

**Superior Court of the
District of Columbia,
Family Court**

**Attorney Practice Standards
For Representing Juveniles Charged With
Delinquency or as Persons in Need of Supervision**

**Submitted to Rufus G. King III, Chief Judge
Superior Court of the District of Columbia
June 2004**

By

**The Family Court Implementation Committee
Lee F. Satterfield, Presiding Judge, Family Court**

**Adopted by Administrative Order 04-13
June 2004**

Table of Contents

	<u>Page</u>
Acknowledgement.....	4
Executive Summary.....	6
Statement of Intent.....	8
A. Panels, Appointments, Certification and Training.....	8
A-1 Application for Appointment to the Juvenile Panel	8
A-2 Training Requirements and Exemptions	9
A-3 Continuing Legal Education Requirements.....	10
B. General Duties	11
B-1 Reasonable Diligence and Promptness	11
B-2 Case Management.....	11
B-3 Case Organization.....	12
B-4 Financial Eligibility Determinations.....	12
B-5 Continuity of Representation.....	12
B-6 Duties of Stand-In Counsel.....	12
C. Attorney-Client Relationship	13
C-1 Role of Counsel for Respondent.....	13
C-2 Protecting Confidentiality of Communication and Proceedings in General.....	13
C-3 Meeting with Clients.....	13
C-4 Barriers to Communication with Clients	13
C-5 Initial Client Interview.....	14
C-6 Follow-Up Client Interview.....	15
C-7 Duty to Keep Client Informed	16
C-8 Advising Clients	16
C-9 Distinguishing Between Client and Attorney Decisions	16
C-10 Plea Discussions with Client.....	17
C-11 Respecting Client Decisions	17
D. Pre-Trial Actions.....	17
D-1 Detention Hearing.....	17
D-2 Contact with Other Parties.....	18
D-3 Investigation	18
D-4 Discovery.....	19
D-5 Filing Pleadings	20
D-6 Negotiated Pleas	21

D-7	Trial Preparation	21
E.	Hearings.....	21
E-1	Motion Hearings	21
E-2	Court Appearances.....	22
E-3	Experts	22
E-4	Client and Witness Testimony	22
E-5	Motions and Objections	22
E-6	Presentation of Evidence.....	22
F.	Post-Hearing	23
F-1	Reviewing Order with Client	23
F-2	Implementation of Order	23
G.	Disposition and Post-Disposition Advocacy	23
G-1	Disposition Hearings	23
G-2	Post-Disposition Obligations.....	24
H.	Transfer Hearings.....	25
I.	Appeal.....	25
I-1	Decision to Appeal.....	25
I-2	While Appeal is Pending.....	26
I-3	Concluding Appeals.....	26
J.	Effective Date.....	26

ACKNOWLEDGEMENTS

The Juvenile Subcommittee of the Family Court Implementation Committee, chaired Judge Anita Josey-Herring, Deputy Presiding Judge of the Family Court, was established to address issues relating to juvenile proceedings in the Family Court. One of the goals of the subcommittee is to improve the quality of representation in the juvenile proceeding by developing practice standards for representing juveniles charged with delinquency or as persons in need of supervision. Following an internal review by the Chief Judge, the practice standards were published for comment.

This document, *Superior Court of the District of Columbia Attorney Practice Standards for Representing Juveniles Charged with Delinquency or as Persons in Need of Supervision*, would not have been possible without the hard work and dedication of the Juvenile Subcommittee.

A special debt of gratitude is owed to Judge Anita Josey-Herring, whose leadership on the Subcommittee was instrumental in obtaining consensus on the practice standards, and to Kristen Henning, Esquire, for extensive hours devoted to the development of the framework from which this document was created. Their commitment to improving the quality of justice in the District of Columbia is evident by their contribution to this document.

The Court gratefully acknowledges all the individuals, whose expertise and knowledge were invaluable to the completion of this document, especially the following:

Lee F. Satterfield
Presiding Judge, Family Court

Anita Josey-Herring
Deputy Presiding Judge, Family Court

William Nooter
Magistrate Judge, Family Court

Filmore A. Lucas, Jr
Deputy Director, Family Court.

Charles R. Dickerson
Branch Chief, Family Court

Mary Grace Rook, Esquire
Juvenile Services Program Coordinator
Public Defender Service

David Rubenstein, Esquire
Deputy Attorney General, Public Safety Division
Office of Attorney General

C. Edward Shacklee, Esquire
Deputy Trial Chief, Juvenile Section
Public Defender Service

David Rosenthal, Esquire
Senior Counsel, Public Safety Division
Office of the Attorney General

Claire Roth, Esquire
Special Counsel
Public Defender Service

Kristen Henning, Esquire

Betty Sinowitz, Esquire

Deputy Director
Georgetown Juvenile Justice Clinic

Inspector Lillian Overton
Director, Youth & Prevention Services Division
Metropolitan Police Department

Thomas Devlin, Esquire
Family Court Trial Lawyers Association

Valerie Boykin
Formerly, Deputy Administrator
Youth Services Administration

President
Family Court Trial Lawyers Association

Moses McAllister, Jr.
Formerly, Director
Court Social Services

Francis Lacey, Esquire
Superior Court Trial Lawyers Association

***Superior Court of the District of Columbia,
Family Court
Attorney Practice Standards
for Representing Juveniles Charged with Delinquency
or as Persons in Need of Supervision***

Executive Summary

The quality of legal representation is critical to the court’s effective administration of justice. To render high quality representation, attorneys handling juvenile cases in the Family Court of the Superior Court of the District of Columbia (hereafter the “Family Court”) must be well trained and informed about changes in procedural and substantive law and cognizant of psycho-social issues affecting their clients. These practice standards are intended to define the role of counsel in juvenile delinquency (“delinquency”) and persons in need of supervision (“PINS”) cases and may be used for evaluating the performance of counsel assigned.

