

# PERFORMANCE GUIDELINES

## FOR QUALITY AND EFFECTIVE

### JUVENILE DELINQUENCY

### REPRESENTATION



# PERFORMANCE GUIDELINES FOR QUALITY AND EFFECTIVE JUVENILE DELINQUENCY REPRESENTATION

## PREFACE

The Juvenile Defenders Association of Pennsylvania (“JDAP”) is a statewide membership organization that is dedicated to supporting zealous and quality legal representation for children in Pennsylvania’s delinquency courts. Through its education and training programs and its policy advocacy, JDAP is building a strong network of juvenile public defenders, contract, and assigned counsel who specialize in the representation of children and who consistently provide their clients with competent, effective legal services.

In consultation with juvenile defenders from across the Commonwealth and national experts, JDAP has developed *Performance Guidelines for Quality and Effective Juvenile Delinquency Representation (Guidelines)*. JDAP’s goal is to provide juvenile defenders, contract counsel, and assigned counsel, as well as the leadership of public defender offices with a clear set of guidelines that define evidence-based best practice standards for attorneys practicing in delinquency court. The Guidelines recognize and incorporate Pennsylvania’s Rules of Professional Conduct, Rules of Juvenile Court Procedure, and the Juvenile Act. They also reflect national standards established by the American Bar Association, the National Legal Aid and Defender Association and its American Council of Chief Defenders, and the National Juvenile Defender Center.

The Guidelines serve as a training and development tool for new attorneys who receive delinquency representation assignments. They also reaffirm for experienced counsel the considerations necessary to deliver quality legal representation. The Guidelines outline the representation steps that “may”, “should” or “must” be undertaken to provide competent, effective delinquency representation. They also emphasize the continuing duty of representation through the adjudicatory, disposition, post-disposition, and appellate phases of the juvenile court process.

Juvenile defenders, contract, and assigned counsel have an ethical obligation and professional responsibility to zealously defend their clients’ rights throughout the representation process. This may involve confronting difficult courtroom and non-courtroom situations. However, the lives of child clients demand that attorneys have the skills, knowledge and determination to fully advocate for the fairness, integrity and justice that our clients deserve.

The *Performance Guidelines for Quality and Effective Juvenile Delinquency Representation* provide support for the development of specialized, quality juvenile delinquency representation. JDAP will use the Guidelines to provide training and education programs. In addition, the Guidelines Subcommittee is responsible for updating the Guidelines whenever new case law, statutes, rules, or practice experience demands changes and adjustments.

# PERFORMANCE GUIDELINES FOR QUALITY AND EFFECTIVE JUVENILE DELINQUENCY REPRESENTATION

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Juvenile Defenders Association of Pennsylvania

*Performance Guidelines for Quality and Effective Juvenile Delinquency Representation*

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# Juvenile Defenders Association of Pennsylvania

## *Performance Guidelines for Quality and Effective Juvenile Delinquency Representation*

### Performance Guidelines

#### INTRODUCTION

##### *Section 1: The Representation of Children in Delinquency Court is a Specialized and Complicated Practice Area<sup>1</sup>*

A. Delinquency cases are complex matters that raise legal, child and family-centered issues and engage overlapping court, school, supervision, service and treatment systems. Delinquency cases have direct and collateral consequences that significantly impact the lives of children and their families. Recent advances in brain research also confirm that children and adolescents are different from adults. They do not have the same cognitive, emotional, decision-making or behavioral capacities as adults.<sup>2</sup> Special care must be taken to ensure that the child's developmental immaturity is considered among the other relevant issues of the case.

B. Quality legal representation for children and adolescents<sup>3</sup> in the juvenile justice system is as important as representation for adults in the criminal justice system. It requires the assignment of well-qualified, experienced attorneys who understand and appreciate the complexity and significance of delinquency representation. Juvenile defense counsel must also recognize that their primary responsibility is to zealously defend their child clients against the charges leveled against them and to protect their due process rights.<sup>4</sup>

##### *Section 2: Support for Well-Resourced, Specialized Juvenile Delinquency Representation by Public Defender Offices and by Contract and Assigned Counsel is Critical for an Effective Juvenile Justice System*

A. Every child and adolescent deserves access to well-resourced juvenile defense counsel, whether that attorney is assigned by a public defender office, contract, or judicial appointment. Juvenile defense attorneys should be well-trained lawyers who specialize in delinquency representation. They should have adequate time for each case and have well-developed skills to communicate and build a positive attorney-client relationship.

B. Specialized delinquency counsel should have access to services that are necessary to protect the child's constitutional right to effective assistance of counsel including experts, mental health professionals, social workers, alternative disposition advocates, education specialists, investigators, paralegals and other legal representation support persons.<sup>5</sup>

### *Section 3: Performance Guidelines Establish Best Practices and Define Accountability for Quality and Client-Centered Juvenile Defense Advocacy*

A. The *Performance Guidelines for Quality and Effective Juvenile Delinquency Representation* provide defense counsel, public defender office leaders, judicial leaders and other system stakeholders with guidelines that identify the practices necessary to achieve quality, client-centered delinquency representation and, therefore, a more effective juvenile justice system.

B. The *Performance Guidelines* serve as a supervision and training tool, outlining the responsibilities an attorney has to the children charged with delinquent conduct in the juvenile justice system.

