



Ethics and the Role of Counsel in Delinquency Proceedings

2007 New Juvenile Defender Program
UNC-Chapel Hill School of Government
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National Juvenile Defender Center



NJDC Mission

to ensure excellence in juvenile defense and promote justice for all children

www.njdc.info



Objectives

- to review the ethical duties of a juvenile defense attorney
- to review the role of a juvenile defense attorney
- to discuss how ethical duties and the role of counsel impact juvenile defense practice



Ethical Duties

-American Bar Association's Model Rules of Professional Conduct (MRPC)

-North Carolina Revised Rules of Professional Conduct



American Bar Association's Model Rules of Professional Conduct (MRPC)

- Rule 1 Client-Lawyer Relationship
- Rule 2 Counselor
- Rule 3 Advocate
- Rule 4 Transactions with Persons Other Than Clients
- Rule 5 Law Firms and Associations
- Rule 6 Public Service
- Rule 7 Information About Legal Services
- Rule 8 Maintaining the Integrity of the Profession



American Bar Association's Model Rules of Professional Conduct (MRPC)

- **Client-Lawyer Relationship**
- **Rule 1.1 Competence**
- A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.



**American Bar Association's
Model Rules of Professional Conduct (MRPC)**

**Client-Lawyer Relationship
Rule 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, as defined in Rule 1.0(e), is required by these Rules;
 - (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;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



**American Bar Association's
Model Rules of Professional Conduct (MRPC)**

- **Client-Lawyer Relationship
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.
- (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.



**American Bar Association's
Model Rules of Professional Conduct (MRPC)**

- **Counselor
Rule 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.



North Carolina Revised Rules of Professional Conduct

Preamble and Scope

0.1 Preamble: A Lawyer's Responsibilities

- [1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.



North Carolina Revised Rules of Professional Conduct

[4] In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.



North Carolina Revised Rules of Professional Conduct

[7] A lawyer should render public interest legal service and provide civic leadership. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, society, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.



**North Carolina
Revised Rules of Professional Conduct**

[10] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.



**Role of Juvenile Defense Counsel
Representing the Expressed Interests of
your Client**

- U.S. Supreme Court
- IJA/ABA Juvenile Justice Standards
- NJDC/ACCD 10 Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems
- North Carolina Statement of Role of Counsel in Juvenile Delinquency Proceedings



In re Gault, 387 U.S. 1 (1967)

The role of defense counsel in delinquency proceedings is to assist the client in “coping with problems of law, to make skilled inquiry into facts, to insist upon the regularity of the proceedings, and to ascertain whether the client has a defense and to prepare and submit it.”



American Bar Association and the Institute of Judicial Administration (IJA/ABA) Juvenile Justice Standards

Standards Related to Counsel for Private Parties state that the "(3.1)(a) *client's interests [are] paramount.* However engaged, the lawyers principal duty is the representation of the client's legitimate interests."

Commentary

"Although adversarial representation and devotion to a client's perceived interests may be more or less inconvenient for counsel in juvenile court; this consequence is, part of the lawyers professional role and must be accepted."



American Bar Association and the Institute of Judicial Administration (IJA/ABA) Juvenile Justice Standards

Standards Related to Counsel for Private Parties (5.2)

(a-b after full consultation with the client, **the lawyer has exclusive province** over, "what witnesses to call, whether and how to conduct cross-examination, what jurors to accept and strike, what trial motions should be made, and any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client."

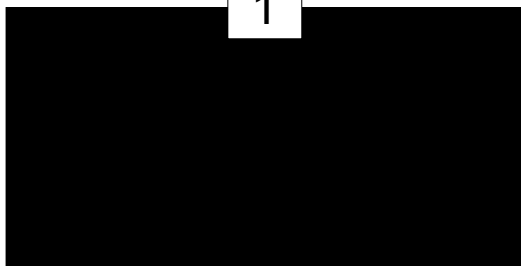
"after full consultation with counsel, **[the client] is ordinarily responsible for determining:** the plea to be entered at adjudication; whether to cooperate in consent judgment or early disposition plans; whether to be tried as a juvenile or an adult, where the client has that choice; whether to waive jury trial; whether to testify on his or her own behalf."



NJDC/ACCD

Ten Core Principles for Providing Quality Delinquency Representation

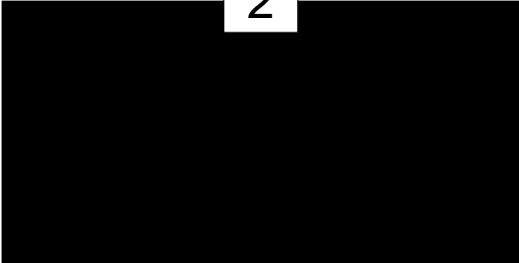
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Ten Core Principles for Providing Quality Delinquency Representation

