

**STATE OF CONNECTICUT
DIVISION OF PUBLIC DEFENDER SERVICES**

PERFORMANCE GUIDELINES FOR COUNSEL IN JUVENILE MATTERS

PURPOSE:

These guidelines are intended to encourage Public Defenders and Assigned Counsel contracted by the Division of Public Defender Services to perform to a high standard of representation and to promote professionalism in the representation of Division clients. As used in these Performance Guidelines, (1) Public Defenders shall mean all Public Defenders, Executive Assistant Public Defenders, Supervisory Assistant Public Defenders, Senior Assistant Public Defenders, Assistant Public Defenders, Deputy Assistant Public Defenders and (2) counsel shall mean all Public Defenders and Assigned Counsel who contract with the Office of Chief Public Defender (OCPD).

These Guidelines are intended to be used as a guide for the representation of clients. However, the obligations due a client are not limited by the Guidelines articulated here; attorneys are also expected to use their individual professional judgment in representing clients. If that judgment mandates a departure from these Guidelines, the attorney should be aware of and be able to articulate the reasons that a departure from these Guidelines is in the client's best interests.

These Guidelines should be used by counsel in evaluating and improving their own performance and by supervising attorneys in evaluating staff performance. However, these Guidelines are not intended to be used as criteria for the judicial evaluation of performance or alleged misconduct or effectiveness of counsel.

SECTION 1: GENERAL PROVISIONS

GUIDELINE 1.1 ROLE OF COUNSEL

- 1) Counsel should zealously represent and advocate for each client and render effective assistance of counsel.
- 2) To ensure the preservation, protection and promotion of the client's rights and interests, counsel has a continuing obligation to:
 - a) be proficient in the applicable substantive and procedural law;
 - b) acquire and maintain appropriate experience, skills and training;
 - c) devote adequate time and resources to the case;
 - d) engage in the preparation necessary for quality representation;
 - e) endeavor to establish and maintain a relationship of trust and open communication with the client;
 - f) keep the client informed and seek the lawful objectives of the client;
 - g) promptly comply with reasonable requests for information including the attorney client file; and,
 - h) make accommodations and take reasonably necessary protective action where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.
- 3) Counsel should adhere to the Rules of Professional Conduct and other guidelines of professional conduct as stated in statutes, rules, court decisions, codes or canons and adhere to the Rules of the Superior Court.
- 4) Counsel should act with reasonable diligence and promptness in representing clients.
- 5) Counsel should abide by the policies adopted by the Connecticut Public Defender Services Commission and the Chief Public Defender in regard to the representation of a client.

GUIDELINE 1.2 CONFLICTS OF INTEREST

- 1) Counsel should adhere to the Rules of Professional Conduct regarding conflicts of interest.
- 2) Counsel should be cognizant of the existence of any potential and actual conflicts of interest which would impair counsel's ability to represent a client, including if the representation of one client in the same or a substantially related matter in which that person's interests are materially adverse to those of a current or former client, and report any such conflict to his/her supervisor immediately upon learning of such.

- 3) Except at arraignment, counsel should not represent a client when a conflict of interest exists between co-defendants or multiple defendants such that the representation of one client will be directly adverse to the other client.
- 4) Counsel should not represent a client if the representation of that client involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - a) the representation of one client will be directly adverse to another client; or
 - b) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- 5) Counsel who has formerly represented a client should not thereafter use information relating to the former representation to the disadvantage of a former client except as the Connecticut Rules of Professional Conduct would permit or require with respect to a client, or when the information has become generally known or reveal information except as the Rules permit.
- 6) Counsel should not withdraw solely on the basis of a personality conflict with the client or a difference of opinion as to how to proceed in the case, unless required by the Rules of Professional Conduct.
- 7) The filing or existence of a habeas corpus petition or grievance against counsel in regard to his/her quality of representation shall not create a conflict of interest per se. Withdrawal by counsel from the representation of a client under such circumstances should occur if ordered by the court upon motion by the client or if counsel is of the opinion that the filing or existence of the habeas corpus petition or grievance will interfere with counsel's ability to adequately represent the client.
- 8) Counsel should withdraw from representation: (1) upon the filing of a claim with the Connecticut Claims Commissioner or a civil lawsuit in state or federal court against counsel by a client alleging malpractice; (2) upon a finding of probable cause in connection with a grievance complaint; or, (3) if counsel has been scheduled to testify at a habeas corpus trial in which (a) counsel is the subject of the claim of ineffective assistance of counsel which has been raised in the petition and, (b) the pleadings have been closed.
- 9) Counsel shall not provide financial assistance to an indigent client in connection with a pending case except in accordance with the policies of the Public Defender Services Commission and the Rules of Professional Conduct.