### **GUIDELINE ONE: *The Special Role and Responsibilities of Juvenile Defense Counsel***

#### *Section 1: Defining Who is the Client and Issues of Attorney-Client Confidentiality*

A. When appointed or assigned to represent children and adolescents in delinquency matters, defense counsel has an ethical and professional obligation to the child client, not to that child's parent, guardian or custodian. The lawyer must explain in clear terms to the juvenile and his parent(s) the meaning of privileged communications and the attorney's prohibition from revealing information shared between the attorney and the young client.<sup>6</sup>

B. Unless disclosure is authorized by operation of law or by the Rules of Professional Conduct, the attorney shall not reveal information relating to representation of a client where the child is the source of information.

C. The child may orally or in writing authorize the attorney's disclosure of information as is necessary to carry out the representation. After consultation with the attorney, the child may permit disclosure to his/her parent(s) or other family member(s) who are in a position to support the child throughout the delinquency process and to encourage open, trusting communication between the child and the attorney.

#### *Section 2: Attorney Client Communications*

A. The attorney has an affirmative ethical obligation to keep the child or adolescent client informed of matters related to representation and to promptly respond to the client's requests for information.

B. The attorney must consult with the child regarding how the client's case objectives are to be accomplished and fully explain these matters to the child so he can understand and make informed decisions.<sup>7</sup>

C. When authorized by the child, defense counsel may also consult with and seek the assistance of the child's parent or designated family member(s) regarding the case objectives, circumstances impacting the outcome of the case and other pertinent decision-making issues.<sup>8</sup>



### *Section 3: The Decision-Making Process: Attorney & Client Responsibilities*

A. After informed consultation with defense counsel and any parent, guardian or family member authorized to participate in the process, the child has the responsibility to determine whether to admit or deny the allegations, whether to enter into a consent decree if offered and whether to testify at the adjudicatory or dispositional hearings.<sup>9</sup>

B. Although the allocation of decision making authority may be more challenging than in an adult case due to the diminished capacity and/or the experience of the child, defense counsel shall abide by the child's decisions in a juvenile case. Counsel must represent the child's decisions and present them to the court. The attorney may not substitute personal judgment, or that of the parent or family member, for the child's decisions.

C. Where the child's age or other factors prevent the child from actually making a reasoned, informed decision, defense counsel may have no alternative but to request the appointment of a guardian ad litem, or to agree to such an appointment by the court. Counsel must advocate to limit the role of the guardian to the specific purposes for which the appointment is necessary.

## **GUIDELINE TWO: *The Education, Training and Experience of Juvenile Defense Counsel for Children***

### *Section 1: Developing, Educating and Continuing to Train Quality Juvenile Defense Counsel*

A. Attorneys representing children must attend regular training programs to recognize and effectively address not only the legal aspects of the adjudicatory process, but also the dispositional needs of their clients.<sup>10</sup> Counsel must be familiar with Pennsylvania statutes relating to delinquency proceedings, as well as the Pennsylvania Rules of Juvenile Court Procedure, Pennsylvania Rules of Evidence, Pennsylvania Rules of Appellate Procedure, relevant case law and the local rules of court governing delinquency proceedings.<sup>11</sup>

B. Counsel must annually attend Continuing Legal Education courses<sup>12</sup> and should register for programs relevant to the representation of children in the delinquency court system. If defense counsel is new to delinquency legal representation, counsel must also seek the advice and assistance of an experienced delinquency practitioner who can provide direct training.<sup>13</sup>

C. Counsel must participate in on-going training, including training in the following critical representational areas:<sup>14</sup>

1. Detention Advocacy
2. Litigation and Trial Skills
3. Disposition Planning/Options
4. Post-Disposition Practice

5. Educational Rights
6. Appellate Advocacy and Procedure
7. Direct and Collateral Consequences of Juvenile Adjudications of Delinquency<sup>15</sup>

D. Counsel should also obtain specialized training that directly relates to delivering quality and effective legal representation including:<sup>16</sup>

1. Child and Adolescent Development
2. Child Competency and Capacity
3. Racial, Ethnic and Cultural Understanding, as well as Lesbian, Gay, Bisexual and Transgender (LGBT) Issues
4. Communicating with Children and Building Attorney-Client Relationships
5. Special Ethical Issues/Considerations Related to Representing Children
6. Zero Tolerance, School Suspension and Expulsion Policies
7. Gender Specific Issues and Programming

E. Counsel's training should also include education on areas requiring assistance from specialists including:<sup>17</sup>

1. Administrative Appeals
2. Child Welfare and Entitlements
3. Special Education within School Systems
4. Immigration Law Consequences
5. Dependency and Neglect Court Process
6. Drug Addiction and Substance Abuse
7. Mental and Physical Health Treatment

***Section 2: Matching Case Severity and Consequences with Juvenile Defense Counsel's Legal Representation Experience and Managing Caseloads and Workloads***

A. Delinquency case representation assignments, whether made by a public defender office or through court appointment, should match the case's complexity, the seriousness of the allegations, and the potential consequences of an adjudication of delinquency with the

experience level of the assigned attorney. The most serious, complex cases should be assigned to the most experienced and qualified attorneys.<sup>18</sup>

B. Defense counsel should not carry a caseload that interferes with the rendering of competent legal services, endangers the juvenile's interest in the speedy disposition of charges or risks a breach of ethical or professional obligations. If any one of these circumstances exists, counsel should bring these issues to the attention of a supervisor for assessment and appropriate remedial interventions.<sup>19</sup>

### **GUIDELINE THREE: *Detention Hearings and Pre-Adjudication Advocacy***

#### ***Section 1: Initial Client Interview and Advocacy Preparation Prior to the Detention Hearing<sup>20</sup>***

A. Prior to representing a client at the detention hearing, counsel must make every effort to conduct a personal interview with the client as soon as practicable and sufficiently in advance of any court hearing. To prepare for this interview, counsel should review the charging documents, law enforcement reports, paperwork submitted by the probation department and any other relevant documentation.

