

ROLE OF DEFENSE COUNSEL IN JUVENILE DELINQUENCY PROCEEDINGS¹

An attorney in a juvenile delinquency proceeding or in an order to show cause proceeding against an undisciplined juvenile shall be the juvenile's voice to the court, representing the expressed interests of the juvenile at every stage of the proceedings. The attorney owes the same duties to the juvenile under the Rules of Professional Conduct, including the duties of loyalty and confidentiality, as an attorney owes to an adult criminal defendant.

The attorney for a juvenile is bound to advocate the expressed interests of the juvenile. In addition, the attorney has a 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 a juvenile shall meet with the juvenile as soon as 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 as to the nature of the proceedings; determine the objectives of the juvenile; and keep the juvenile informed of the status of the proceedings. The attorney should move the court for appointment of an interpreter if the primary language of the juvenile or the juvenile's parents or guardian is other than English and the attorney has difficulty communicating with them.

If the attorney determines that the juvenile is unable to understand the proceedings or otherwise cannot assist the attorney in representing the juvenile, the attorney shall move the court for an evaluation of the juvenile's capacity to proceed and otherwise proceed according to Rule 1.14 of the Rules of Professional Conduct.

The attorney for a juvenile should consider moving the court to appoint a guardian if it appears to the attorney that the juvenile does not have a parent or other adult to provide assistance in making decisions outside the scope of the attorney's representation.

Decisions whether to admit to allegations of a petition and whether to testify are those of the juvenile, after consultation with the attorney. Decisions regarding the method and manner of conducting the defense are those of the attorney, after consultation with the juvenile.

An attorney for the juvenile should be knowledgeable of dispositional alternatives available to the court. The attorney should inform the juvenile and the juvenile's parents or guardian of those alternatives, of possible recommendations to the court, and of the possible outcome of the hearing. At the dispositional hearing, the attorney shall provide the court with reasonable dispositional alternatives, if desired by the juvenile.

¹ This statement of the role of defense counsel in juvenile delinquency proceedings was derived from a number of sources. See, e.g., National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (2005); American Council of Chief Defenders, National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent*

Defense Delivery Systems (2005); Amy Howell & Brook Silverthorn, Southern Juvenile Defender Center, *Representing the Whole Child: A Juvenile Defender Training Manual*, § IV (2004); California Administrative Office of the Courts, *Effective Representation of Children in Juvenile Delinquency Court* (2004); Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, *Access to Counsel* (2004); Katherine R. Kruse, Washington University Journal of Law and Policy, *Lawyers Should be Lawyers, But What does that Mean? A Response to Aiken & Wizer & Smith* (2004); Frank E. Vandervort, Michigan Bar Journal, *When Minors Face Major Consequences: What Attorneys in Representing Children in Delinquency, Designation, and Waiver Proceedings Need to Know* (2001); National Association of Counsel for Children, *Recommendations for Representation of Children in Abuse and Neglect Cases*, Part IV (2001); Barbara Butterworth, Will Rhee & Mary Ann Scali, American Bar Association Juvenile Justice Center, *Juvenile Defender Delinquency Notebook*, Chapter 2, § 2.2 (2000); Massachusetts Committee for Public Counsel Services, *Assigned Counsel Manual: Policies and Procedures*, Parts III. A.4 & J 1.2 (2000); Kentucky Department of Public Advocacy, *Juvenile Law Manual*, Chapters 1 & 3 (1999); IJA/ABA Juvenile Justice Standards, *Standards Relating to Private Parties*, Standard 3.1 (1996); Stephen Wizner, 4 Columbia Human Rights Law Review 389, *The Child and the State: Adversaries in the Juvenile Justice System* (1972)