

## **Practice Standards**

December, 2012

### **Section XIII, Standards for Representation of Youth in Youth Court**

#### **3. HANDLING THE CASE:**

- A. In preparation for the probable cause hearing, counsel should:
  - a. Review all evidence to identify relevant and meritorious pretrial motions;
  - b. Be fully informed of the rules of evidence, court rules, and the law with relation to all stages of the hearing process; be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudicatory hearing;
  - c. Be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review;
  - d. Be aware of the confidentiality provisions that pertain to youth court proceedings;
  - e. Prepare the youth and, when appropriate, the youth's parent or guardian, for the proceeding by explaining the process and that the probation officer may contact them to get information; stress the importance of providing the probation officer with factually accurate information.
  
- B. During the probable cause hearing, counsel should use the testimony at the hearing as a discovery tool and elicit as much information as possible about the facts and circumstances of the case.
  
- C. If probable cause is found, counsel shall argue for the least restrictive placement for the youth pending arraignment.
  
- D. Counsel shall promptly investigate the case. Regardless of whether the youth wishes to admit guilt, counsel shall ensure that the charges in the disposition are factually and legally correct and that the youth is aware of any potential defense to the charges.
  
- E. When conducting the investigation, counsel should:
  - a. Obtain the arrest warrant, petition, and copies of all charging documents in the case to determine the specific charges that have been brought against the youth;
  - b. Obtain the police reports and any other records, documents, and statements;
  - c. Research relevant law to determine the elements of the offenses charged and defenses available; interview all witnesses favorable and adverse and obtain any criminal or juvenile history of the witnesses;
  - d. Ascertain if there is physical evidence and make prompt requests to examine and view the crime scene if possible;
  - e. Determine whether an expert is needed to assist in preparation of the defense or to rebut the prosecution's case.
  
- F. In preparation for the adjudicative hearing, counsel should review all statements, reports, and other evidence to determine whether motions are appropriate.

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G. At the adjudicative hearing, counsel shall, where it benefits the youth, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence.

H. Counsel shall offer evidence favorable to the youth's case and present lay and expert witnesses, if available.

I. Prior to engaging in plea negotiations, counsel must ensure that the youth and parent understand the concept of plea bargaining in general, as well as the details of any specific plea offer made to him or her.

J. Counsel should make it clear to the youth that the ultimate decision to enter the plea has to be made by the youth.

K. Counsel should investigate and candidly explain to the youth the prospective strengths and weaknesses of the case for the prosecution and defense, including the availability of prosecution witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication of delinquency.

L. Counsel should also ascertain and advise the youth of the court's practices concerning disposition, recommendations, and withdrawal of pleas or admissions.

M. Counsel's recommendation on the advisability of a plea or admission should be based on a review of the complete circumstances of the case and the youth's situation. Such advice should not be based solely on the youth's acknowledgement of guilt or solely on a favorable disposition offer.

N. The youth shall be kept informed of the status of the plea negotiations.

O. Where counsel believes that the youth's desires are not in the youth's best interest, counsel may attempt to persuade the youth to change his or her position. If the youth remains unpersuaded, however, counsel should assure the youth that he or she will defend the youth vigorously.

P. Notwithstanding the existence of ongoing plea negotiations with the prosecution, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to an adjudicatory hearing on the merits.

Q. Counsel should make sure that the youth is carefully prepared to participate in the procedures required and used in the particular court.

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R. Counsel must also be satisfied that the plea is voluntary, that the youth understands the nature of the charges, that there is a factual basis for the plea or admission, that the witnesses are or will be available, and that the youth understands the right being waived.

S. Counsel must consider whether an admission will compromise the youth or the youth's family's public assistance or immigration status. If it does, the youth may need to reconsider the decision to plead.

T. Counsel should be aware of the effect the youth's admission will have on any other court proceedings or related issues, such as probation or school suspension.

U. In preparation for the disposition hearing, counsel should:

- a. Explain to the youth and parent or guardian, if applicable, the nature of the dispositional hearing, the issues involved, and the alternatives open to the court;
- b. Explain fully and candidly the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the youth's responsibilities under the proposed dispositional plan.

V. Counsel should be familiar with and consider:

- a. The dispositional alternatives available to the court and any community services that may be useful in the formation of a dispositional plan appropriate to the youth's circumstances;
- b. The official version of the youth's prior records, if any;
- c. The position of the probation department with respect to the youth;
- d. The prosecutor's sentencing recommendation;
- e. Using a creative interdisciplinary approach by collaborating with educational advocates, social workers, and civil legal service providers;
- f. The collateral consequences attaching to any possible disposition;
- g. Any victim impact statement to be presented to the court;
- h. Requesting a continuance for disposition at a later date; and,
- i. Securing the assistance of psychiatric, psychological, medical, or other expert personnel needed for the purposes of evaluation, consultation, or testimony with respect to the formation of a dispositional plan.

W. Counsel shall provide the youth with continuous legal representation throughout the youth court process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement, and sealing of records.

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X. If counsel withdraws from representation of a youth following adjudication and disposition, counsel shall make all reasonable efforts to ensure that the youth is well represented in matters that stem from the youth's adjudication. This includes ensuring a smooth transfer of responsibility to new counsel or monitoring of the detention status, probation, treatment, and services provided an adjudicated youth.