B. Counsel should interview the client in a setting that is conducive to maintaining the confidentiality of communications between the attorney and the client. If the available setting is problematic, counsel should seek ways to remedy the situation.

C. When the client and counsel do not speak the same language, counsel must seek the assistance of a qualified interpreter. Counsel should be alert to any other issues that might hinder his ability to communicate with the client and should address the issues throughout the representation process.

D. Counsel should become familiar with the client's life history, family background, school experience, mental and physical health conditions, prior treatment interventions and any other circumstances that may impact case preparation.

E. Counsel should work cooperatively with the parent(s) or guardian to assess potential alternatives available for the possible release of a detained juvenile without jeopardizing the juvenile's legal interests.

#### ***Section 2: Effective Juvenile Defense at Juvenile Detention Hearings<sup>21</sup>***

A. Counsel must be familiar with the court's detention hearing procedures and the detention alternatives, including community-based resources, that the judge or master may consider.

B. Counsel must determine whether the paperwork contains any substantive legal defects and should argue these issues at the detention hearing.

C. Counsel should prepare and present an argument for release of the child. The least restrictive conditions must be considered at the detention hearing, and counsel should address the

juvenile's risk of flight, as well as his potential dangerousness to himself and others. Counsel should decide whether to call witnesses in support of the client's release, in particular, witnesses that might describe the potential living arrangements of the client.

D. Counsel should know the current conditions at the local juvenile detention center and should raise any deficiencies before the court. Counsel should consider issues such as overcrowding, violence, harsh treatment and limited or non-existent access to special education, mental health treatment, and adequate medical care.

E. If the judge or master releases the juvenile back into the community, counsel must ensure that the client and his parent(s) or guardian fully understand the conditions of release and any reporting requirements. The juvenile should also have counsel's business address and phone number so that he can maintain contact with counsel. Counsel must also have the current contact information for the client.

F. If the judge or master orders the juvenile to remain in detention, counsel should be certain that medical, mental health, and education issues are affirmatively addressed in the detention order. Counsel should continuously seek opportunities to obtain the client's release.

### *Section 3: Case Preparation, Investigation and Pre-Adjudication Motions Practice*

A. Counsel should examine all charging documents, pleadings and discovery,<sup>22</sup> including any exculpatory or impeachment information. Counsel should know the discovery process under the county prosecutor's control and be prepared to file motions with the court seeking to obtain any discovery materials not appropriately provided to counsel.

B. Counsel should also request that the prosecutor reveal the names and addresses of all witnesses that will be called at either the adjudicatory or dispositional hearings, including their prior written or electronic statements or reports and any criminal records. Counsel should also request the names of any co-defendants, their statements and any authorization necessary to view and/or obtain physical evidence, 911 tapes, search warrants, arrest warrants or any other materials held in law enforcement files or with custodians of physical evidence.

C. The juvenile's delinquency record and any prior statements must be obtained. Defense counsel may need signed client and/or parent release forms or court orders to retrieve records from the court, child welfare services, schools, hospitals, doctors, substance abuse treatment programs, psychological/psychiatric experts, other defense attorneys and other entities that have interacted in the past with the client and/or the family.

D. Defense counsel has an obligation to investigate the facts, the scene of the incident, and circumstances surrounding the juvenile's case allegations, even where the law enforcement reports seem to establish clear culpability and the client has made an admission of guilt.<sup>23</sup> Counsel may, however, consider these factors in determining the scope, relevancy and length of the investigation.

E. Where defense counsel does not have funds to employ a necessary expert or an investigator, counsel should file a timely motion with the court requesting these services and funds.

F. Counsel should conduct in-depth interviews with the client as necessary.

G. After reviewing all of the juvenile's interview(s), prosecution discovery reports and statements, defense discovery, investigation, expert reports, and the relevant procedural and evidentiary rules and case law, counsel should decide whether pre-adjudication motions needs to be filed to protect the clients's legal rights and interests . Counsel shall timely file all appropriate pre-adjudication motions, which may include:

1. Challenges to the constitutionality of the implicated statute(s)
2. Defects in the charging process or the charging document
3. Severance of charges or defendants
4. Discovery issues
5. Suppression of physical evidence,<sup>24</sup> identification, and/or statements
6. Speedy adjudication issues
7. Evidentiary issues

H. Defense counsel should neither request a continuance nor agree to one without first fully consulting with the client. Any defense request for a continuance, whether by an oral motion or a written filing, should document all the relevant reasons for the continuance. Counsel should ensure the argument for a continuance is on the record before the juvenile court in case the motions by the defense or the prosecution become an issue for appeal.