Basic Functions of Defense Counsel

The practice standards address the general authority and duties of attorneys appointed to represent juveniles in delinquency or PINS cases, and to define the overall objectives that counsel should seek to achieve. The paramount obligation of defense counsel in the administration of justice, and as an officer of the court, is to serve as their client’s counselor and zealous advocate and to render effective, quality representation. Moreover, defense counsel should ensure that the interests and rights of juveniles are fully protected and advanced. Under these standards, attorneys shall only accept an appointment or otherwise appear in delinquency and PINS proceedings if they are knowledgeable of substantive and procedural criminal and juvenile law and have participated in the required training programs. Counsel must also know and adhere to applicable ethical opinions and standards and comply with relevant court rules. If counsel is unclear about how to resolve an ethical issue, he or she should seek guidance from other experienced attorneys or from the Office of Bar Counsel. The fundamental obligations of counsel as set forth below are based on the District of Columbia Rules of Professional Conduct and the Superior Court Rules, including the Rules Governing Juvenile Proceedings and the General Rules of the Family Court (referred to collectively as the “Rules” unless otherwise specified).

Responsibilities to Clients

Establishing and maintaining a trusting relationship with a client is the foundation of quality representation. These standards identify an attorney’s responsibilities to his or her client to include:

- ❑ open, candid and on-going communication;
- ❑ thorough investigation of all necessary and relevant information;
- ❑ attempts to settle the case or relevant issues, through formal or informal negotiation;
- ❑ adequate pre-trial preparation, to include an active pretrial motions practice;
- ❑ attendance and participation in court conferences and hearings;
- ❑ post-hearing follow-up and review of court orders;
- ❑ assistance to clients with obtaining services or navigating the court system;
- ❑ effective disposition and post-disposition advocacy; and
- ❑ discussion with clients about appellate rights.

***Superior Court of the District of Columbia
Attorney Practice Standards
for Representing Juveniles Charged with Delinquency
or as Persons in Need of Supervision***

Statement of Intent

D.C. Code §16-2304(a)(2001 Ed.) provides that a child alleged to be delinquent or in need of supervision is entitled to be represented by counsel at all critical stages of proceedings in the Superior Court of the District of Columbia. Superior Court judges may appoint qualified attorneys to represent indigent juveniles named in delinquency or PINS proceedings under the Criminal Justice Act, D.C. Code Ann. §§ 11-2601 to 2609 (2001). Counsel appointed pursuant to the Act "shall in every case be selected from panels of attorneys designated and approved by the courts." D.C. Code Ann. §11-2602 (2001). See also *Plan for Furnishing Representation to Indigents Under the District of Columbia Criminal Justice Act*, D.C. Court Rules Ann., Vol. I, p. 913 (2002 Ed.). To comply with the Act, the Chief Judge issued Administrative Order No. 02-15, which requires the Family Court Panels Committee to establish a panel of qualified attorneys to represent indigent children in juvenile and PINS proceedings. Thereafter, the Family Court Panels Committee developed procedures for appointing a panel of attorneys to represent indigent children in juvenile matters. The Chief Judge established a panel of attorneys eligible to receive appointments in juvenile and PINS cases (the "Juvenile Panel"). See Administrative Order 03-11.

The District of Columbia Family Court Act of 2001, Pub. L. 107-114, also provides that the Superior Court shall establish standards of practice for attorneys appointed as counsel in matters under the jurisdiction of the Family Court. To accomplish the goals of the Family Court Act, and to promote high quality representation for juveniles in delinquency and PINS proceedings, panel attorneys must adhere to these practice standards. A panel attorney not in compliance with these standards may be subject to removal from the panel.

A. Panels, Appointments, Certification and Training

A-1 Application for Appointment to the Juvenile Panel

Individual attorneys wishing to receive appointments pursuant to the Criminal Justice Act in delinquency and PINS proceedings in Superior Court shall be selected from the Family Court Juvenile Panel. Attorneys seeking to become a member of the Juvenile Panel must: complete a Family Court Panel Application that sets forth the qualifications to act as defense counsel in juvenile and PINS proceedings; provide a Certificate of Good Standing from the District of Columbia Bar; and certify, in writing, that he or she has read and understands these standards, the District of Columbia Rules of Professional Conduct, Superior Court Rules and District of Columbia statutes governing juvenile and PINS proceedings. Applications will be considered on a schedule set and published by the Oversight Subcommittee (the "Oversight Subcommittee").

Prior to appointment to the Juvenile Panel, counsel must comply with the training requirements set forth below in Section A-2. Fulfillment of training requirements does not guarantee appointment to the Juvenile Panel. After appointment to the Panel, counsel must comply with training requirements set forth below in Section A-3.

