

South Carolina Commission on Indigent Defense

Performance Standards for Indigent Defense in Juvenile Cases

Effective July 1, 2013

The following Performance Standards for Indigent Defense (Public Defenders and Assigned Counsel) were formally adopted by the SC Commission on Indigent Defense on June 7, 2013, effective July 1, 2013. Counsel in juvenile cases should also refer to the general Performance Standards for Public Defenders and Assigned Counsel as adopted by the Commission on June 7, 2013, effective July 1, 2013.

These performance standards are not intended to provide a new basis for a claim of ineffective assistance of counsel. They are benchmarks taken from existing national standards, and do not and cannot redefine the existing precedents that set forth the basis for determining when reversible error has occurred.

Section 1. Purpose of Standards

Juvenile delinquency proceedings in the South Carolina Family Court are fundamentally different than adult criminal cases. Judges are charged by the South Carolina Code of Laws with acting in the “best interests of the child,” this emphasis on the rehabilitation of the child contrasts with the more punitive model used by the adult criminal justice system. These standards aim to provide guidance to appointed counsel in juvenile matters with particular emphasis on the distinctive requirements of the South Carolina juvenile justice system.

Section 2. Attorney Role

Guideline 2.1 *Function of Defense Counsel.* The participation of counsel for juveniles subject to delinquency proceedings in Family Court is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of these proceedings.

Guideline 2.2 *Role of Counsel.* Counsel’s role is to insure that the interests and rights of the juvenile client are fully protected and to insure that the juvenile is afforded due process. Additionally, counsel in juvenile cases should be familiar with dispositional alternatives and services, should investigate the client’s social, educational, and psychological history, and should advocate a plan approved by the client generally proposing the least restrictive alternative.

Guideline 2.3 *Attorney Qualification and Training.*

a. In order to provide competent representation, counsel should know the South Carolina Code of Laws, the South Carolina Rules of Evidence, the South Carolina Rules of Family Court, and the South Carolina Rules of Criminal Procedure.

b. Counsel should be cognizant of the roles of the Department of Juvenile Justice (DJJ), the Department of Social Services (DSS), the Department of Disabilities

and Special Needs (DDSN), and the Department of Mental Health (DMH). Counsel should be aware of the various service delivery systems and placement processes for these agencies.

c. Counsel should be encouraged to attend continuing legal education seminars devoted specifically to the function and procedures of representing juveniles subject to Family Court proceedings.

d. Counsel should review and follow the Performance Standards for non-capital representation as they apply to qualification and training.

Guideline 2.4 *Independence of Counsel*. It is essential that the professional independence of counsel and the integrity of the attorney-client relationship be maintained at all times.

Section 3. Attorney Responsibilities

Guideline 3.1 *Acting Diligently and Promptly*. Counsel is bound by Rule 1.3 of the Rules of Professional Conduct to act with reasonable diligence and promptness in representing the client. Counsel should be prompt in all dealings with the court, including attendance, submissions of motions briefs and proposed orders, and in dealing with clients and other interested parties.

Guideline 3.2 *Acting Ethically*. Counsel in a juvenile case must know and follow the standards of professional conduct set forth in the Rules of Professional Conduct and decisions of the South Carolina Supreme Court.

Section 4 Lawyer-Client Relationship

Guideline 4.1 *Client Meetings*. A lawyer should meet with the client as soon as practicable and as often as necessary to ascertain all relevant facts and matters related to the defense known to the client.

Guideline 4.2 *Keeping Client Informed*. The lawyer has a duty to keep the client informed on all developments in the case and of the lawyer's efforts and progress with respect to all phases of the representation. This duty may extend also to a parent or guardian whose interests are not adverse to the juvenile, subject to the confidentiality requirements of the South Carolina Rules of Professional Conduct

Guideline 4. *Confidentiality*. Counsel should seek to establish a relationship of trust and confidence with the client. The lawyer should explain to the client that full disclosure to counsel of all facts known to the client is necessary for effective representation and, at the same time, explain that the lawyer's obligation of confidentiality makes the client's disclosures to counsel privileged.

