

STATE OF GEORGIA PERFORMANCE STANDARDS FOR JUVENILE DEFENSE REPRESENTATION IN INDIGENT DELINQUENCY AND UNRULY CASES

Practice in juvenile delinquency cases is unique and challenging, requiring specialized skills and knowledge to assure the best legal representation of clients.

Juvenile Courts have jurisdiction over children up to age 17 who are charged with delinquent acts, alleged unruly or charged with a so-called status offense. However, if a child age 13-17 is charged with one of seven serious offenses, his or her case will be prosecuted in the Superior rather than Juvenile Court.

The purpose of these standards is to provide juvenile defense attorneys with a general guide to appropriate and zealous advocacy on behalf of clients in juvenile court delinquency or unruly proceedings.

Performance Standard 1: Obligations of Juvenile Defense Counsel

The primary and most fundamental obligation of a juvenile defense attorney is to provide zealous and effective representation for his or her client at all stages of the juvenile court proceedings. The defense attorney's duty and responsibility is to promote and protect the child's expressed interest. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. Attorneys also have an obligation to uphold the ethical standards of the State Bar of Georgia and to act in accordance with the Uniform Juvenile Court Rules.

Performance Standard 2: Training and Experience of Juvenile Defense Counsel

Commentary:

Juvenile delinquency cases should not be taken on without the adequate experience and knowledge necessary to represent the client zealously.

- 2.1** Before practicing in juvenile court, juvenile defense counsel (hereafter "counsel") should be proficient in applicable substantive and procedural Georgia juvenile and criminal law and should have appropriate experience, skills and training necessary to represent children.
 - a.** At a minimum counsel should observe at least twenty hours of juvenile court, including every stage of a delinquency proceeding and some observation of deprivation and unruly proceedings. Counsel should obtain formal and informal training in relevant areas of practice, including the

training provided by GPDSC.

- b.** It is highly recommended that counsel work with a mentor before taking a case or have a mentor available to consult on a case.

2.2 Counsel should be knowledgeable about and seek ongoing training in the following areas:

- a.** pre-dispositional and dispositional services and programs available through the court and probation;
- b.** facilities available to serve children: on-site visits may be appropriate;
- c.** child and adolescent development;
- d.** brain development and the affect of trauma on brain development;
- e.** the juvenile justice system;
- f.** the child welfare system;
- g.** the Department of Juvenile Justice policies and procedures;
- h.** the Division of Family and Children's Services policies and procedures;
- i.** substance abuse issues;
- j.** mental health issues and common childhood diagnoses;
- k.** special education laws, rights and remedies;
- l.** competency and immaturity laws, issues and defenses;
- m.** post dispositional advocacy;
- n.** pathways to delinquency;
- o.** cultural diversity;
- p.** interviewing techniques for children;
- q.** working with children and building rapport with the child or adolescent client;
- r.** immigration laws and how they can affect a child involved with the juvenile court;
- s.** school related issues including school disciplinary procedures and zero tolerance policies;
- t.** gangs.

2.3 Counsel should note that local juvenile court practices and procedures may differ.

2.4 Counsel has a continuing obligation to stay abreast of changes and development in the law.

2.5 Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer effective representation to a defendant in a particular matter. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

2.6 Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.

- 2.7** If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Uniform Rules of Court and in accordance with the Disciplinary Rules of the State Bar of Georgia.
- 2.8** When counsel's caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the Circuit Public Defender for counsel's judicial circuit and the court or courts before whom counsel's cases are pending. If the Circuit Public Defender determines that the caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the Circuit Public Defender shall inform the court or courts before whom cases are pending and the Director of the Georgia Public Defender Standards Council.

Performance Standard 3: The Role of Juvenile Defense Counsel

Commentary:

After counseling the child, if the child's express interest does not accord with the lawyer's judgment, then the lawyer may withdraw or seek the appointment of a guardian ad litem. Every effort should be made to limit the role of the guardian ad litem to the minimum required for him or her to accomplish the purpose for which the appointment was made. In most cases both the guardian and the client should be instructed not to discuss the facts of the case as this discussion may not be privileged. However, the attorney may discuss the facts of the case with the guardian ad litem with discretion.