GUIDELINE 1.3 LAWYER-CLIENT RELATIONSHIP

- 1) Counsel should seek to establish a relationship of trust and confidence with the client.

- 2) As soon as practicable after being appointed, counsel should contact the client and conduct an initial client interview.
- 3) Counsel should schedule confidential legal visits with the incarcerated client when necessary to provide effective representation and maintain effective communication with the client by mail or telephone.
- 4) Counsel should preserve all client confidences and should not knowingly disclose privileged and confidential information obtained during the course of representation, unless authorized to do so by the client or the court or as otherwise permitted by law or the Connecticut Rules of Professional Conduct.
- 5) Counsel should ensure that barriers to communication with the clients, such as differences in language or literacy, are overcome. Counsel should make accommodations and take reasonably necessary protective action where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.

GUIDELINE 1.4 DUTY TO KEEP CLIENT INFORMED

- 1) Counsel should promptly keep the client informed of any developments in the case and the progress of the preparation of the case, and promptly provide sufficient information to permit intelligent participation in decision making by the client.
- 2) Counsel should promptly comply with reasonable requests for information received from the client including requests for a copy of the attorney client file and promptly reply to client correspondence and telephone calls.
- 3) Counsel in a delinquency matter should inform and explain to the client that he/she has the constitutional right to (1) plead not guilty; (2) in an adult criminal matter to be tried by a judge or a jury; (3) to the assistance of counsel; (4) to confront and cross-examine witnesses against him/her; (5) to testify; and, (6) to not be compelled to incriminate him/herself.
- 4) Counsel for a parent in a child protection matter should inform and explain to the client that he/she has the right to admit or (1) deny the allegations against them; (2) to have the allegations tried before a judge; (3) to the assistance of counsel; (4) to confront and cross examine the witnesses against them; (5) to testify; (6) to maintain some decision making authority over their child while the allegations are pending; (7) to propose alternative placement options for their child; (8) to have the Department of Children and Families provide services and make reasonable efforts to reunite their families.

- 5) Counsel for a minor child or a guardian ad litem in a child protection or family matter shall keep the child informed of the progress of a case in a developmentally appropriate manner tailored to the needs of the client. Counsel should discuss the case with the child to determine the child's goals and desired outcomes.
- 6) Counsel should explain to the client the court procedures and provide sufficient information to the client so that he/she can participate intelligently in decisions relating to the objectives in the case.
- 7) Counsel should explain the attorney-client privilege to the client and explain to the client that he/she is not required to speak to anyone regarding the case without counsel present.

GUIDELINE 1.5 PROTECTING CONFIDENTIALITY

Counsel should ensure that confidential communications between counsel and the client are conducted in privacy, including making reasonable efforts to compel court and other officials to make necessary accommodations for confidential and privileged discussions between counsel and clients in places where clients must confer with counsel. Counsel in juvenile matters must be aware that the attorney client privilege runs to the client but not to the parent or guardian. The client must be advised of this. Care must be taken to keep protected communication confidential.

GUIDELINE 1.6 REPRESENTATION AFTER DISPOSITION IN JUVENILE MATTERS

Counsel's responsibility to the client is governed by Section 3-9 of the Connecticut Practice Book. Counsel is expected to maintain representation of the client through the end of all court orders in delinquency and child welfare cases. Counsel in delinquency cases are expected to maintain active representation until the child's probation or commitment period ends unless proper referral is made to the OCPD Post Conviction Unit. Counsel in Child Welfare Matters are expected to maintain active representation through the conclusion of the client's involvement with DCF.