## ***GUIDELINE FOUR: Effective Negotiation Practice<sup>25</sup> for Juvenile Adjudication and Disposition***

### ***Section I: Advocacy Efforts Fostering Positive Plea Negotiation Outcomes***

A. While continuing to actively investigate, prepare and research the client's case and with the informed consent of the client, counsel may explore the possibility and desirability of reaching a negotiated adjudication and/or disposition settlement of the charges. Any agreements made through plea negotiations should be in writing and signed by all necessary parties. With the client's consent, counsel should also consider diversion and other informal and formal disposition agreements with the intended purpose of avoiding an adjudication of delinquency.

B. In evaluating various strategies, counsel must consider:

1. Concessions that the client might offer the prosecution, such as:
  - Declining to assert or litigate particular pretrial motions;
  - Not forcing the case to a full, contested adjudicatory hearing;

- Providing law enforcement and/or the prosecution with assistance in a pending investigation or prosecution;
  - Agreeing to pay restitution; or
  - Participating in a community services or rehabilitation and treatment program
2. Any benefits to the client from a negotiated settlement, such as:
- Release from custody;
  - Dismissal of one or more of the charges or a reduction in the gradation of a charge;
  - Agreement for a recommended disposition or that the prosecutor will remain silent at disposition;
  - Agreement that the client will not be subject to further investigation or prosecution for uncharged alleged delinquent conduct; or
  - Special prosecution recommendations for place/manner of confinement and/or release on probation

***Section 2: Attorney-Client Communication Responsibilities during Negotiation and Prior to Entering an Admission***

A. Throughout the negotiation process, counsel must keep the client fully informed. Counsel should clearly explain the possible outcomes of a contested adjudicatory hearing and that hearing's ultimate impact upon final disposition, which may include commitment, probation and other direct and collateral consequences.

B. Prior to the entry of an admission, counsel should meet with the client in a confidential setting and clearly and thoroughly explain the following:

1. The decision to enter an admission on charges is the client's, to be made in consultation with counsel, and, as authorized, with a parent(s) or guardian.
2. The constitutional and other legal rights that will be waived by entering an admission and the completion of an admission colloquy.
3. The conditions and limits of the plea agreement with the prosecutor and the maximum punishments, sanctions and other direct and collateral consequences the client faces as a result of entering the admission.
4. The nature of an admission hearing before the juvenile court judge and the expectations of the client in the proceedings, including answering questions from the judge and providing a statement concerning the offense.
5. Each of the elements of the offense(s) included in the admission.

### *Section 3: The Courtroom Admission Process and Advocacy for Best Dispositional Outcome*

- A. After the client enters the admission, counsel must be prepared to address all the issues required to fulfill the agreement, including the release of the client from detention prior to a final disposition hearing.
- B. In an appropriate setting outside the courtroom, counsel should respond to questions and explain the courtroom process and final outcome to the client and authorized parent(s) or guardian. Counsel should ensure the client and the guardian understand what has happened and the steps that must be taken to comply with the judge's order.
- C. Counsel should anticipate the dispositional hearing issues and should be prepared to examine the probation and prosecution witnesses and reports, to call defense witnesses, to provide supporting information and to argue for the client's best dispositional outcome.

### **GUIDELINE FIVE: *Effective Advocacy for the Adjudicatory Hearings where Children are Charged with Delinquent Conduct***

#### *Section 1: Counsel's Duties and Responsibilities in Timely Preparation for a Full Adjudicatory Hearing*<sup>26</sup>

- A. Counsel should know the forum in which the adjudicatory hearing will take place and be familiar with the judge's past fact-finding history and perspective. If counsel does not have personal experience with an assigned judge, counsel should seek the guidance of other lawyers who have represented clients before that judge.
- B. In advance of the adjudicatory hearing, counsel must know the applicable law and rules of evidence and procedure. Counsel must also anticipate the legal issues that may arise.
- C. After conducting a comprehensive review of prosecution and defense discovery materials, reports, interviews, and pre-trial motion transcripts and outcomes, counsel should determine what documents and fact or character witnesses are necessary for the defense case at the adjudicatory hearing. Counsel should ensure that the necessary materials and witnesses are easily accessible and available for the hearing. Defense counsel should ensure witnesses are fully prepared to present their testimony with appropriate courtroom demeanor. When necessary, counsel should issue subpoenas for the defense witnesses.
- D. In advance of the contested adjudicatory hearing, counsel should prepare an opening statement, where it is strategically advisable to offer one, as well as the cross-examination of prosecution witnesses, the direct examination of defense witnesses and the outline of points for a meaningful closing argument.
- E. Counsel should explain all aspects of the adjudicatory hearing process and necessary courtroom demeanor to the client and, as needed, to the client's parent(s) and family member(s). Counsel should advise the juvenile on appropriate courtroom dress, attitude and language when

addressing the judge. Counsel also should plan with the client the most convenient system for conferring throughout the contested hearing.

### *Section 2: Juvenile Defense Counsel's Obligation to Develop a Persuasive Theory for the Case*

A. Counsel must develop a persuasive defense theory of the case that justifies a finding of not guilty or that minimizes or reduces the level of guilt.

B. Counsel should consider whether the client's interests are best served by not putting on a defense case, but by relying upon the prosecution's failure to meet its constitutional burden of proving each element charged beyond a reasonable doubt.

