

Practice Standards

September 26, 2018

Section XVI, Representation of a Minor Voluntarily Committed to a Mental Health Facility

3. HANDLING THE CASE:

A. In preparation for court hearings, counsel must thoroughly prepare for trial, the examination of both lay and expert witnesses, submission of trial briefs and stipulations, and all evidentiary considerations.

B. At any court proceedings, counsel should present and cross examine witnesses, offer exhibits as necessary, introduce evidence where appropriate, make arguments on the minor's behalf, and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the minor's decisions about the representation with respect to each issue on which the minor is competent to direct counsel. Counsel should pursue the minor's expressed objectives.

C. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions if authorized by the client. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

D. Counsel should determine and advocate for, on behalf of the minor, the least restrictive alternatives to meet the needs and wishes of the minor.

E. After the initial disposition of the case, counsel should discuss the end of the legal representation with the minor and discuss all avenues of appeal and other assistance in the future on behalf of the minor.

F. When counsel's representation terminates, counsel shall cooperate with the minor and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

G. Counsel should provide continuity in representation for the minor. Counsel shall advocate for an appropriate treatment and discharge plan to be developed. The treatment plan should be tailored to the minor's needs. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported. The treatment plan should include the following elements:

- a. All assessments of the minor's problems and needs;
- b. A brief description of the nature and effects of service and treatment already administered to the minor;
- c. A description of services and treatment to be administered, their possible side effects and feasible alternatives, if any;
- d. The identities of agencies and specific individuals who will, in the future, provide the services and treatment;
- e. The settings in which the services and treatment will be provided;

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- f. A time table for attaining the goals or benefits of treatment or care to be administered;
 - g. A statement of the criteria for transition to less restrictive placements, as well as the date for transfer or discharge; and,
 - h. A statement of the least restrictive conditions necessary to achieve the purposes of treatment.
- H. The discharge plan should include the following:
- a. An anticipated discharge date;
 - b. Criteria for discharge;
 - c. Identification of the facility staff member responsible for discharge planning;
 - d. Identification of community-based agency or individual who is assisting in arranging post discharge services;
 - e. Referrals for financial assistance needed by the patient upon discharge; and,
 - f. Other information necessary to ensure an appropriate discharge and adequate post discharge services.
- I. Counsel who has represented a minor pursuant to §53-21-112, MCA, should make every effort to maintain responsibility for the minor's legal representation so long as the respondent remains a minor subject to a voluntary admission or involuntary commitment.
- J. If counsel who represented the minor does not continue to represent the minor, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the minor's admission pursuant to §53-21-112, MCA. Specific objectives include:
- a. A smooth transfer of responsibility to new counsel who assumes representation of the minor, including representation in matters including the periodic review of the minor's status; and,
 - b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.