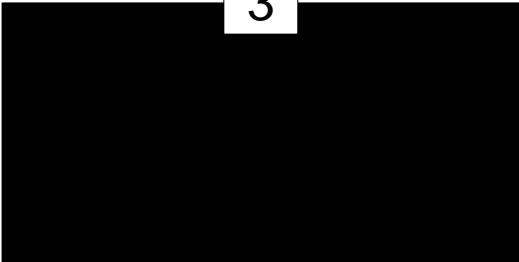
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Ten Core Principles for Providing Quality Delinquency Representation

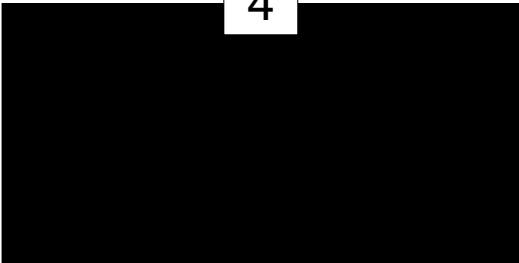
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Ten Core Principles for Providing Quality Delinquency Representation

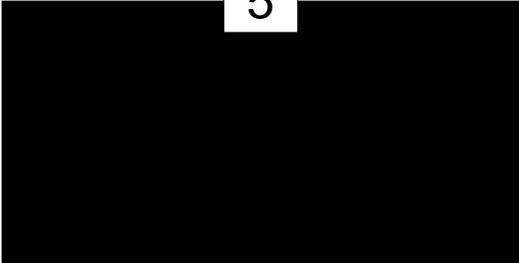
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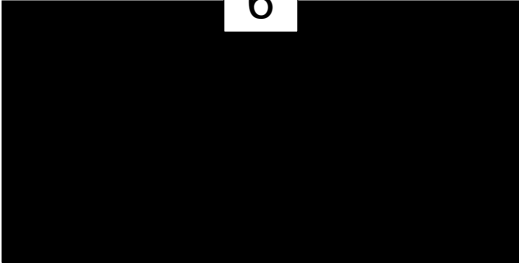
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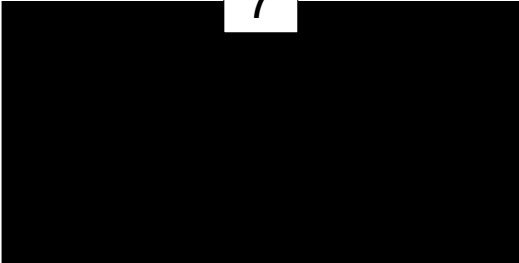
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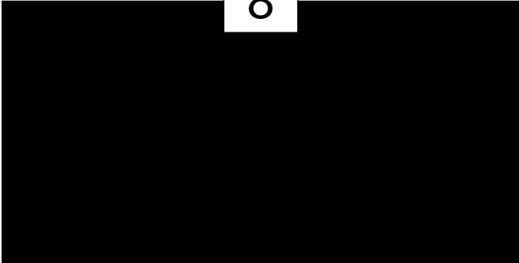
Ten Core Principles for Providing Quality Delinquency Representation

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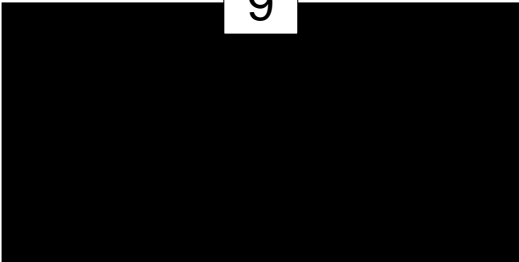
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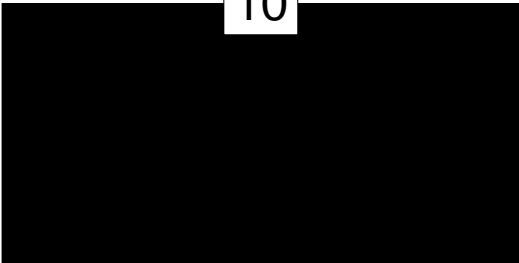
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North Carolina Statement of Role of Counsel in Juvenile Delinquency Proceedings

- the attorney shall be the juvenile's voice to the court at every stage of proceedings
- An attorney for a juvenile is bound to advocate for the expressed interests of the juvenile.



North Carolina Statement of Role of Counsel in Juvenile Delinquency Proceedings

- The attorney has the responsibility to counsel the juvenile, recommend to the juvenile actions consistent with the juvenile's interest, and advise the juvenile as to potential outcomes of various courses of action.
- The attorney for the juvenile shall meet with the juvenile as soon as is practical; communicate with the juvenile in a manner that will be effective, considering the juvenile's maturity; physical, mental and or emotional health, intellectual abilities, language, educational level, special education needs, cultural background and gender; educate the juvenile, and keep the juvenile informed of the status of the proceedings.



North Carolina Revised Rules of Professional Conduct

Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, **when properly advised and assisted**, is capable of making decisions about important matters.



National Juvenile Defender Center

Making Informed Decisions

- Review hypotheticals



National Juvenile Defender Center

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ensuring excellence in juvenile defense & promoting justice for all children