C. Counsel should know the elements of any affirmative defense and the attendant burden of production or persuasion that rests with the defense.

### *Section 3: Full Litigation of the Client's Case and Protecting the Record for Appeal*

A. Throughout the adjudicatory process, counsel must raise and argue evidentiary and other objections on the record in order to preserve the client's appellate rights. Counsel must ensure that oral arguments and rulings in open court or in chambers are fully recorded.

B. Counsel should consider the strategic advantages or disadvantages of entering into any stipulations with the prosecution.

C. Counsel should fully discuss with the client the decision to testify at the contested adjudicatory hearing. Where counsel believes or knows the client will testify in an untruthful manner, counsel should appropriately advise the client of counsel's ethical responsibilities and duties under the Pennsylvania Rules of Professional Conduct.<sup>27</sup>

D. Counsel must actively protect the client's due process trial rights, holding the prosecution to its burden of proof beyond a reasonable doubt and ensuring that the "best interests of the child" is not the standard applied by the judge at the conclusion of the contested adjudicatory hearing.

## **GUIDELINE SIX: *Effective Advocacy for the Disposition of an Adjudicated Child***

### *Section 1: Juvenile Defense Counsel's Responsibilities in Preparing for the Disposition Hearing<sup>28</sup> and Final Dispositional Decision*

A. Counsel's preparation for an appropriate client-centered dispositional outcome begins upon appointment and continues throughout the adjudicatory process.

B. Counsel must know the local, state and national dispositional alternatives available to the client and the financing mechanisms necessary to pay for them.



C. Counsel should prepare the client and the family for the interview with the official preparing the dispositional report for the judge. Counsel should decide whether or not to personally attend the interview, knowing he may be able to provide supportive client information or reports to the interview official.

D. In advance of the dispositional hearing, counsel should review the dispositional recommendations of the judge, the probation department and other court departments. Prior to the disposition hearing, counsel must explain these dispositional recommendations and their consequences to the client.

E. Counsel has a duty independent of the probation department or other court- designated entity to develop the client's own dispositional alternative recommendations. These recommendations should stem from the defense expert's assessments, as well as the client's life experience, economic condition and school, family or community support structures.

F. Prior to the dispositional hearing, counsel shall fully consult with the client to determine the final dispositional recommendations to be offered to the judge and the relevant supporting witnesses and/or report materials. Counsel shall candidly describe to the client the nature, obligations and consequences of any proposed disposition, including the conditions of probation, the possibility of conditional release, the characteristics of any institution to which commitment is possible and the probable duration of the child's responsibilities under the proposed dispositional plan.

G. Counsel shall not agree to a specific dispositional recommendation without the child's prior consent.

H. When appropriate, counsel should prepare the client to personally address the judge. Where a victim impact statement is to be submitted or the victim may attend the dispositional hearing, counsel should also prepare the client to speak to victim issues.

### *Section 2: Counsel's Role in Preparing the Child's Dispositional Report and in Commenting upon any other Dispositional Report Submitted to the Judge*

A. Counsel may choose to submit and file on the record the client's own written, video or electronic dispositional report or memorandum in advance of the hearing. In addition to presenting the juvenile's dispositional recommendations and justification, counsel may also correct inaccurate information in any report previously submitted to the judge. Counsel should also object to the distribution of any information or reports that are not properly before the judge.

B. Where counsel decides not to file a formal dispositional recommendation and/or correction memorandum, counsel may present this information orally, along with any relevant testimony, to the judge during the disposition hearing. However, counsel must ensure that the oral argument is transcribed and made part of the official court record.

### *Section 3: Juvenile Defense Counsel's Dispositional Hearing Advocacy and Post-Disposition Responsibilities*

A. Defense counsel shall present to the judge all known and reasonably available mitigating information favorable to the child. It is counsel's responsibility to minimize the negative inferences offered by the prosecution.

B. Where the judge accepts the report of the probation department or other official, counsel should take reasonable steps to correct erroneous or misleading information and to make sure that an amended copy is contained in the official court record.

C. Upon the completion of the dispositional hearing, counsel must fully understand all of the conditions and requirements of the judge's order. Counsel must make sure the written disposition order clearly and accurately states the judge's final ruling, is consistent with any conditions contained in the previously entered plea agreement and clearly reflects any available detention credits. If the order is unclear or inaccurate, counsel must make an immediate effort to make corrections and include them in the official court record.

D. Counsel should meet in an appropriate location with the child and carefully explain all the requirements, responsibilities, and conditions of the judge's dispositional order. If authorized by the client, the child's parent(s) or guardian may be present.

E. Although counsel's adjudicatory and dispositional case preparation included communications with the client regarding possible collateral consequences, such as juvenile sex offender registration and immigration consequences, counsel's post-disposition hearing discussions with the client should reiterate the impact on the child of any of these additional mandates.

### **GUIDELINE SEVEN: *Special Cases Involving Juveniles: Representation and Defense Counsel's Responsibilities***

#### *Section 1: Juvenile Sex Cases, SORNA and Act 21*

A. The delinquency court representation of children and youth who face allegations of sexual misconduct is a specialized practice area. Defense counsel assigned to these cases must have sufficient delinquency law practice and litigation experience, as well as overall systems knowledge. Defense counsel should not accept appointments in these types of cases unless counsel is fully committed to and capable of providing zealous and quality defense representation.