A-2 Training Requirements and Exemptions

Each lawyer seeking admission to the Juvenile Panel after adoption of these standards must receive training certification by the Public Defender Service for the District of Columbia. Training certificates shall be submitted to the Oversight Subcommittee.

To attain training certification, lawyers will be required to complete 26 hours of training and 4 hours of courtroom observation within one year preceding the date of application to the Juvenile Panels. Each lawyer must also certify that he or she has visited the existing juvenile justice facilities where juveniles in the delinquency system are detained (currently Oak Hill). Training must be devoted to the following categories:

- (1) At least 8 (eight) hours of practical trial skills training (such as direct and cross examination, closing argument, etc.);
- (2) At least 12 (twelve) hours must be devoted to juvenile law and practice;
- (3) The remaining 6 (six) hours of training may be devoted to general criminal law issues and developmental, mental health and cultural issues affecting juveniles.

Training topics that will satisfy the practical trial skills requirements include: (1) Opening Statements, (2) Cross-Examination, (3) Direct Examination, (4) Closing Arguments and (5) Evidence. Topics that will satisfy the juvenile law and practice requirements include: (1) Juvenile Court Procedure, from Intake to Disposition, (2) Juvenile Motions Practice, (3) Juvenile Disposition, (4) Juvenile Placement Options, (5) Juvenile Post-Disposition Practice, (6) Special Education Laws and Resources and (7) Competency. Topics that will satisfy the remaining training requirements include: (1) Mental Illness and Mental Retardation, (2) Substantive Criminal Law, (3) Discovery, (4) Forensic Science, (5) Ethics, (6) Investigation, (7) Title 16 Hearings and (8) Appellate Issues. This list is illustrative, not exclusive.

All training hours may be satisfied in training seminars offered by the District of Columbia Public Defender Service (“Public Defender Service”) or through relevant programs sponsored by the following institutions: (1) the Family Court Implementation Committee/ Training Subcommittee (the “Training Subcommittee”), (2) the Superior Court Trial Lawyers’ Association; (3) the District of Columbia Association of Criminal Defense Lawyers; (4) the District of Columbia Bar; (5) the Bar Association of the District of Columbia; (6) the Juvenile and Neglect Practice Institute; (7) the Office of the Attorney General; (8) the National Association of Criminal Defense Lawyers; (9) the Federal Defender Training Program; (10) the National Institute for Trial Advocacy; (11) the American Bar Association; and any other organization approved by the Family Court Implementation Committee. To assess compliance with certification requirements, the Public Defender Service or the Panels Oversight Sub-

Committee may request a copy of any training program or seminar outline. Recognizing that many attorneys have been accepted to more than one panel in the Criminal Division or in the Family Court of the Superior Court, the Implementation Committee may consider completion of any requirements for other panels in certification for the Juvenile Panel.

As part of the training process, new attorneys are strongly encouraged to seek the advice and input of more experienced lawyers who have represented parties in juvenile proceedings. Correspondingly, experienced attorneys are encouraged to provide mentoring to new attorneys, assist new attorneys in preparing cases, debrief following court hearings, and answer questions as they arise.

Full and Partial Exemptions from Training Requirements

Experienced Lawyers

Lawyers who meet the following qualifications will be fully exempted from the above-listed training certification requirements: the lawyer (1) has practiced in the field of juvenile law in the District of Columbia continuously during the last two years before the date of application to the juvenile panel; (2) can certify that he or she has completed 20 hours of the above-listed training within the last two years before the date of application; and (3) the lawyer has participated in at least five juvenile delinquency trials. Any exemption in this category is subject to approval by the Oversight Subcommittee.

Experienced attorneys may be credited by the Oversight Subcommittee for training completed consistent with the requirements in A-2 above.

Law Student Enrolled in Clinical Programs

Law students practicing under the student practice rule must be enrolled in a clinical program as defined by D.C. Superior Court General Family Proceedings Rule M(b). Students in such a clinical program will be presumed to have satisfied the training requirements and will not be required to submit any certification to the Family Court Implementation Committee. However, student practitioners must comply with District of Columbia Superior Court Rules, General Family Rule M (2003) and District of Columbia Court of Appeals Rule 48 (2003).

A-3 Continuing Legal Education Requirements for All Attorneys

Attorneys admitted to the Juvenile Panel and who practice before the Family Court have a continuing obligation to stay abreast of changes and developments in the law. Where appropriate, counsel should also be aware of any special requirements of the specific judge before whom a case is pending. Counsel should also be familiar with substantive criminal law, criminal procedure, the General Rules of the Family Court, the Rules Governing Juvenile Proceedings and the Rules of the District of Columbia Court of Appeals.

In order to continue representing children in juvenile matters, attorneys on the Juvenile Panel must complete 10 hours of continuing legal education on criminal and juvenile related topics each

year. Attorneys already on the Juvenile Panel as of the date of this order must first meet this requirement within a year of the date of this order. Attorneys hereafter appointed to the Juvenile Panel must first meet this requirement by the anniversary of their appointment to the panel. At least 5 of those hours must be devoted to juvenile law as referenced in A-2. CLE requirements may be satisfied through training by organizations listed above in section A-2.

B. General Duties

B-1 Reasonable Diligence and Promptness

All attorneys practicing before the Family Court shall act diligently and promptly in the representation of his or her clients. Counsel should avoid unnecessary delay in the disposition of cases, should take steps to inform all parties when delay is unavoidable, and should be punctual in attendance at court and in the submission of all motions, requests for discovery, briefs and other papers.

