

Practice Standards

September 26, 2018

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

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the minor's case and explore the range of mental health and social services that may be available to the minor in the minor's community.

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

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

D. Counsel shall help the minor determine his or her objectives by advising him or her about the probability of success in pursuing those options. If the minor expresses a desire to seek voluntary mental health treatment in a particular setting or related social services, counsel must give the minor the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the minor's express wishes. The primary role of counsel is to represent the perspective of the minor alone, and not the perspective of the minor's relatives, friends, or guardian. This is true regardless of the age of the minor. In addition, counsel will not substitute his or her judgment about what is in the best interest of the minor. To the extent that a minor is unable or unwilling to express personal wishes, counsel must presume that the minor wishes to reside in the least restrictive environment.

F. Counsel shall meet with the minor as soon as possible after notification of his or her assignment to represent the minor. This meeting shall be conducted in private and shall be held sufficiently before any scheduled legal proceeding to permit effective preparation and allow pre-hearing assistance to the minor.

G. When meeting with the minor for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall make it clear to the minor that he or she is not a member of the facility staff. Counsel shall inform the minor that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve the attorney-client confidentiality. Counsel shall also inform the minor client of the right to remain silent prior to the commencement of any court-ordered examination and that the minor cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the following:

- a. The circumstances that brought about the attorney's assignment, including the voluntary admission, the minor's age at admission, the extent to which the

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minor's parents or guardian participated in that decision, and the reason that the minor asked for counsel if that request brought about the assignment;

- b. The names, addresses, and telephone numbers of all persons with knowledge of those circumstances;
 - c. Any information about the minor's past mental health treatment;
 - d. Information to aid the exploration of the minor's choices for treatment;
 - e. The name of a mental health professional of the minor's choice to conduct an independent evaluation.
- I. During the conference, counsel shall also:
- a. Explain what is happening and why, including a description of the judicial hearing if one is pending;
 - b. Explain the minor's rights in that process as well as the minor's rights regarding voluntary admission to mental health services; and
 - c. Explain that the minor may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender.

J. Immediately after being assigned, counsel should review the file and should inform other parties and other counsel of his or her assignment and that, as counsel of record, he or she should receive copies of any pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

K. Immediately after being assigned, counsel should meet with the minor adapting all communications to the minor's level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the minor about the court system, the proceedings, and counsel's responsibilities. Counsel should elicit and assess a minor's views and concerns of the case.

L. Counsel shall encourage and support the minor in maintaining contact with family members and friends if the minor so desires and when doing so would benefit the minor.

M. Counsel should thoroughly explain to the minor the requirements for a valid voluntary admission to a mental health facility under §53-21-111, MCA, and discuss all practical and legal considerations that flow from their admission.

N. If counsel believes it to be appropriate, counsel should seek to have a medical evaluation of the minor done by a qualified physician of the minor's choosing, and preserve said examination for further use on behalf of the minor.

O. Counsel should conduct thorough, continuing and independent investigations, including reviewing the minor's social service records, mental health records, if applicable, drug

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and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

P. If the public defender was assigned to the case because there is an upcoming legal proceeding, such as an involuntary commitment proceedings, counsel will follow the appropriate public defender standards as well as these Standards.

Q. Counsel must ensure that a minor's consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to the client.

R. If the minor indicates that he or she would consent to voluntary treatment, counsel shall:

- a. Determine whether the minor was indeed aware that by electing to receive voluntary patient status, he or she was agreeing to enter or remain in mental health services; and,
- b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

S. If counsel has determined that the minor's consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceeding.

T. When, due to the minor's disability, the effect of medication, or other factors, counsel is unable to determine that the consent to voluntary patient status was made knowingly and voluntarily, he or she shall investigate the circumstances of the minor's stated desire to voluntarily receive treatment.