GUIDELINE 1.7 THE IMPAIRED CHILD CLIENT

- 1) Counsel for the minor child shall determine whether the child client's ability to make decisions or to communicate in connection with the case is impaired due to age, mental impairment or other reason. In making the determination, the lawyer should consult the child and may consult other individuals or entities that can provide the child's lawyer with the information and assistance necessary to determine the child's ability to direct the representation.

- 2) If the child client is impaired and unable to communicate or direct the representation, counsel for the minor child shall take protective action as contemplated by Section 1.14 of the Connecticut Rules of Professional Conduct.
- 3) When a child client is impaired the counsel for the minor child shall make a good faith effort to determine the child's needs and wishes. The child's lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the child client.
- 4) Where a normal client-lawyer relationship is not reasonably possible to maintain, counsel for the minor child in a child welfare matter shall make a substituted judgment determination. A substituted judgment determination includes determining what the child would decide if he or she were capable of making an adequately considered decision, and representing the child in accordance with that determination. Counsel for the minor child should take direction from the child as the child develops the capacity to direct the lawyer. Counsel for the minor child shall advise the court of the determination of capacity and any subsequent change in that determination.
- 5) Where counsel for the minor child in a juvenile delinquency case believes that the child is impaired and is unable to participate in his or her own defense or comprehend the proceedings, counsel should have the child evaluated to determine competency to stand trial.
- 6) In cases where the child client is impaired, counsel for the minor child may consult with the guardian ad litem. The attorney for the child must take care not to substitute the role of best interest advocate but to continue to advocate on behalf of the child's wishes to the best of their ability.

SECTION II TRAINING AND EXPERIENCE

GUIDELINE 2.1 GENERAL QUALIFICATIONS

- 1) Counsel should be familiar with substantive criminal or civil law, criminal or civil procedural law, the Connecticut Rules of Practice and the prevailing customs or practices of the court in which he/she practices.
- 2) Counsel for the minor child and Guardians ad litem in Family Matters must complete the training program required by Section 25-62 and 25-62A of the Connecticut Practice Book.
- 3) Counsel for in Child Welfare matters are required to complete pre service training of up to three days prior to being eligible to represent child or parent clients.

- 4) Counsel in juvenile delinquency, child welfare and family matters should have training in the following areas:
 - a. adolescent and child development;
 - b. adolescent brain development as it relates to decision making;
 - c. special issues relating to child's statements;
 - d. educational Issues and Special education;
 - e. domestic violence and its effect on children;
 - f. impact of incarceration on families; and,
 - g. adolescent and adult substance abuse.

GUIDELINE 2.2 CONTINUING OBLIGATION

- 1) Counsel has a continuing obligation to stay abreast of changes and developments in criminal and civil law and criminal and civil procedure as it applies to his/her legal practice.
- 2) Counsel has an obligation to continue his/her legal training, professional development and education through the weekly review of the Connecticut Law Journal and other legal periodicals. Counsel should participate in person or via taped or multimedia programs, in Public Defender, bar and professional legal association, regional, or national legal training events, legal seminars and training. Public Defenders employed by the Commission should complete a minimum of twelve hours of such training annually. Assigned Counsel must complete a minimum of six hours of such training annually and certify such completion to the Office of Chief Public Defender annually.
- 3) Supervisory attorneys as office heads shall be provided with management training on a regular periodic basis.