B-2 Case Management

Counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality legal service, endangers the juvenile's interest in the speedy disposition of charges, or risks breach of professional obligations. Before agreeing to act as counsel, or accepting appointment by a court, counsel has an obligation to make sure that he or she has sufficient time, resources, knowledge, and experience to offer quality legal services in a particular matter. If, after accepting an appointment, it later appears that counsel is unable to offer effective representation, counsel should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action. Counsel's obligations include the following:

- (1) Seeking access to appropriate support services, such as investigative assistance, sign interpreters, and language translators;
- (2) Developing a timeline for each case that identifies the actions to be taken and their deadlines;
- (3) Thoroughly preparing for all hearings and trials;
- (4) Providing Memoranda of Law to the Court when required or appropriate;
- (5) Counseling clients concerning matters related to their cases;
- (6) Assessing clients' needs for services and assisting in obtaining those services to the fullest extent possible;
- (7) Serving all filings and communications with the court on all parties;

- (8) Participating in negotiations, discovery, pretrial conferences, mediation sessions and hearings; and
- (9) Cooperating and communicating civilly with other professionals, the court and parties in a case.

B-3 Case Organization

Counsel shall maintain a client case file on each active case, and when appropriate, provide the case file to successor attorneys. Counsel is expected to maintain all information about the case's history and future proceedings, deadlines, dates, etc., on or within the client case file so that it is readily discernible. All client case files must reflect the procedural history of the case, and all other information necessary to render effective legal service, including copies of the charging documents, all discovery, pleadings, plea offers, notes and other communications to and from the client, the names and telephone numbers of government and other parties, and the judge, as well as information about how to locate the client.

B-4 Financial Eligibility Determinations

When representing juveniles, counsel must ensure that the client's parents are interviewed to determine their financial eligibility under the Criminal Justice Act. See also D.C. Code Ann. §§ 11-2602 (2001). If after investigation, the client's parents are not available, the attorney must file an absent party form with the CJA office. Once the party is available, the attorney has an obligation to ensure that the eligibility interview is held.

B-5 Continuity of Representation

Unless otherwise ordered by the court, counsel of record shall continue to represent the client from the point of initial court proceedings through disposition, post-disposition review hearings, and any other related proceedings until the case is closed.

B-6 Duty of Stand-In Counsel

Any attorney appointed to stand in for another at any delinquency or PINS proceeding must (1) represent the client zealously as if his or her own client; (2) ensure that the juvenile knows how to contact stand-in counsel in case he or she does not hear from counsel of record, (3) immediately communicate with counsel of record regarding upcoming dates/hearings, how to contact the client, placement of client, nature of charges, whether a probable cause hearing was held and the result, and other timely issues that counsel of record may need to know or address, (4) immediately or within a reasonable time thereafter provide to counsel of record all notes, documents, and any discovery received, and (5) should notify chambers within a reasonable time or be available to stand in at next hearing if contact with counsel of record is not successfully made.

C. Attorney-Client Relationship

C-1 Role of Counsel for Respondent

The lawyer's principle duty is the representation of the client's legitimate interests. Thus, counsel should seek the lawful objectives of the client and should not substitute counsel's judgment for that of the client. The potential for conflict of interest between an accused juvenile and his or her parents should be clearly recognized and acknowledged. In every case, the attorney should inform all parties that he or she is counsel for the juvenile, and that in the event of disagreement between a parent or guardian and the juvenile, the attorney is required to serve exclusively the interest of the accused.

C-2 Protecting Confidentiality of Communication and Proceedings

Counsel should ensure that confidential communications between defense counsel and the client are conducted in private. When necessary, counsel should make the appropriate request to court officials, detention staff and others to provide necessary accommodations for private discussions between counsel and clients.

Counsel should comply with all confidentiality statutes, rules and procedures that govern the dissemination of information concerning juvenile and Family Court matters.

C-3 Meeting with Clients

Upon initial appointment, counsel shall conduct an in-person client interview as soon as practicable and sufficiently before any court proceedings. In instances where the client is detained or in custody, counsel should make every effort to conduct a follow-up interview within 48 hours of appointment to the case. In all cases counsel must continue to maintain regular contact with the client to establish and maintain a relationship of trust and open communication that will enable counsel to diligently advocate for the client's interests and needs.

C-4 Barriers to Communication with Clients

Counsel should ensure that at all interviews and proceedings, barriers to communication, such as differences in language or literacy, or mental or physical disability, are addressed. In the event that counsel is not able to communicate with the client because of either language differences or mental disability, the attorney should take whatever steps are necessary to insure that he or she is able to communicate with the client and that the client understands the proceedings. Such steps would include having counsel obtain appropriate accommodations and expert assistance, including an interpreter for pre-trial preparation, interviews and investigation, as well as for in-court proceedings.

Additionally, in light of the age range and maturity of youth involved in juvenile cases, counsel must be sensitive to the importance of communicating with respondents clearly,

precisely, and in an age-appropriate manner about the implications and consequences of legal proceedings. A child may not understand the legal terminology and, for a variety of reasons, may choose a particular course of action without fully appreciating the implications. With a child, the potential for misunderstanding is greater than with an adult client. Therefore, the lawyer's level of communication must take into account the child's age, including any disparity between physical and developmental age, primary language, language skills, level of education and special education needs. The attorney should be cognizant of relevant developmental concerns and should learn to ask developmentally appropriate questions and how to interpret the child's responses. For example, inconsistent responses to the same question asked in different contexts may indicate lack of comprehension or receptive language disability, rather than inattention or uncooperativeness.