B. Defense counsel must have current knowledge and special training in the following relevant areas:

1. Child sexuality issues and behavior generally and within the client's and complainant's family circumstances
2. Sexual victimization issues

3. Special evidentiary and substantive law issues pertaining to the litigation of sexual misconduct cases

4. Special Collateral Consequences, including DNA Submission, access to commitment treatment programs, probation requirements, Sex Offender Registration and Notification Act,<sup>29</sup> and Act 21.<sup>30</sup>

C. Defense counsel must obtain and review all relevant reports and documents pertaining to both the client and the complainant. Counsel should be prepared to fully investigate the client's and complainant's backgrounds, prior relationships and the factual circumstances surrounding the incident. Any witnesses should be identified, interviewed, and investigated.

D. Counsel's case preparation should include obtaining and reviewing police reports, forensic interviews of the complainant and any witnesses, medical records, psychological and psychiatric evaluations, internet social networks and the CYS/DHS records of the complainant, witnesses and the client.

E. Counsel should actively seek advice from experts in the area of sexual offending who may evaluate the client and provide substantive information related to sexual behaviors, available treatment methodologies and resources to support client advocacy during the pre- and post-adjudication stages.

F. Counsel should carefully screen and analyze any admission "offer" from the district attorney within the context of both the direct and collateral consequences of an admission and the likely disposition by the assigned judge. Counsel should be familiar with the disposition recommendations by the probation office in similar cases and the disposition outcome pattern of the assigned judge.

G. If the case proceeds to a contested adjudication hearing, counsel must be fully prepared to litigate all fact and legal issues, either through motions or at the hearing. Counsel must also actively cross-examine prosecution witnesses, call any reasonable defense witnesses, and present any other evidence to assist the defense case. Counsel has an obligation to create a complete record and ensure the recording of the entire case for appeal.

H. Counsel must prepare for any dispositional hearing and must seek the best possible outcomes for the client. Counsel may seek to present a dispositional report to the judge and argue for a disposition independent from any suggestions offered by the probation department.

I. Counsel must continue to represent clients adjudicated delinquent for a sexual offense after the disposition hearing to ensure that court-ordered services are provided and delivered in an appropriate setting based upon the needs and ability of the client.

J. Counsel should also be prepared to represent these youth when they are aging out of the juvenile justice system, but are not yet twenty-one years of age. During this time, these youth face a civil mental health commitment hearing under Act 21, 42 Pa. C. S. Chapter 64, to determine whether they have a "mental abnormality" that "renders them unable to control their violent sexual impulses." In preparation for this hearing and to contest civil commitment for a

year or more to the Sexual Responsibility and Treatment Program at Torrance State Hospital, counsel should seek a complete client assessment independent of the one conducted by the Pennsylvania Sexual Offenders Assessment Board (“SOAB”). Throughout the assessment process by SOAB, counsel must protect the client’s rights against self-incrimination.

***Section 2: Dual Jurisdiction Cases: Juveniles in both the Delinquency and the Dependency Court Systems<sup>31</sup>***

A. When defense counsel is assigned to provide delinquency representation for a child or adolescent who is already under the jurisdiction of the dependency court as an “abused” and/or “neglected” youth, counsel must know the social services and child welfare support services available for that child and his or her family, as well as the protections afforded to foster youth under Title IV-E of the Social Security Act.

B. Counsel must fully protect the due process rights of a “dual jurisdiction” child who faces adjudication and disposition in delinquency court.

C. For delinquency disposition planning, counsel should have full access to child welfare information, assessments and reports that may assist with determining treatment, and placement options available for final delinquency court disposition.

D. When appropriate, counsel should advocate for access to dependency court placement and treatment resources to improve the client’s final delinquency disposition outcomes.

***GUIDELINE EIGHT: Continuing Post-Disposition Representation Responsibilities***

***Section 1: Juvenile Defense Counsel’s Continuing Representation Responsibilities at Review Hearings after Disposition***

A. Once counsel has entered an appearance or the court assigns counsel, counsel’s obligation to represent the child continues through final judgment, including probation violation and dispositional review hearings.<sup>32</sup> Counsel may be permitted to withdraw upon filing a motion and subsequent court order for good cause shown or upon the entry of appearance by new retained counsel. If new retained counsel enters an appearance or is appointed, original counsel should comply with the information requests of new counsel so the juvenile client is not prejudiced or representation delayed.

B. When the child is committed to a residential placement facility or program, counsel has a continuing obligation to ensure that the required placement goals are met and that all necessary services are provided. Counsel must review the client’s placement goals and reports and attend all post-disposition placement and progress review hearings. Counsel or counsel’s appropriate authorized agent must also maintain written, face-to-face or telephonic contact with the client to ensure that the health and safety of the child is fully protected.<sup>33</sup>

## *Section 2: Counsel's Advocacy Role for Juveniles Placed in Specialty Drug and Treatment Courts*

A. Pennsylvania has and will continue to develop a number of juvenile treatment and specialty courts.<sup>34</sup> Treatment courts, especially drug treatment courts, provide juveniles with additional community-based options.

