

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers and other experts who understand the public defender's advocacy role to investigate the various health and social services that may be available to the youth in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the youth.

C. Counsel shall advise the youth of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall advocate the youth's express wishes and shall not substitute his or her judgment about what is in the best interests of the youth. The primary role of counsel is to represent the perspective of the youth alone and not that of the youth's best interests or of the youth's parents or guardian. Appointment of a guardian-ad-litem to investigate the best interests of the child is a matter within the exclusive province of the court.

E. Counsel shall ensure that children do not waive appointment of counsel. Counsel should be assigned at the earliest possible stage of the youth court proceeding. Furthermore, counsel shall actively represent the youth at all stages of the proceeding. When the public defender becomes aware of the assignment, the public defender shall meet with the youth as soon as possible and sufficiently before any scheduled hearing or proceeding, including the probable cause or detention hearing, to permit effective preparation.

F. When meeting with the youth for the first time, counsel shall identify himself or herself by name and affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall explain that he or she is not a member of the facility staff. Counsel shall inform the youth their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others, including the youth's parent or guardian, in order to preserve the attorney-client confidentiality. Counsel shall also inform the youth that he or she has a right to remain silent.

G. Counsel shall maintain the attorney-client privilege with the understanding that the attorney represents the youth alone and not the youth's parents or guardians. The potential for a conflict of interest between the accused juvenile client and his or her parents should be clearly recognized and acknowledged. Counsel should inform the parent that he or she is counsel for the youth and that in the event of a disagreement between a parent or guardian and the youth, counsel is required to serve exclusively the interest of the youth.

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- H. During the conference, counsel shall:
- a. Explain the charges and possible dispositions;
 - b. Explain the youth court process, timelines, and the role of all the parties involved, such as judge, prosecutor, probation staff, guardian ad-litem, counsel, youth and parent;
 - c. Inform the youth and parent not to make statements to anyone concerning the offense;
 - d. Obtain signed releases by the youth and parent for medical and mental health records, school records, employment records, and other necessary records. Counsel should advise the youth of the potential use of this information and the privileges that attach to this information;
 - e. Obtain information from the youth concerning the facts of arrest and charges and whether there were any statements made, witnesses, co-defendants, and other relevant information.
- I. If the youth is detained, counsel must focus upon obtaining information relevant to the determination of pre-adjudication conditions of release. Such information should generally include:
- a. Youth's residence and length of time at the residence;
 - b. Youth's legal custodian and physical custodian with names, addresses, and phone numbers;
 - c. Mental and physical health and employment background, if any;
 - d. School placement, status, attendance, and whether the youth qualifies for special education;
 - e. Whether the youth or the youth's family had previous contact with the youth court system and the outcome of that contact;
 - f. Adults possibly willing to assume responsibility for the youth;
 - g. Useful social information, including the youth's home behavior, school performance, involvement with special education services, past or present employment, and other information concerning the youth's ability to stay out of trouble if released, and the parent's ability to control and discipline the youth.
- J. If counsel is unable to communicate with the youth because of language or other disability, counsel shall secure the assistance of such experts as are necessary to communicate with the youth.
- K. Whenever the nature and circumstances of the case permit, counsel should explore the possibility of informal adjustment under § 41-5-130, MCA.
- L. Counsel shall actively prepare the youth for any interview with the youth probation officer and accompany the youth at any such interview.

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M. If the court requires the posting of a bond, counsel should discuss with the youth and his or her parent or guardian the procedures that must be followed. Where the youth is not able to obtain release under the conditions set by the court, counsel should consider pursuing modifications of those conditions.