GUIDELINE 2.3 PUBLIC DEFENDER STAFF ATTORNEYS

- 1) Newly hired Public Defenders shall be required to participate in the following training activities during their first year as employees of the Division of Public Defender Services:
 - a) A New Attorney Training Program conducted by the OCPD Training Department covering the duties and responsibilities of a Public Defender, ethics of defense practice, basic criminal practice and procedure, and a review of the Connecticut Public Defender Services Commission Guidelines on Indigent Defense. Said Training Program shall be conducted over a twelve-month period in accordance with a curriculum developed by the OCPD Training Department. An appropriate training in juvenile matters may be substituted for any part of the program at the discretion of the Director of Delinquency Defense and Child Protections and the Director of Training
 - b) A Trial Advocacy Program conducted by the OCPD Training Department covering the development of basic trial skills for criminal defense. When

available, a newly hired attorney in juvenile matters may participate in an approved trial advocacy program focused on juvenile delinquency matters at the discretion of the Director of Delinquency Defense and Child Protections and the Director of Training.

- c) A Mentor Program through which newly hired Public Defenders will be paired with an experienced Public Defender for the first six months of employment. The mentor will be available to meet periodically with the new Public Defender and to provide advice and assistance as necessary to support the new Public Defender during this transition period.
- d) The Chief Public Defender may vary any of the requirements of this section based on the prior experience of the newly hired Public Defender.

GUIDELINE 2.4 ASSIGNED COUNSEL IN JUVENILE AND FAMILY MATTER

- 1) New Assigned Counsel for Juvenile Matters-Child Protection must complete a three day pre service training on child protection practice and procedure before being assigned cases under the contract. The new Assigned Counsel must also attend a fourth day of follow up training and work with a mentor for the first year of the contract or as deemed necessary by the Office of Chief Public Defender.
- 2) Assigned Counsel for Family Matters-AMC/GAL must complete the 6 day training program required by Connecticut Practice Book Section 25a-62 before being eligible to take cases.
- 3) New Assigned Counsel for Juvenile Matters-Delinquency must participate in Basic Training for Assigned Counsel.
- 4) All Assigned Counsel for Juvenile and Family Matters must certify that they have completed 6 hours of training annually at the time of renewal of the contract.

SECTION III: GUIDELINES FOR COUNSEL IN A JUVENILE DELINQUENCY MATTER

GUIDELINE 3.1 ROLE OF DEFENSE COUNSEL IN JUVENILE MATTERS: DELINQUENCY

- 1) Counsel should abide by the general guidelines enumerated in Section I.
- 2) The duty to keep the client informed may extend, in the case of a juvenile client, to a parent or guardian whose interests are not adverse to the juvenile's, subject to the requirements of client confidentiality.
- 3) Counsel in juvenile delinquency matters often has occasion to counsel the client and, in some cases, the client's family with respect to related non-legal matters

(e.g. education, family, therapy, etc.), which should be discharged to the best of counsel's training and ability or with appropriate assistance of other professions by referral.

- 4) Whenever the nature and circumstances of the case permit, counsel should explore the possibility of an early diversion from the formal juvenile court process through other community resources. Participation in non-judicial stages of the juvenile court process may well be critical to such diversion, as well as to protection of the client's rights.
- 5) Counsel should be prepared to assist in securing appropriate legal or other services for the client in matters arising from or related to the juvenile proceedings.
- 6) Counsel should be familiar with dispositional alternatives and services, should investigate the client's social educational and psychological history, and should advocate a plan approved by the client generally proposing the least restrictive alternative.
- 7) In any case in which a judicial detention hearing will be held regarding a juvenile client, counsel should be prepared to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place detention, the sufficiency of evidence to support the legal criteria used for detention, and any noncompliance with procedures for referral to court or placement in detention. Counsel should also be prepared to present evidence of less restrictive alternatives to detention and a plan for pretrial release of the juvenile client.
- 8) In any case involving a Motion to Transfer a juvenile matter to the adult criminal docket, counsel shall inform the client and their family of the consequences of the transfer. Counsel should litigate all motions to transfer. A hearing on a motion to transfer should include information on a client's background, criminal record, educational progress and any developmental or mental health issues.

