured.

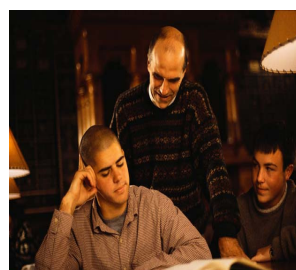
DCFS’s duty to provide this ongoing assessment means that mere “monitoring” of the



Out of Home Services must be available to all geographic regions of the state.

parents progress through the plan is inadequate and inconsistent with the Practice Guidelines and Practice Model. It is not sufficient for the caseworker to passively sit back and wait for each review to report to the court a parent’s progress—or lack thereof.

It is inadequate and inconsistent with Practice Guidelines and Practice Model principles for the caseworker to wait for the family to ask for help to complete the service plan. Practice Model principles and the Practice Guidelines creates the expectation that the caseworker will take action based upon their ongoing assessment of the parents progress to help the parents complete the service plan. Defense counsel must remind the caseworker of that expectation and seek the court’s assistance when appropriate.



The family team creates a plan based on the assessment of the family’s strengths and needs.

Practice Guideline 304 “Services to Family” Major objective:

*“Child and Family Services Provides services to parents or guardians to facilitate the child/youth(s) return home or placement with a permanent family. These services shall be designed to maintain and enhance parental functioning, care, and familial connections.*



*“Front-line staff members and their supervisors provide services through which families are able to effectively change”*

**PARENTAL DEFENSE ALLIANCE**

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Kudos to defense counsel who have begun to use the Practice Model and Practice Guidelines in their day-to-day representations of parents involved in abuse/neglect proceedings.

Your efforts result in better outcomes for Utah families.

REMINDER: We want to hear from you. If you have a suggestion for us, would like to hear more about a particular topic, or want us to research a particular topic, let us know. We are here to support your efforts.

Have you checked out the ABA website at:  
<http://www.abanet.org/child/>

The ABA's results on how dependency courts are making decisions under ASFA for children of parents with substance abuse addictions is now available, both the executive summary and the final report.

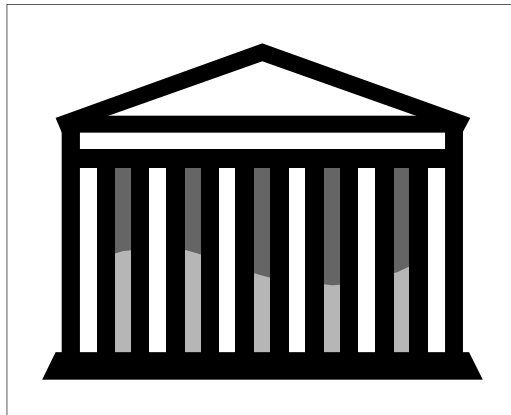
The Report, titled "Parental Substance Abuse, Child Protection and ASFA: Implications for Policymakers and Practitioners" explores how dependency courts are making permanency decisions under the Adoption and Safe Families Act of 1997.

Check it out!

## WRAP-AROUND SERVICES

Wrap around services shall be provided to the child/youth and family and will be crafted by the child and family team based on the assessed needs and resources. Practice Guidelines, 304.4. The statutory basis for the Division's responsibility to provide wrap-around services is at U.C.A. 62A-4a-105, Division responsibilities.

According to the Division, wrap-around services include, but are not limited to, peer parenting, child care, home health aide services, parenting education, respite care, transportation services for visitation, vocational or educational assistance, mental health and/or substance abuse assessment and treatment, and housing referral and assistance. Practice Guidelines, 304.4. The



DCFS must use flexible funding to craft and meet the needs of the family to access wrap-around services.

child and family team must explore with the family the different levels of support and use flexible funding to craft and meet the needs of the family. Id.

Defense counsel with any experience with DCFS cases are familiar with standard programs such as peer parenting, or parenting classes.

For those attorneys representing indigent parents, counsel knows that parents are typically not charged a fee for those services or, costs are assessed on a sliding fee basis depending upon the clients income. Indigent clients are, therefore, able to access those services to complete the parenting requirements in the service plans.

The Practice Guidelines do not make a distinction between peer parenting and mental health/substance abuse

treatment when it comes to the use of flexible funding to meet the needs of the family. If the Division is going to request that the family complete a particular service to meet a particular identified need, it is the Division's obligation to use flexible funding to meet the need.