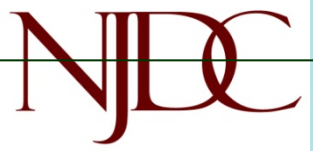




Ethics and the Role of Counsel in Delinquency Proceedings

2008 New Juvenile Defender Program
UNC-Chapel Hill School of Government
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Mary Ann Scali
Deputy Director
National Juvenile Defender Center
Washington, DC



NJDC Mission

*to ensure excellence in
juvenile defense and promote
justice for all children*

www.njdc.info

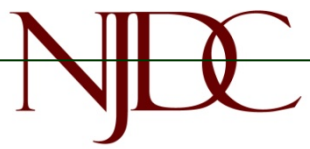
Objectives

- to review the ***ethical duties*** of a juvenile defense attorney
- to review the ***role*** of a juvenile defense attorney
- to discuss how ethical duties and the role of counsel impact juvenile defense practice

Ethical Duties

- American Bar Association's Model Rules of Professional Conduct (MRPC)

- North Carolina Revised Rules of Professional Conduct



American Bar Association's Model Rules of Professional Conduct (MRPC)

Rule 1 Client-Lawyer Relationship

Rule 2 Counselor

Rule 3 Advocate

Rule 4 Transactions with Persons Other Than Clients

Rule 5 Law Firms and Associations

Rule 6 Public Service

Rule 7 Information About Legal Services

Rule 8 Maintaining the Integrity of the Profession



American Bar Association's
Model Rules of Professional Conduct (MRPC)

- ***Client-Lawyer Relationship***
Rule 1.1 Competence
- A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.



American Bar Association's Model Rules of Professional Conduct (MRPC)

Client-Lawyer Relationship

Rule 1.4 Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

American Bar Association's Model Rules of Professional Conduct (MRPC)

- ***Client-Lawyer Relationship***
Rule 1.14 Client With Diminished Capacity
- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, **whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.**
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
- (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.



American Bar Association's Model Rules of Professional Conduct (MRPC)

- ***Counselor***
Rule 2.1 Advisor
- In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

North Carolina Revised Rules of Professional Conduct

Preamble and Scope

0.1 Preamble: A Lawyer's Responsibilities

- [1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As **advisor**, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As **advocate**, a lawyer zealously asserts the client's position under the rules of the adversary system. As **negotiator**, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As **evaluator**, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.



North Carolina Revised Rules of Professional Conduct

[4] In all professional functions a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.



North Carolina Revised Rules of Professional Conduct

7] A lawyer should render public interest legal service and provide civic leadership. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, society, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.



**North Carolina
Revised Rules of Professional Conduct**

[10] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. **A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.**

Role of Juvenile Defense Counsel

Representing the Expressed Interests of

- U.S. Supreme Court
- IJA/ABA Juvenile Justice Standards
- NJDC/ACCD 10 Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems
- North Carolina Statement of Role of Counsel in Juvenile Delinquency Proceedings

In re Gault, 387 U.S. 1 (1967)

The role of defense counsel in delinquency proceedings is to assist the client in “coping with problems of law, to make skilled inquiry into facts, to insist upon the regularity of the proceedings, and to ascertain whether the client has a defense and to prepare and submit it.”



American Bar Association and the Institute of Judicial Administration (IJA/ABA) Juvenile Justice Standards

Standards Related to Counsel for Private Parties state that the “(3.1)(a) *client’s interests [are] paramount.* However engaged, the lawyers principal duty is the representation of the client’s legitimate interests.”

Commentary

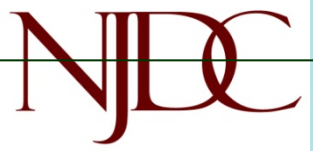
“Although adversarial representation and devotion to a client’s perceived interests may be more or less inconvenient for counsel in juvenile court; this consequence is, part of the lawyers professional role and must be accepted.”

American Bar Association and the Institute of Judicial Administration (IJA/ABA) Juvenile Justice Standards

Standards Related to Counsel for Private Parties (5.2)

(a-b after full consultation with the client, **the lawyer has exclusive province** over, “what witnesses to call, whether and how to conduct cross-examination, what jurors to accept and strike, what trial motions should be made, and any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client.”

“after full consultation with counsel, **[the client] is ordinarily responsible for determining:** the plea to be entered at adjudication; whether to cooperate in consent judgment or early disposition plans; whether to be tried as a juvenile or an adult, where the client has that choice; whether to waive jury trial; whether to testify on his or her own behalf.”



NJDC/ACCD

Ten Core Principles for Providing Quality Delinquency Representation

1

The Indigent Defense Delivery System upholds juveniles' right to counsel throughout the delinquency process & recognizes the need for zealous representation to protect children.

Ten Core Principles for Providing Quality Delinquency Representation

2

The Indigent Defense Delivery System recognizes that legal representation of children is a specialized area of the law.

Ten Core Principles for Providing Quality Delinquency Representation

3

The Indigent Defense Delivery System supports quality juvenile delinquency representation through personnel and resource parity.