GUIDELINE 3.2 INITIAL CLIENT INTERVIEWS

- 1) Counsel should conduct a client interview as soon as practicable after being appointed by the court, in order to obtain information necessary to provide quality legal representation at the early stages of the case and to provide the client with information concerning counsel's representation and the case proceedings. Counsel should conduct the initial interview with the client sufficiently before any further court proceeding so as to be prepared for that proceeding.
- 2) To the extent possible, counsel should prepare for this interview with the client by obtaining and reviewing relevant documents available including but not limited to

petitions and/or charging documents, police and other law enforcement reports, and the reports of any pretrial detention agencies or programs, where applicable.

- 3) To the extent possible, counsel should obtain the following types of information from the client at the initial interview:
 - a) the facts surrounding the allegations against or affecting the client;
 - b) any possible witnesses who should be located;
 - c) any evidence of improper conduct by police or other investigative or law enforcement agencies; juvenile or mental health departments or the prosecution which may affect the client's rights;
 - d) any evidence that should be preserved;
 - e) evidence of the client's competence to stand trial and/or mental state at the time of the offense; and,
 - f) any necessary releases or authorizations to obtain records or documents deemed relevant by counsel to the representation of the client including but not limited to physical, mental health, educational or military records or other legal proceedings.

- 4) When representing a minor child in a criminal or juvenile delinquency matter, counsel shall also discuss the following at the initial client interview:
 - a) Educational issues, including school attending, grade level, special education services being received and concern of the client or family regarding the client's school situation.
 - b) Who the child lives with.
 - c) The names and ages of other children and adults living in the home.
 - d) The names of family members or other interested adults who can be a placement resource for the client.
 - e) Whether the child or anyone in the home is currently receiving or has ever received services of any kind from DCF.

- 5) As applicable, counsel should convey the following types of information to the client:
 - a) the charges and the nature of the allegations, what the state must prove, and maximum potential sentence that could be imposed if the client were convicted;
 - b) an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with counsel;
 - c) a general procedural overview of the likely progression of the case;
 - d) the procedures that will be followed in setting the conditions of pretrial release, if applicable to the type of proceeding and the particular client;
 - e) an explanation of the type of information that will likely be requested in any interview that may be conducted by juvenile detention or juvenile probation personnel, or others and what information the client should and should not provide;
 - f) the importance of maintaining contact with counsel and the need to notify counsel of any change of address or if charged with additional offenses;

- g) the names and contact information of counsel and staff assisting with the case;
- h) when counsel will see the client next;
- i) realistic answers, where possible, to the client's questions; and,
- j) any arrangements that will be made or attempted for the satisfaction of the client's needs, including medical or mental health attention and contact with family.

GUIDELINE 3.3 CONTROL AND DIRECTION OF THE CASE

- 1) Counsel should advise the client of those decisions that are ultimately for the client, which are:
 - a) what pleas to enter;
 - b) whether to accept a plea agreement;
 - c) whether to testify in his/her own behalf; and,
 - d) whether to appeal;
- 2) Counsel should advise the client of the existence of any lesser-included offense.
- 3) Counsel should advise the client that strategic and tactical decisions will be made by counsel and that such decisions include the type of motions that will be filed.
- 4) Counsel should fully discuss with and advise the client of the advantages or disadvantages of accepting a plea offer.
- 5) Counsel should fully discuss with and advise a client whether to testify at trial.
- 6) Counsel representing a minor child must be cognizant that the right to make decisions regarding a case run to the client and not to the parent or guardian. While is appropriate to discuss case outcomes and decisions with a parent or guardian when the client gives consent, counsel must ensure that all decisions are made by the client knowingly and voluntarily.

GUIDELINE 3.4 PRETRIAL RELEASE

- 1) When a client is in custody, counsel should explore and discuss with the client the pretrial release of the client under the conditions most favorable to the client and attempt to secure that release.
- 2) Counsel should obtain information regarding the client, including family and community ties, immigration status, school or employment history, physical and mental health, participation in community programs, past criminal and delinquency record, the ability of the client, relatives or third parties to provide supervision for the client, the feasibility and possible benefits of requesting a bond, and the names of individuals or other sources that counsel can contact to verify the information provided by the client.

