

ROLE OF COUNSEL FOR CHILDREN AND YOUTH

During the course of numerous site reviews over the last four years, OPDS has noticed significantly inconsistent practices regarding the role of appointed counsel for children in both dependency and delinquency cases.

For example, some attorneys believe that it is not necessary to meet and confer with child clients.

It is hoped that this statement will clarify what OPDS believes to be the role of counsel for children in dependency cases and youth in delinquency cases. The statement is being sent to all public defense providers. If you have questions about the role of counsel as outlined in this statement, please contact OPDS's General Counsel, Paul Levy at (503) 378-2478.

Role of Counsel in Dependency Cases

In juvenile dependency cases, the role of the attorney appointed to represent a child will depend on the age of the child and the child's capacity for considered judgment.

An attorney for a child capable of considered judgment must advocate for the child's expressed wishes. The attorney for a child not capable of considered judgment must advocate for the child's best interest as determined by the attorney's independent investigation and exercise of sound judgment. Some children are capable of considered judgment with respect to some decisions that need to be made in the case but not with respect to others. Standard 3.4 of the Specific Standards for Representation in Juvenile Dependency Cases of the Oregon State Bar's Principles and Performance Standards¹ outlines the analysis to be used in deciding the appropriate type of advocacy in a given case.

Regardless of that ultimate determination, the child is a "client" and OPDS contracts require the contractor to speak to and conduct initial interviews, in person, with clients who are in custody within 24 hours of appointment whenever possible; and to arrange for contact, including notification of a scheduled interview time, within 72 hours of appointment for all clients who are not in custody. Children are not excepted from this rule.

In addition, Rule 1.14 of the Oregon Rules of Professional Conduct (ORPC) requires counsel for persons with diminished capacity (which includes children not capable of considered judgment) to maintain, as far as reasonably possible, a normal client-lawyer relationship with the client. The ORPC require attorneys to

¹ The full text of the 2005 version of the Principles and Standards for Counsel in Criminal, Delinquency and Dependency Cases can be found on the bar's website at http://www.osbar.org/surveys_research/performancestandard/index.html.

maintain contact with their clients, **to keep them reasonably informed** about the status of their cases (ORPC Rule 1.4), **to promptly comply** with reasonable requests for information (*Id*), **to explain** matters to the extent reasonably necessary to permit the client to make informed decisions about matters regarding which the client is capable of exercising considered judgment (*Id*), **to abide by** the decisions of a client who is capable of considered judgment concerning the objectives of representation (ORPC Rule 1.2), and **to consult** with the client regarding the means by which the objectives of representation are to be pursued (*Id*). These rules apply regardless of the client's age or capacity.²

Role of Counsel in Delinquency Cases

Attorneys for youth in juvenile delinquency proceedings are bound to advocate for the expressed wishes of the youth. While the attorney has a responsibility to advise the youth of legal options that the attorney believes to be in the youth's best interest and to identify potential outcomes of various options, the attorney must represent the expressed wishes of the juvenile at every stage of the proceedings. The attorney owes the same duties to a juvenile under the Rules of Professional Conduct as an attorney owes to an adult criminal defendant.

If an attorney determines that a youth is not capable of aiding and assisting in the youth's defense, the attorney shall move the court to dismiss or amend the petition, as discussed in Standard 2.8(2) of the Specific Standards for Representation in Criminal and Juvenile Delinquency Cases.

² For those attorneys who lack the information or skills to have an age appropriate discussion with a young or disabled client, an online training will be available beginning in November, 2007 at the following link: <http://www.cwpsalem.pdx.edu/teen/>.