C-5 Initial Client Interview

Prior to conducting the initial interview, the attorney should, where possible:

- (1) Be familiar with the elements of the offense and the potential punishment;
- (2) Obtain copies of any relevant documents that are available, including copies of any charging documents, law enforcement reports and recommendations and reports made by the court social service representatives concerning pretrial release;
- (3) Be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in making that determination;
- (4) Be familiar with the different pretrial release and detention options and conditions the court may set and whether private or public agencies are available to act as a custodian upon the client's release; and
- (5) Be familiar with any procedures available for reviewing the trial judge's determination of level of detention and/or conditions of release.

In the initial interview, counsel should obtain a signed release authorizing the attorney and/or his/her agent to obtain official records related to the child.

Also, at the initial interview, counsel should endeavor to convey the following types of information to the client:

- (1) The nature of the allegations, what the government must prove, and the likely and maximum potential consequences;
- (2) An explanation of the role of counsel, the defense function, the attorney-client privilege, the limits to privileges covering the client's communications with counsel, therapists, case workers, social workers, and other relevant individuals

and advice about the consequences of the client discussing the facts of the case without first consulting with the attorney;

- (3) An explanation of the procedures that will be followed in setting the conditions of pretrial release, if applicable to the particular client;
- (4) An explanation of the type of information that will likely be requested in any other interview the client may have (e.g. with court social services personnel, detention staff, and forensic or mental health evaluators);
- (5) A general procedural overview of the progression of the case, where possible;
- (6) Information regarding how counsel can be readily reached generally within one business day;
- (7) Schedule for the next client meeting;
- (8) Realistic answers, where possible, to the client's most urgent case related questions; and
- (9) Discussion of arrangements to address the client's most critical needs; e.g., medical or mental health attention, request for separation during detention or contact with family or employers.

C-6 Follow-up Client Interview

Counsel should make every effort to arrange for a follow-up meeting with the client within 48 hours of appointment to a case. Counsel should use the follow-up interview to gather additional information relevant to preparation of the defense. Such information should include, but is not limited to:

- (1) The facts surrounding the allegations against or affecting the client;
- (2) Any possible witnesses who should be located;
- (3) Information about how the client was treated in the custody of police or other investigative agencies, juvenile or mental health departments or the prosecution;
- (4) Information relevant to potential motions issues;
- (5) Evidence that should be preserved;
- (6) Where appropriate, evidence of the client's competence to stand trial or mental state at the time of the offense;
- (7) The client's physical and mental health, and education records; and

- (8) The client's past juvenile record, if any, including arrests in this and other jurisdictions; whether the client has any pending charges or is on probation; the history of the client's compliance with orders to appear in court, and the client's past or present performance under supervision.

C-7 Duty to Keep Client Informed

Counsel shall maintain in regular contact with the client during the course of the case, and especially before court hearings. Counsel should promptly respond to telephone calls and other types of contact from his or her clients where possible, within one business day or a reasonable time thereafter. Counsel has a continuing duty to keep the client informed of developments in the case and the progress of preparing the defense, and should promptly comply with reasonable requests for information from the client. When on vacation or otherwise unavailable for a considerable length of time, counsel shall make reasonable efforts to provide emergency contact information or arrange to have back-up counsel who can respond to client emergencies.

C-8 Advising Clients

Counsel should advise the accused with complete candor about all aspects of the case, including a candid assessment of the probable outcome. 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 the entry of a plea. Counsel should explain developments in the case to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Counsel shall inform the client of all court hearings and the need to attend. Counsel should advise the client about the consequences of non-compliance with court orders.

C-9 Distinguishing Between Client and Attorney Decisions

Certain decisions relating to the conduct of the case are ultimately to be decided by the client and others are ultimately resolved by defense counsel. Decisions that are to be made by the client after full consultation with counsel include whether to enter a plea, what pretrial placement to seek, what defense should be mounted, the existence of any lesser-included offense, whether to testify in his or her own behalf, whether to assert or waive any right or position of the client, what disposition to seek and whether to appeal. Strategic and tactical decisions should be made by defense counsel after consultation with the client, where feasible and appropriate. Such decisions include what witnesses to call, whether and how to conduct cross-examination, what trial motions should be made, and what evidence should be introduced by respondent at hearings or trial.

C-10 Plea Discussions with Client

Counsel should explore with the client the possibility and desirability of reaching a negotiated plea of guilty to the charges rather than proceeding to trial, and in doing so should fully explain the rights that would be waived by a decision to enter a plea. Counsel should

ordinarily obtain the consent of the client before entering into any plea negotiation. Counsel should keep the client fully informed of any continued plea discussion and negotiations and convey to the accused any offers made by the prosecution for a negotiated settlement. Counsel should not accept or reject any plea agreement without the client's express authorization. The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to preserve a defense.

C-11 Respecting Client Decisions

Where an attorney believes that the client's desires are not in the client's best interest, the attorney may attempt to persuade the client to change his or her position. If the client remains unpersuaded, however, the attorney should assure the client that he or she will defend the client vigorously within the bounds of the law and the D.C. Code of Professional Conduct.