- 3) Counsel should contact parents, guardians or family members to assist with the preparation of proposed conditions of release or suspended orders of detention. Where appropriate, and where the child client consents, a referral may be made to the Department of Children and Families to assist in providing supervision or a place to reside. Counsel must keep in mind the duty to represent the wishes of the child client and should make a proposal concerning conditions of release that are least restrictive with regard to the client.
- 4) If the court sets conditions of release or suspended orders of detention, counsel should explain to the client the conditions of release and potential consequences of violating such conditions. Counsel should explain the conditions and the potential consequences of violating such conditions to the parents, guardians or individual responsible for supervising the child client.
- 5) Where the client is remanded and ordered detained, counsel should request the shortest return to court and not automatically acquiesce to the statutory remand period. Counsel should object to any screening, evaluations or other mental health testing that would put the client in jeopardy of self incrimination. Counsel should counsel the client that discussions with the staff in detention or probation are not confidential and could be used against them in any proceeding.
- 6) Where the client is remanded, counsel should inform the court the juvenile detention facility personnel about any medical, psychiatric, or security needs of the client and request that the court direct the appropriate officials to take steps to meet such special needs.

GUIDELINE 3.5 PRETRIAL ACTIVITY

Counsel in a delinquency matter shall adhere to Sections 6.1-6.4 of the Guidelines for Indigent Defense,

GUIDELINE 3.6 CONDUCT OF PLEA NEGOTIATIONS

All discussions of plea agreements must be conducted in a manner appropriate to the age and developmental ability of the client.

Counsel should not accept or reject any plea agreement without the authorization of the client.

Counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case to exert undue influence on the client's decision as to his/her plea.

Parents, guardians and responsible adults should be advised of plea negotiations. Counsel must adhere to the wishes of the child client in the decision whether to accept or reject a plea agreement.

GUIDELINE 3.7 DISCUSSIONS WITH THE CLIENT CONCERNING PLEA NEGOTIATIONS

- 1) After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel should discuss, in a manner appropriate to the age and developmental ability of the client, all alternatives, including the possible resolution of the case through a negotiated plea of guilty. Counsel should make it clear to the client that the ultimate decision to enter a plea of guilty has to be made by the client. All discussions must be conducted in a manner appropriate to the age and developmental ability of the client.
- 2) Counsel should advise the client with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.
- 3) Counsel should caution the client to avoid communication about the case with witnesses or other individuals, except with the approval of counsel.
- 4) Counsel should explain to the client the evidence that the state has and elicit from the client all relevant information in regard to the aspects of the case, including but not limited to, background information concerning the defendant, his/her prior convictions and the events surrounding the offenses charged.
- 5) Counsel should discuss with the client any ongoing plea negotiations and convey all offers to the client.
- 6) Counsel should discuss with the client the advantages and disadvantages of accepting a plea agreement.
- 7) Counsel should discuss with the client any rights that are waived by acceptance of a plea agreement.
- 8) Counsel should discuss with the client the nature of the charge to which he/she would be entering a plea, the possible maximum sentences which the client is exposed to as a result of the plea and any other questions that the court may raise during the plea canvass including:
 - a) the maximum term of commitment to the Department of Children and Families;
 - b) the possibility that the client could be subject to a recommitment and face additional time in custody past the term ordered at the disposition;
 - c) the amount of restitution that may be ordered;
 - d) other consequences of conviction such as deportation, and other collateral consequences; and,
 - e) the possible and likely place and manner of confinement.

GUIDELINE 3.8 PREREQUISITES FOR GUILTY PLEAS

- 1) Before counsel advises the client to plead guilty, counsel should be satisfied as to the following:
 - a) That the client admits guilt, or believes that there is a substantial likelihood of conviction at trial, and believes that it is in his/her best interests to plead guilty under the plea agreement rather than risk the consequences of conviction after trial (North Carolina v. Alford);
 - b) That the client understands all aspects of the plea agreement, and understands all consequences of a plea of guilty under the agreement;
 - c) That the state would be able to prove the charge(s) against the client at trial;
 - d) That a plea of guilty by the client is knowing, voluntary, and intelligent, with full understanding of the nature of the charge and the consequences of the plea;
 - e) That the client understands the rights he/she is waiving, including the right to trial, the right to assistance of counsel at trial, the right to compulsory process, the right to confrontation of witnesses, the right to testify and privilege against self-incrimination, and the state's burden of proof beyond a reasonable doubt; and,
 - f) That the client understands the terms of the plea agreement and the consequences of conviction, including the maximum possible term of commitment faced by the client.