Ten Core Principles for Providing Quality Delinquency Representation

4

The Indigent Defense Delivery System utilizes expert and ancillary services to provide quality juvenile defense services.

Ten Core Principles for Providing Quality Delinquency Representation

5

The Indigent Defense Delivery System supervises attorneys & staff and monitors work and caseloads.

Ten Core Principles for Providing Quality Delinquency Representation

6

The Indigent Defense Delivery System supervises & systematically reviews juvenile defense team staff for quality assurance according to national, state, and/or local performance guidelines or standards.

Ten Core Principles for Providing Quality Delinquency Representation

7

The Indigent Defense Delivery System provides and supports comprehensive, ongoing training & education for all attorneys & support staff involved in the representation of children.

Ten Core Principles for Providing Quality Delinquency Representation

8

The Indigent Defense Delivery System has an obligation to present independent treatment & disposition alternatives to the court.

Ten Core Principles for Providing Quality Delinquency Representation

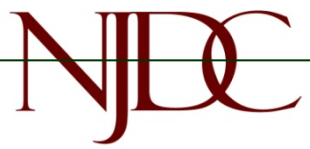
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The Indigent Defense Delivery System advocates for the educational needs of clients.

Ten Core Principles for Providing Quality Delinquency Representation

10

The Indigent Defense Delivery System
must promote fairness &
equity for children.

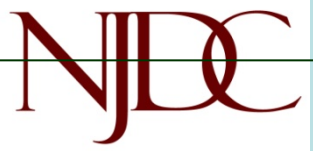


North Carolina Statement of Role of Counsel in Juvenile Delinquency Proceedings

- the attorney shall be the juvenile's voice to the court at every stage of proceedings
- An attorney for a juvenile is bound to advocate for the expressed interests of the juvenile.

North Carolina Statement of Role of Counsel in Juvenile Delinquency Proceedings

- The attorney has the responsibility to counsel the juvenile, recommend to the juvenile actions consistent with the juvenile's interest, and advise the juvenile as to potential outcomes of various courses of action.



North Carolina Statement of Role of Counsel in Juvenile Delinquency Proceedings

- The attorney for the juvenile shall meet with the juvenile as soon as is practical; communicate with the juvenile in a manner that will be effective, considering the juvenile's maturity; physical, mental and or emotional health, intellectual abilities, language, educational level, special education needs, cultural background and gender; educate the juvenile, and keep the juvenile informed of the status of the proceedings.



North Carolina Revised Rules of Professional Conduct

Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, **when properly advised and assisted**, is capable of making decisions about important matters.

Ethics & the Role of Counsel Hypotheticals

- Mark has been held in secure custody while he waits for his five-day detention hearing on Monday.
- His grandmother tells you at the detention hearing that she wants to be present with you when you talk to Mark because she wants to make sure you don't put words in his mouth.
- She also tells you that he is going to plead to all of the charges because "he did it."
- She also tells you that he cannot come home because she's tired of him and wants the court to do something about him or lock him up.
- Before you speak with Mark, the court counselor tells you that Mark is denying the charges and that he wants to go home despite what his grandmother says.
- The court counselor discusses with you alternative placements that could be available rather than detention.

What ethical issues are you presented with and how should you deal with them?

Ethics & the Role of Counsel Hypotheticals

- At the five-day secure custody hearing, the assistant district attorney offers Mark a plea agreement.
- If Mark pleads to the resist charge and the disorderly conduct charge, the assistant district attorney will dismiss the sexual battery charge.
- The assistant district attorney will recommend Mark's release, but Mark will have to undergo a sex offender specific evaluation prior to the dispositional hearing.
- The assistant district attorney states that if Mark doesn't accept the plea today, then the offer is "off the table."
- In your discussion with Mark prior to your discussion with the assistant district attorney, Mark denied all of the charges but has told you that he will do "whatever he needs to" to be released.
- The judge calls Mark's case before you have an opportunity to speak with him.

What do you do?

Ethics & the Role of Counsel Hypotheticals

- Mark is out of secure custody, and you meet with him in your office pending his adjudicatory hearing.
- Although he denies having touched Mary, Mark reveals that he has touched his younger cousin Freddie inappropriately on several occasions.
- Mark is very remorseful about this, and feels that he “needs help,” but is still adamant in denying that he touched Mary. He asks you if the court provides any services that would help him.
- Mark has not revealed to anyone else that he touched Freddie.

How do you counsel Mark?

Is there any obligation to contact law enforcement in this situation? What about the Department of Social Services?

Ethics & the Role of Counsel Hypotheticals

- You have questions about Mark's competence to proceed and assist in his defense.
- You suggest to Mark that you would like him to talk with someone about the court process because you are concerned he does not understand the proceedings.
- Mark is extremely defensive and says he is not stupid and he does understand the court process.
- Mark does not want to talk to anybody who will ask him a bunch of confusing questions and make him look dumb.

What do you say to Mark?

What do you do?



National Juvenile Defender Center

1350 Connecticut Avenue NW, Suite 304

Washington, DC 20036

Phone: 202-452-0010

www.njdc.info

ensuring excellence in juvenile defense & promoting justice for all children