D. Pre-Trial Actions

D-1 Detention Hearing

Counsel has an obligation to consult with the client regarding the available conditions of release, to consider the client's wishes, and to advocate the express interests of the client. Counsel should consider the range of alternatives to secure detention, including shelter houses, group homes and/or residential treatment options available through non-delinquency agencies such as the Child and Family Services Agency or the District of Columbia Public Schools, drug and alcohol treatment facilities, detox facilities, alternative family member placements, electronic monitoring, acute mental health facilities, curfews, stay-away orders, and other non-secure community based alternatives. Counsel should be prepared to present to the court a statement of the facts and the legal criteria supporting a request for release and to make a proposal concerning conditions of release. If a juvenile client is released, counsel should ensure that the client's needs for safety and right to receive services are met by agencies responsible for the client's care. Moreover, counsel should adequately explain the conditions of release to the client and provide the client with the name and telephone number of the assigned pre-trial probation officer or the Youth Services Administration ("YSA") caseworker on his or her case.

If the client is not released, he or she should be advised of the right to have the placement decision reviewed, and counsel should seek review if requested. Counsel should advise the client of his or her right to appeal and the advantages and disadvantages of doing so. Where the client is unable to obtain pretrial release, counsel should inform the court and the juvenile detention facility personnel about any medical, psychiatric, or security needs of the client.

D-2 Contact with Other Parties

In the case of neglect proceedings which relate to the same subject matter as the juvenile case, counsel shall not contact or interview represented parties in that proceeding without permission from the parties' attorney(s). However, counsel may contact represented parties for the limited purpose of scheduling visits with the child. Counsel may not circumvent the Rules of Professional Conduct concerning communication with a represented party by asking a caseworker or other third party to ask the represented party for information. *See* D.C. Bar Legal Ethics Comm., Opinion 295 (2000). When dealing with an unrepresented person, counsel shall not state or imply that he or she is disinterested, and if the unrepresented person misunderstands counsel's role, the lawyer shall make reasonable efforts to correct the misunderstanding.

D-3 Investigation

Defense investigation is an essential aspect of competent representation. It is through investigation that the attorney may learn necessary and relevant information about the case and preserve the client's rights. As such, counsel has an absolute duty to conduct a prompt and diligent independent case investigation. The duty to investigate exists regardless of the client's admissions or statements to defense counsel or others or of facts constituting guilt, or the client's stated desire to plead guilty. At minimum, the investigation should be initiated within a few days of being appointed to a case, and when appropriate, counsel shall promptly issue subpoenas and write investigative memoranda. Supplemental investigative memoranda should be written as the case progresses.

Counsel shall view all evidence in the case, including visiting the scene(s) of the alleged offense(s), under circumstances similar to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions), and identify and hire experts if warranted. The investigation should also include efforts to secure relevant information in the possession of the prosecution and law enforcement authorities, including:

- (1) Law enforcement notes (field notes);
- (2) Client, victim or witness records, such as school, mental health, drug and alcohol test results and criminal records, with appropriate releases and/or subpoenas;
- (3) 911 tapes, interofficer radio transmissions and dispatch reports; and
- (4) Civilian police officer complaints and internal affairs files, and other investigation records.

The investigation could also include but is not limited to:

- (1) Interviewing clients and individuals the client appropriately believes are potential witnesses;
- (2) Identifying and interviewing potential witnesses such as school personnel,

neighbors, relatives, foster parents, etc.;

- (3) Reviewing client's records including educational, psychological, psychiatric, medical, substance abuse treatment, law enforcement, and court files; and
- (4) Executing necessary authorizations for releases of information.

D-4 Discovery

At all stages of the proceedings, counsel should be alert to all opportunities for obtaining discovery as permitted by law. Counsel has a duty to pursue, as soon as practicable, both formal and informal discovery. In considering discovery requests, counsel should evaluate any reciprocal discovery obligations which may be triggered by a particular discovery demand and consider the strategic implications of the discovery request. Where necessary, counsel should pursue such efforts through formal and informal discovery unless a sound tactical reason exists for not doing so. Among the discovery material counsel should consider seeking, through motions if necessary, are the following items that may be in the custody or under the control of law enforcement or other prosecution agencies:

- (1) Details of all identification procedures, including examination of any photographs shown and selected;
- (2) Written and oral statements of respondents and any co-respondent(s) or co-defendant(s), and details of the circumstances under which the statements were made;
- (3) Client's prior delinquency or criminal record and evidence of other misconduct that the prosecutor may intend to use against the client;
- (4) Copies of all official reports, e.g., police, arson, hospital, scientific tests;
- (5) Inspection of physical evidence;
- (6) List of potential witnesses and addresses;
- (7) Names and addresses of any witnesses expected to offer expert opinions and the substance of their anticipated testimony;
- (8) Probation records of all potential witnesses; and
- (9) Potential *Brady* information, identified as specifically as possible, and including promises, rewards, and/or inducements made to witnesses.

D-5 Filing Pleadings

When appropriate, counsel must file motions, requests for discovery, and responses and answers to pleadings filed by other parties. These pleadings must be thorough, accurate, and timely. They must be served on all parties pursuant to Superior Court Rules. Counsel shall consider all potentially appropriate motions, so that the absence of pretrial motions is the result of professional choice rather than negligence or error.