- 2) In addition, if applicable and to the extent possible, counsel should advise the client of:
 - a) the likelihood of potential civil liabilities arising out of conviction for this particular offense;
 - b) collateral consequences of conviction, e.g. deportation and civil disabilities; and,
 - c) if the client is being committed to the Department of Children and Families as a delinquent child, the possibility that the client could be subject to a recommitment and face additional time in custody past the term ordered at the disposition

- 3) Counsel should ensure that the full content and conditions of the plea agreement are placed on the record prior to the entry of a guilty plea by the defendant.

GUIDELINE 3.9 TRIAL PREPARATION

- 1) Counsel should conduct a thorough independent investigation prior to trial, including investigation of potential witnesses, physical evidence and the scene of the alleged crime.

- 2) To the extent possible, counsel should obtain expert reports, witness statements, police and law enforcement reports and any other potential information relating to the offense.

- 3) Counsel has a duty to pursue as soon as practicable discovery procedures provided by the rules and to pursue such information through discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.
- 4) Counsel should consider seeking discovery of the following items:
 - a) potential exculpatory information or materials;
 - b) the names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
 - c) all oral and/or written statements by the accused, and the details of the circumstances under which the statements were made;
 - d) the prior criminal or delinquency record of the accused and any evidence of other misconduct that the government may intend to use against the accused;
 - e) all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
 - f) all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof; and,
 - g) statements of co-defendants.
- 5) Counsel should obtain the assistance of experts where necessary.
- 6) During investigation and trial preparation, counsel should develop and continually reassess a defense theory of the case.
- 7) Counsel should file appropriate pre-trial motions and memoranda or briefs in a timely fashion, as necessary to protect the defendant's rights after consideration of the statutes, caselaw and constitutional provisions. Counsel should file a motion for a bill of particulars prior to trial, except when tactical reasons exist for not doing so.
- 8) Counsel should request a continuance if he/she determines that he/she is not prepared for trial.
- 9) Counsel should develop an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden.
- 10) Counsel should be familiar with and prepared to address legal and evidentiary issues that can reasonably be anticipated to arise in the trial.
- 11) Counsel should continuously endeavor to establish a proper record for appellate review.

GUIDELINE 3.10 EVIDENCE

- 1) Counsel should be prepared to cross-examine prospective witnesses for the State, be familiar with the applicable law and procedures concerning impeachment, and be alert to issues relating to witness credibility, including bias and motive for testifying.
- 2) Counsel should prepare all defense witnesses for direct and possible cross-examination.
- 3) Counsel should consider the advantages and disadvantages before entering into stipulations concerning the prosecution's case.
- 4) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify, and prepare the client for direct and cross-examination if he/she chooses to testify.
- 5) Where appropriate, at the close of the prosecution's case, counsel should move for judgment of acquittal on each count charged and request that the court immediately rule on the motion to assist counsel in regard to presenting a defense.

GUIDELINE 3.11 CLOSING ARGUMENT

- 1) Counsel should present closing argument and object to any improper argument by opposing counsel. Whenever the prosecution exceeds the scope of permissible argument, counsel should request a mistrial, or seek cautionary instructions unless tactical considerations suggest otherwise.
- 2) Counsel should endeavor throughout the trial process to establish a proper record for appellate review and should request that all trial proceedings be recorded. Where appropriate, counsel should make an offer of proof as to evidence deemed by the trial court to be inadmissible. Counsel should request precise rulings from the court on all objections and make every effort to obtain for the record the reasons for the court's rulings.