B. Before a child is placed into a treatment court program, the attorney should fully explain the treatment court program and reporting requirements to the client and the parent(s). When a treatment court team defense attorney serves as the client's advocate solely for the treatment court program, counsel assigned for the adjudicatory hearing must explain the role of this additional attorney. Treatment court counsel must also provide an explanation of his special representational role to the client and the parent(s).

C. Treatment court juvenile defense counsel should ensure that his clients are fairly treated, that effective therapeutic procedures and modalities are applied, and that these courts retain positive rehabilitative rather than punitive goals. Counsel must serve as a zealous advocate for all clients enrolled in the treatment court program, protecting their due process rights, presenting mitigating factors, and advocating for community-based services.

D. As a member of the treatment court team, defense counsel should actively participate in all phases of treatment court, including the establishment of the eligibility criteria, the application process, and the admissions process. Counsel should also help shape the expectations for the court and assist in establishing goals and the means to achieve them.

E. Defense counsel should participate in the administration of treatment court and help increase access to treatment and other services and assist in the development of appropriate incentives and sanctions. Counsel should also participate in the development of appropriate policies related to access, disclosure and distribution of confidential client and family information acquired through the treatment court program.

F. Counsel should advocate for a written treatment court team policy manual and/or memoranda of understanding that clearly describe the treatment court's operational policies and procedures and limits the disclosure of personal records and information. As circumstances require, counsel may seek to amend these manuals or memoranda to improve the quality of the program and better protect the client's interests.

G. Treatment court counsel should encourage the evaluation and assessment of the program and suggest areas for improvement consistent with greater client success and graduation from the program.

## *Section 3: Counsel's Responsibilities to File Expungement Petitions*

A. Consistent with statutory enactment and the Rules of Juvenile Court Procedure,<sup>35</sup> a juvenile may be eligible under specified circumstances to have his juvenile court records expunged. Where there is a good faith basis for the filing of a Motion to Expunge Juvenile Records, defense counsel should so file and represent the client before the court. Counsel should ensure that all

appropriate records subject to expungement, including the official court record, probation records, docket entries, law enforcement records, fingerprints, photographs, DNA samples and any other material, are included in the motion and any final court order to expunge.

## ***GUIDELINE NINE: The Role of Juvenile Defense Counsel in Transfer and Direct File Proceedings***

### ***Section 1: Qualifications and Experience of Juvenile Defense Counsel in Transfer and Direct File Proceedings***<sup>36</sup>

A. Transfer and direct file proceedings require special knowledge and skill due to the severity of the consequences of these proceedings. Counsel shall not undertake representation assignments of children in these areas without sufficient experience, knowledge and training in this specialized area of practice.

B. Best practices recommend that counsel representing children in transfer and direct file proceedings possess significant prior criminal procedure, law, and jury trial experience, as well as substantive knowledge about adult sentencing law, county and state corrections systems, and any available community-based alternatives to incarceration.

### ***Section 2: Effective Client Centered Case Preparation in Transfer and Direct File Cases***

A. Counsel must know the legal issues related to probable cause hearings and transfer/direct file proceedings, and counsel has an obligation to actively investigate the social, psychological and educational history of the child.

B. In order to provide the judge with a comprehensive argument in support of retaining juvenile court jurisdiction, counsel should actively use the services of experts, such as social workers, psychologists and investigators. Counsel should seek funding from either the public defender office or the court to support these essential defense services.

### ***Section 3: Providing Quality Legal Representation for Juveniles in Transfer and Direct File Proceedings***

A. Counsel must know the case law related to transfer and direct file proceedings, as well as the required statutory findings that a court must make before transferring jurisdiction to or from the criminal court. To support the retention of juvenile court jurisdiction, counsel must be prepared to offer evidence and testimony, such as from teachers, counselors, psychologists, probation officers, religious associates, and/or employers, to establish amenability to the juvenile system. Counsel should also contrast the sentencing options available in the adult criminal system with those in juvenile delinquency court.

B. Counsel has a continuing obligation to ensure that transfer and direct file hearing proceedings are recorded and that all issues for appeal are preserved in the official court record.

## **GUIDELINE TEN: *Perfecting an Appeal from the Delinquency Adjudication and Disposition***

### ***Section 1: Making and Maintaining a Record for Appeal***

- A. Throughout the adjudicatory, disposition and post-disposition review process, counsel has an obligation make a record that is reviewable on appeal either orally or through written filings.<sup>37</sup>
- B. Counsel should frequently review the juvenile's official court record<sup>38</sup> to ensure that it accurately contains all filed documents, orders, notices, docket entries, evidence admitted into the record, transcriptions, oral arguments and any other appropriate court designated material.

### ***Section 2: Client's Right to Appeal & Continuing Representation***

- A. Counsel must fully inform the client of his or her right to appeal and the actions that must be taken to perfect an appeal. Unless permitted by the court to withdraw an appearance, counsel's initial entry of appearance continues until final judgment, including any proceeding upon direct appeal.
- B. Counsel must complete the timely filings necessary for perfecting an appeal.

### ***Section 3: Counsel's Responsibilities upon Withdrawal as Appellate Counsel of Record***

- A. Where original counsel is permitted to withdraw and new counsel is retained or appointed for purposes of an appeal, original counsel should cooperate with new appellate counsel and provide requested information to new counsel during the appellate process.