Among the issues counsel should consider addressing in a pretrial motion are:

- (1) The pretrial detention, placement or release conditions of the accused;
- (2) The constitutionality of the implicated statute or statutes;
- (3) The potential defects in the charging process, including lack of jurisdiction;
- (4) The sufficiency of the petition;
- (5) Rule 48(b) dismissals for social reasons or in the interests of justice;
- (6) The propriety and prejudice of any joinder of charges or respondents in the charging document;
- (7) The discovery obligations of the prosecution and the reciprocal discovery obligations of the defense;
- (8) The suppression of evidence gathered as the result of violations of the Fourth, Fifth, or Sixth Amendments to the United States Constitution, or corresponding or additional statutory provisions, including:
 - a. the fruits of illegal searches or seizures;
 - b. involuntary statements or confessions;
 - c. statements or confessions obtained in violation of the accused's right to counsel or privilege against self-incrimination;
 - d. unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification.
- (9) Access to and funds for experts, investigators, interpreters or other resources an accused cannot obtain for him- or herself because of indigence;
- (10) The respondent's right to a continuance in order to adequately prepare his or her case;
- (11) Matters of trial evidence which may be appropriately litigated by means of a pretrial motion in limine;
- (12) Matters of trial or courtroom procedure;

- (13) Non-suggestive identification procedures (e.g., lineup or its equivalent, testimony with client out of view, etc.) where strategically indicated and desired by the client; and
- (14) Request for speedy trial or dismissal for lack of speedy trial.

D-6 Negotiated Pleas

Counsel should participate in plea negotiations to seek the best result possible for the client consistent with the client's interests and directions to counsel. Counsel should consider narrowing contested issues or reaching global resolution. Prior to entering into any negotiations, counsel shall have sufficient knowledge of the strengths and weaknesses of the client's case, or of the issue under negotiation, to enable counsel to advise the client of the risks and benefits of settlement.

D-7 Trial Preparation

Early preparation is the key to successfully resolving a case, either through negotiation or trial. Counsel should develop and continually reassess the theory of the case based on investigation and discovery. To the extent possible, counsel should develop a witness list in advance of trial, and subpoena witnesses and obtain records in a timely manner. Counsel should set aside adequate time to prepare witnesses and exhibits beforehand. Adequate preparation also requires communicating with the client in advance of the hearing, attempting to resolve issues prior to trial, and conducting necessary legal research on relevant topics.

E. Hearings

E-1 Motion Hearings

When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

- (1) Investigation, discovery, and research relevant to the claim advanced;
- (2) Subpoenas for all helpful evidence and witnesses, including witness preparation; and
- (3) A full understanding of the burdens of proof, evidentiary principles, and trial procedures applicable to the hearing, including an assessment of the benefits and disadvantages of having the client testify.

E-2 Court Appearances

Counsel must be prepared for and attend all hearings, and must participate in all telephone or other conferences with the court. If counsel has a conflict, he or she has an obligation to call the court's conflict line and notify the courtroom clerk or judge's chambers and all other counsel. Counsel should maintain a manageable caseload to adequately represent clients and avoid numerous scheduling conflicts.

E-3 Experts

Counsel shall, where appropriate, obtain and file necessary pleadings to secure payment for the assistance of experts and other professionals to provide consultation and testimony regarding issues in the case, evaluations of clients and others, and testing of physical evidence. Counsel should secure the assistance of experts where it is necessary or appropriate for:

- (1) Preparation of the defense;
- (2) Adequate understanding of the prosecution's case; and
- (3) Rebuttal the prosecution's case.

E-4 Client and Witness Testimony

Counsel should explain to the client and the witnesses in clear, appropriate language what is expected to happen before, during, and after each hearing. Counsel should prepare clients and witnesses for both direct and cross-examination.

E-5 Motions and Objections

Counsel should make appropriate motions and objections during hearings to advance the client's position. Counsel should file appropriate motions with memoranda of points and authorities and proposed orders in support of the client's position. Counsel must preserve legal issues for appeal.

E-6 Presentation of Evidence

When necessary to advance the client's position, counsel must present and cross-examine witnesses, and prepare and present exhibits.

F. Post-Hearing

F-1 Reviewing Order with Clients

Counsel shall review all written orders to ensure they reflect the court's oral order. Also, where appropriate, counsel shall discuss such orders with the client. If the client objects to the order, counsel should consider filing a motion to reconsider or pursuing an appeal.

F-2 Implementation of the Order

Counsel should encourage his or her client to comply with the court's order and to take full advantage of services offered. Counsel should monitor the client's service provider's efforts to implement their obligations under the order. Counsel should be available to assist the client in obtaining services or navigating the system.

G. Disposition and Post-Disposition Advocacy

Very often, disposition and post-disposition advocacy are the most important aspects of the attorney's role in juvenile delinquency and PINS cases. As long as counsel is appointed in a juvenile or PINS case, counsel's obligations to a client continue from initial hearing through termination of the court's jurisdiction in the matter.

G-1 Disposition Hearings

Notwithstanding a resolution by plea or an admission to sufficient facts, counsel must be prepared for disposition arguments, including, where appropriate, release pending disposition or appeal.