Guideline 4.4 *Client Duty and Responsibility*. A lawyer has a duty to his juvenile client to protect confidentiality and to consult with his client just as in an adult case. This duty to determine how to best approach the case and

any plea negotiations must be undertaken with the client being fully informed. In juvenile cases this must be done with the client's best possible legal resolution of the case in mind and not the best interest of the parent or guardian, which may at times conflict with the client's interest.

Guideline 4.5 *Resolving Conflicts of Interest*. The lawyer's principal duty is always first and foremost the representation of the client's legitimate interest and not personal or professional advantage or convenience. Conflicts of Interest rules should always be followed. The potential for conflict of interest between a juvenile and his or her parents should be clearly recognized and acknowledged. All parties should be informed that counsel represents the juvenile and that in the event of a disagreement between a parent or guardian and the juvenile, the attorney is required to serve the interests of the juvenile.

Guideline 4.6 *Advice to Give Client*. A lawyer should advise the juvenile client with complete candor concerning all aspects of the case. This includes a frank estimate of the probable outcome.

Guideline 4.7 *Testimony by Juvenile*. It is the duty of the attorney to protect the juvenile defendant's privilege against self-incrimination. If the client elects not to testify then the attorney should insist on the recognition of this right.

Guideline 4.8 *Decision Making*. Certain decisions related to the conduct of the case are to be made by the lawyer and others by the client. The client is ordinarily responsible, after being fully advised and consulting with Counsel for determining:

- i. The plea to be entered at adjudication;
- ii. Whether to cooperate in diversion program;
- iii. Whether to be tried as a juvenile or an adult, where the client has the choice;
- iv. Whether to testify on his or her own behalf.

Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what motions should be made, and similar strategic and tactical decisions are the exclusive province of the lawyer after full consultation with the client.

Section 5 Attorneys' Initial Duties

Guideline 5.1 *Early Release*. Whenever the nature and circumstances of the case permit, counsel should explore the possibility of diversion from the formal juvenile court process.

If the client is detained, the lawyer should immediately consider all steps that may in good faith be taken to secure the child's release from custody. At detention hearings the lawyer should be present and prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the

allegations, the appropriateness of the place and criteria used for detention, and any non-compliance with procedures for referral to court or for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile. Counsel must be familiar with and able to use the DJJ guidelines for release in preparation for and presentation at detention hearings.

Guideline 5.2 *Visiting Detention Facility*. Whenever the juvenile is detained, the attorney should regularly and periodically visit the juvenile. The attorney should keep records of these visits.

Section 6 Pretrial Duties

Counsel should be held to the same standards set forth in the non-capital representation regarding Pretrial Duties.

Section 7 Transfer Hearings

Counsel is responsible for being familiar with the provisions of SC Code of Laws Section 63-19-1210 and its application to the client. Counsel should be ready to argue for or against transfer of jurisdiction to or from the Family Court based on the best interests of the client. Counsel must prepare for Transfer Hearings and consider the need for expert witnesses or other witnesses necessary to support the position of the client regarding the transfer of jurisdiction.

Section 8 Plea Negotiations

Guideline 8.1 The client should be made aware of any plea negotiations. Clients should be aware of any plea negotiations as soon as practical to inform them. Counsel is responsible for explaining and making sure the juvenile understands the concept of plea bargaining in general as well as the details of any specific plea offer made to the client. Counsel must advise the client on all possible consequences of an adjudication, including collateral consequences. Where it appears that the client's participation in a psychiatric, medical, social, or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and seek the client's consent to participation in such a program.

Section 9 Trial/Adjudication

Guideline 9.1 *Trial/Adjudication Standards*. The trial of a case in Juvenile Court requires much if not all the same skills and preparation as required in any non-capital trial handled by an attorney. Therefore, close attention should be paid to the

provisions for handling a trial set forth in these Performance Standards for non-capital cases by indigent defense attorneys.