## End Notes

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- <sup>1</sup> Nat'l Legal Aid and Defender Assoc., *Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* pmbll., princ. 2 (2d ed. 2008) [hereinafter *Ten Core Principles*].
- <sup>2</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).
- <sup>3</sup> A juvenile is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age. Pa. R.J.C.P. 120.
- <sup>4</sup> *In re Gault*, 387 U.S. 1 (1967); *Ten Core Principles* pmbll.
- <sup>5</sup> *Ten Core Principles* pmbll., princ. 4.
- <sup>6</sup> Pa. R.P.C. 1.6(a); 1.14(a), *Ten Core Principles* pmbll.
- <sup>7</sup> Pa. R.P.C. 1.4(a).
- <sup>8</sup> Pa. R.P.C. 1.4.
- <sup>9</sup> Pa. R.P.C. 1.2(a).
- <sup>10</sup> *Ten Core Principles* princ. 7(A).
- <sup>11</sup> *Ten Core Principles* princ. 7(B).
- <sup>12</sup> See ABA Comm. on Indigent Defense, *Ten Principles of a Public Defense Delivery System* princ. 9 (2009); Pa. Continuing Legal Educ. Bd., *Rules and Regulations for CLE in Pennsylvania*, available at <http://www.pacle.org/about/rulesregs.asp>.
- <sup>13</sup> Pa. R.P.C. 1.1.
- <sup>14</sup> *Ten Core Principles* princ. 7(A).
- <sup>15</sup> *Padilla v. Kentucky*, No. 08-651, 2010 U.S. LEXIS 2928 (Mar. 31, 2010).
- <sup>16</sup> *Ten Core Principles* princ. 7(D).
- <sup>17</sup> *Ten Core Principles* princ. 7(C).
- <sup>18</sup> ABA Standing Comm. on Indigent Defense, *supra* note 12, princ. 6.
- <sup>19</sup> Pa. R.C.P. 1.3; *Ten Core Principles* princ. 5; ABA Comm. on Ethics and Prof'l Responsibility, Ethics Op. 06-441 (2006); ABA, *Eight Guidelines of Public Defense Related to Excessive Workloads* (2009); ABA Comm. on Indigent Defense, *supra* note 12, princ. 5.
- <sup>20</sup> See Pa. R.J.C.P. 240-243.
- <sup>21</sup> See Nat'l Juvenile Defender Ctr., *Ten Principles for Providing Effective Defense Advocacy at Juvenile Detention Hearings* (n.d.).
- <sup>22</sup> See Pa. R.J.C.P. 340.
- <sup>23</sup> *ABA Standards for Criminal Prosecution and Defense Function* (3d ed. 1993)
- <sup>24</sup> Pa. R.J.C.P. 350.
- <sup>25</sup> See generally Nat'l Legal Aid and Defender Assoc., *Performance Guidelines for Criminal Defense Representation* (2006)
- <sup>26</sup> See Pa. R.J.C.P. 401, 404, 406-409.
- <sup>27</sup> See Pa. R.P.C. 3.3.
- <sup>28</sup> See Pa. R.J.C.P. 510, 512-513, 515-516.
- <sup>29</sup> As of this writing, states have until July 27, 2010, to "substantially comply" with the requirements of the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16901, which establishes a national system for registration of sex offenders and notification to particular stakeholders. Juveniles, included under this Act at 42 U.S.C. § 16911, and serious juvenile sexual offenders could face lifetime registration requirements and federal prosecution for failure to comply with the requirements of the Act. The Act also contains retroactive registration requirements for former juvenile sex offenders who are now adults and who come into the criminal justice system. Pennsylvania has yet to be in substantial compliance under the Adam Walsh Act.
- <sup>30</sup> Chapter 64 of Title 42 of the Pennsylvania Consolidated Statutes (42 Pa. C.S. §§ 6401–6409) is applicable to individuals who reside in a juvenile treatment facility and are about to turn twenty-one years of age, and who have been adjudicated delinquent for the following enumerated sex offenses: Rape (18 Pa. C.S. § 3121), Involuntary Deviate Sexual Intercourse (18 Pa. C.S. § 3123), Sexual Assault (18 Pa. C.S. § 3124.1), Aggravated Indecent Assault (18 Pa. C.S. § 3125), Indecent Assault (18 Pa. C.S. § 3126), and Incest (Pa. C.S. § 4302).
- <sup>31</sup> ABA, *Policy and Report on Crossover and Dual Jurisdiction Youth* (2008)
- <sup>32</sup> See Pa. R.J.C.P. 150(B).
- <sup>33</sup> Post-dispositional representation is critical to the accountability of the system, and it is a major goal of the MacArthur Foundation's Models for Change, which includes the Pennsylvania Juvenile Indigent Defense Network.
- <sup>34</sup> Bureau of Justice Assistance, U.S. Dep't of Justice, *Defining Drug Courts: The Key Components* (1997); Nat'l Legal Aid and Defender Assoc., *Ten Tenets of Fair and Effective Problems Solving Courts* (2002).
- <sup>35</sup> 18 Pa. C.S. § 9123; Pa. R.J.C.P. 170, 172.
- <sup>36</sup> See Pa. R.J.C.P. 390-391, 394-395, 396.
- <sup>37</sup> See Pa. R.J.C.P. 127.
- <sup>38</sup> See Pa. R.J.C.P. 120.



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