Preliminary disposition planning must begin when counsel first meets the client. Counsel should file appropriate disposition letters, and if able, secure letters from representatives in the community, including witnesses and mentors or have them attend court to provide helpful information about the client.

Counsel should promptly investigate all sources of evidence, including any reports or other information that will be brought to the court's attention at the time of disposition, and interview all witnesses and review material prior to proceedings. If access to social, psychological, psychiatric or other reports is not provided voluntarily or promptly, counsel should seek their timely disclosure through formal measures. Whether social and other reports are readily available, counsel has an independent duty to investigate the client's circumstances, including such factors as previous history, family background and economic condition, and any other information relevant to disposition. If helpful or necessary, counsel should seek to secure the assistance of psychiatric, psychological, medical or other expert personnel to evaluate, consult, or testify to aid the client at dispositional.

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 fully explain the

nature, obligations and consequences of any proposed disposition 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 disposition plan. Counsel should not make or agree to a specific recommendation for disposition without the client's consent. When psychological or psychiatric evaluations are ordered by the court or arranged by counsel prior to disposition, counsel should explain the nature of the procedure to the client and encourage the client's cooperation with the person or persons administering the diagnostic procedure. In some cases, ethical rules may prohibit counsel from disclosing data or conclusions contained in such reports to the extent that revelation would likely have an adverse affect on the client and disclosure is not necessary.

It is counsel's duty to insist that proper procedures be followed throughout the disposition stage and that orders rendered be based on adequate reliable evidence. Counsel should ensure, if possible, that the court has before it all evidence necessary to render a fair, well-reasoned disposition. Counsel at disposition should examine fully, impeach and challenge the accuracy, credibility and weight of any reports, written statements, or other evidence before the court. Counsel should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation officer, when failure to examine will prejudice the client's interests. This judgment should be made after balancing the client's overall interest with any competing concerns. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which such statements are based.

When a disposition has been reached, 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 encourage the client to cooperate with the order. If appeal from the decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

G-2 Post-Disposition Obligations

Once disposition is complete, counsel must maintain regular contact with the client to ensure that he continues to understand and comply with conditions set by the court at disposition. If the client is placed in a residential facility, group home, detention center or other out-of-home placement within the District of Columbia or within the D.C. Metropolitan area, counsel has an obligation to visit that client. If the client is placed outside of the Metropolitan Washington area, to the extent that the court retains jurisdiction over the case or otherwise approves for payment of attorney services, counsel shall maintain regular contact with the client either in person or by phone. Whenever a child is placed outside of his home, counsel shall maintain regular contact with staff at residential facilities, group homes, etc. as well as with youth services caseworkers and court social services staff. Counsel has a duty to prepare for, attend and advocate zealously on behalf of clients at all post-disposition reviews including revocation hearings.

When a client is under the care of the Youth Services Administration and/or is placed in a residential treatment facility, group home or other out-of-home placement, counsel must contact YSA or other appropriate agency to facilitate home visits, holiday passes, release from the

facility, clothing vouchers, parent travel vouchers, and should address other needs of the client to the extent practicable. Counsel also has a duty to file appropriate pleadings with the Court when Court Social Services, YSA or other youth agency is not in compliance with court directives.

H. Transfer Hearings

In any case where transfer for criminal prosecution as an adult is likely, counsel should seek to discover at the earliest opportunity whether transfer will be sought and if so, the procedure and criteria according to which the determination will be made. The lawyer should promptly investigate all circumstances of the case bearing on the appropriateness or inappropriateness of transfer and should seek disclosure of any reports or other evidence that will be submitted to or may be considered by the court in the transfer proceedings. Where circumstances warrant, counsel should promptly move for appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protect the client's rights. Counsel should fully explain the nature of a transfer proceeding and the consequences to the client. In so doing, counsel may further advise the client concerning participation in diagnostic and treatment programs which may provide information material to the transfer decision. If a transfer hearing is held, the rules set forth within the preceding sections of these standards shall apply to counsel's conduct of that hearing. If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

I. Appeal

I-1 Decision to Appeal

Counsel shall consider and discuss with the client the right to appeal and whether an appeal has merit. When discussing the possibility of an appeal, counsel should explain both positive and negative effects. Counsel should discuss with the client the possibility of expediting the appeal. Counsel should also discuss whether he or she will represent the client in an appeal or whether another attorney will be appointed.

If the client decides to appeal, trial counsel must file any necessary post-hearing motions and the notice of appeal, and he or she must order the transcript. If trial counsel does not serve as appellate counsel, he or she must transmit all documents relevant to the appeal to appellate counsel.

Trial counsel must protect his or her client's interests by responding in a thorough and timely manner to any post-trial motions, notice of appeal, and order for transcript filed by any adverse party. This obligation remains in effect until appellate counsel has been appointed for his or her client.

I-2 While Appeal is Pending

If appointed to handle the appeal, assigned counsel must carefully review his or her obligations as defined by the Rules of the District of Columbia Court of Appeals.

I-3 Concluding Appeals

Trial counsel must communicate the result of an appeal and its implications to the client in an appropriate manner. If, as a result of the appeal, the client must take action in the case, counsel should instruct the client to do so. Counsel must file any necessary motions with the trial court that result from the appeal. If trial counsel did not handle the appeal, he or she must keep apprised of the matter and monitor whether necessary motions are filed with the trial court.

J. Effective Date

These practice standards will take effect June 30, 2004.