Guideline 9.2 *Disposition without Trial*. Counsel must be aware of any alternative programs, along with inquiring if the minor would qualify for such diversion program, which may be available and allow the case to be disposed of without trial. This would include, but not be limited to, negotiated guilty pleas, alternative dispositions, deferrals and diversion programs. As noted above, this requires counsel to be informed about all these possible resolutions and to have fully investigated them in the context of the client's case.

The client must also be fully informed regarding the alternatives to trial and the advantages and possible disadvantages of a trial versus a negotiated plea or diversion program or other disposition.

If the client elects to enter into any plea or any of the other dispositions available to him or her it is the attorney's responsibility to be sure the client is properly informed and prepared for the Court hearing that will impose this resolution short of trial, including the Court procedures and format, his or her expected conduct and the possible outcomes/sentences.

Guideline 9.3 *Trial of the case*. Counsel must prepare for the trial just as described in the Performance Standards for non-capital cases except for matters relating to juries since a jury is not available in juvenile adjudications.

Section 10 Disposition/Sentencing

Guideline 10.1 *Counsel's Role at Disposition Hearings*. The active participation of counsel at disposition is often essential to the protection of clients' rights and to furtherance of their legitimate interest. Counsel must know and be ready to address the DJJ Guidelines for disposition as they relate to the client's case. Counsel must prepare for the disposition just as described in the sentencing provisions of the Performance Standards for non-capital cases while being aware of all the various options available for disposition in the juvenile's case. This can be the most valuable service to a client by an attorney.

Guideline 10.2 *Duty to Investigate*. Counsel should promptly investigate all sources of evidence including any reports or other information that will be brought to the court's attention, including all witnesses who are material to the disposition decision. Whether or not social and other dispositional reports are readily available, the lawyer has a duty independently to investigate the client's circumstances, including such factors as previous history, family relations, economic condition and any other information relevant to disposition. The lawyer should look to secure the assistance of expert personnel needed for purposes of evaluation, consultation, or testimony with respect to formation of a dispositional plan.

Guideline 10.3 *Client Counseling*. Prior to disposition counsel should explain to the client the nature of the disposition hearing, the issues involved, and the alternatives open to the court. When psychological or psychiatric evaluations are ordered by the State or used by defense counsel, Counsel should fully discuss and explain the process of these procedures to the client.

Guideline 10.4 *Hearing Duties*. It is Counsel's duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

Guideline 10.5 *Counseling After Disposition*. At disposition counsel should urge the Court to apply dispositional requirements that fit the client and avoid placing a counterproductive burden on the client and his or her parent or guardian. Counsel has a duty to obtain the Court's Final Order and review it carefully. Counsel should file objections to any errors or irregularities in the order and seek a hearing. If the Court refuses to correct its order after the hearing, Counsel should consider filing an appeal on behalf of the client seeking appropriate relief. When a dispositional decision has been reached, it is Counsel's duty to explain the nature, obligations and consequences of the disposition to the client and his or her parent or guardian and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

Guideline 10.6 *Continuing Duty to Client*. The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render assistance to the juvenile in securing appropriate legal services for the client in matters arising from the original proceeding. No matter the outcome, if Counsel feels that counseling services are necessary for the juvenile and/or the parent or guardian, Counsel should do everything in his/her power to assist them in receiving this assistance. Counsel should embrace a holistic approach to the client that not only addresses the immediate legal needs of the client but also seeks to place the client in the best position possible to succeed after the Court matters are resolved.

Section 11 Post-Dispositional Hearing Duties

Guideline 11.1 *Post-Trial Matters*. Counsel must be informed about and be able to handle contempt proceedings and probation violation matters. The Performance Standards for non-capital representation apply to Counsel in these matters as well.

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