GUIDELINE 3.12 DISPOSITION

- 1) Prior to disposition, counsel should discuss with the client the recommended sentence that may be imposed which may include any period of probation, any special conditions of probation which may include treatment or restitution, or commitment to the Department of Children and Families.

- 2) Counsel should inform the client of the nature of the predispositional study process and the mental health screenings and evaluations that are included in the process.
- 3) Counsel or counsel's representative should be present during the Office of Juvenile Probation's interview of the client in the presentence investigation process when requested by the client, or when, in counsel's opinion, counsel's presence is required to protect the interests of the client, or when otherwise appropriate.
- 4) With the client's consent, counsel should provide information and documents to the probation officer preparing the predispositional study report.
- 5) Counsel should be provided a copy of the predispositional study report no less than 48 hours prior to the disposition date or the sentencing date shall be continued in accordance with section 43-7 of the Connecticut Practice Book.
- 6) Counsel should review the predispositional study.
- 7) Counsel should review the predispositional study with the client and the client's parent or guardian and request that any necessary corrections be made to the predispositional study in writing and in accordance with subsection (1) of the Connecticut Practice Book Sections 43-10 and 43-14.
- 8) Counsel should advocate the best possible disposition on behalf of the client. In advocating his/her position, counsel should take whatever steps are necessary, including, where appropriate, the presentation of witnesses and other evidence.
- 9) Where appropriate, counsel should carefully prepare the client and/or witnesses to address the court.
- 10) Counsel should verify that the client understands the disposition, including any conditions of probation. Counsel should advise the client as to what is required in order to comply with the obligations that are imposed.

GUIDELINE 3.13 DISPOSITIONAL HEARING

- 1) In the dispositional phase of a delinquency proceeding, counsel should advocate for a plan approved by the client and take appropriate steps to evaluate and augment the recommendations of the state so that the ultimate disposition is tailored to the client's individual needs. Referrals should be made to the social worker when appropriate to assist with this process.
- 2) Counsel should explain to the client the nature of the disposition hearing, the issues involved, and the alternatives available to the court. Counsel should also 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 client's responsibilities under the proposed dispositional plan. Counsel should not make or agree to a specific dispositional recommendation without a client's consent.

- 3) Counsel should exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client's history or condition or the history or condition of the client's parents. In general, counsel should not disclose information or conclusions contained in such reports to the extent that, in counsel's judgment based on knowledge of the client and the client's family, revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.
- 4) When a dispositional decision has been reached by the court, it is counsel's duty to explain the nature, obligations, and consequences of the disposition to the client and his or her family, and to urge upon the client the need for accepting and cooperating with the dispositional order.

GUIDELINE 3.14 APPEAL

- 1) Counsel should inform the client of his/her right to appeal.
- 2) Counsel should take all necessary steps to preserve the client's appellate rights.
- 3) In any case involving conviction after trial and imposition of a sentence of incarceration or a suspended sentence of incarceration, there shall be a presumption that an appeal should be filed on behalf of a client. If it is the opinion of the attorney that all potential issues in the appeal would be wholly frivolous, those issues should normally be addressed in accordance with the procedures set forth in Practice Book Section 43-33 through 43-38. Under Section 43-35, after the appeal has been filed, counsel should submit an Anders brief identifying anything in the record that might arguably support the appeal following a review of the trial transcript. Under circumstances when a defendant deems it in his/her best interests not to appeal a conviction, the final decision not to appeal must be made by a defendant knowingly, intelligently, and after full consultation with counsel. In any case in which an accused wishes to waive his/her right to appeal, a waiver should be made before the court on the record or in a writing signed by the defendant in which he/she affirmatively states his/her desire not to appeal so as to ensure that the decision is voluntary.
- 4) Counsel should cooperate in providing information to appellate counsel in regard to the trial proceedings in accordance with the requirements of the Division's policy and the Connecticut Practice Book regarding the handling of appeals.

- 5) Counsel should not withdraw his/her appearance from the trial court file, even though the appeal has been transferred to the appellate office or another public defender or assigned counsel.