- 3.1** Counsel's principal duty is to zealously advocate the client's expressed interests rather than for counsel's opinion as to what is in the client's best interests.
- a.** Counsel is bound by and should advocate for the client's definition of his or her interests, and may not substitute counsel's own judgment for the client's, nor should counsel ignore the client's wishes because they are perceived not to be in the client's best interests.
 - c.** Counsel should advise the client as to the probable success, and the consequences of, adopting any position, and should give the client all information necessary for the client to make an informed decision.
- 3.2** If a client is incapable of considered judgment on his or her own behalf, counsel may ask for a guardian ad litem to be appointed to represent the client's best interests.
- 3.3** Counsel should remember that the child is the client, not the parent (hereinafter "parent" refers to any parent, guardian, custodial adult or any entity assuming legal responsibility for the child.) The potential for conflict of interest between an accused juvenile and his or her parents should be clearly recognized and acknowledged. Counsel should inform the parent that he or she is counsel for the child, and that in the event of a disagreement between a parent or guardian and

the child, counsel is required to serve exclusively the interests of the child.

- 3.4 In order to effectively advocate for the client and to provide suggestions for appropriate dispositional options, counsel should take a holistic approach to juvenile defense, evaluating all factors which may have contributed to the existing charges

Performance Standard 4: Definition of the Client

- 4.1 The juvenile defender's client is the child. Counsel should explain to the parent that the child is the client and that counsel's principal duty is to represent the child's expressed wishes.
- 4.2 Counsel should remember that, even though the client is a child, all attorney client privileges and obligations attach.

Performance Standard 5: Juvenile Defender's Duty at Appointment

- 5.1 Counsel or a representative of counsel has an obligation to meet with detained clients within 72 hours of arrest.
- 5.2 Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. Counsel should immediately inform the child of his or her rights and the nature of the attorney client relationship, and should pursue any investigatory or procedural steps necessary to protect the clients' interests. Counsel should invoke the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable.
- 5.2 Whenever the nature and circumstances of the case permit, counsel should explore the possibility of informal adjustment.
- 5.3 Counsel should ascertain the parent's willingness to take custody of the client upon release (in situations where the child has been detained) and obtain useful social information from the parent, such as: the client's home behavior, school performance, involvement with special education services, past or present part-time employment, prior delinquency record, whether the client is on probation or pending trial in another case, and other information concerning the child's ability to stay out of trouble if released, and the parent's ability to control and discipline the child. Counsel should utilize this information to request and secure release of the client.
- 5.4 The juvenile procedure law expressly equates a juvenile's right to bail with that possessed by an adult under Georgia law. Rule 9.1 of the Uniform Juvenile Court

Rules (UJCR) requires that an application for bail be made by the child's parent or legal guardian.

- 5.5** If the court requires the posting of a bond, counsel should discuss with the client and his or her parent(s) the procedures that must be followed.
- 5.6** Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of those conditions.

Performance Standard 6: Counsel's Initial Interview with Client

Commentary:

The initial interview is the first and most crucial opportunity to build rapport with the child client. It is important to initiate face-to-face contact with the client as soon as possible after appointment. This interview, and any subsequent conversations with the client, should be conducted at an age appropriate level.

- 6.1** In preparation for the interview, counsel should:
 - a.** schedule the interview to allow for ample time to speak with the client;
 - b.** collect any relevant information to bring, including all records and releases;
 - c.** be familiar with the elements of the offense(s) and the potential dispositions.
- 6.2** At the interview, counsel should:
 - a.** explain to both the client and parent the role of defense counsel. It is important to clarify that counsel represents the legal interests of the child, not the parent. Thoroughly explain the confidential nature of attorney client conversations and the necessity of conducting interviews with the client alone;
 - b.** explain the charges and possible dispositions;
 - c.** explain the juvenile court process, timelines and the role of all the parties involved, such as judge, prosecutor, probation staff, counsel, client and parent;
 - d.** inform the client and parent not to make statements to anyone concerning the offense;
 - e.** obtain signed releases by the client and parent for medical and mental health records, school records, DFCS records, employment records, etc. Counsel should advise the client of the potential use of this information and the privileges that attach to this information;
 - f.** counsel should obtain information from the client concerning the facts of the arrest and charges, and whether there were any statements made, witnesses, codefendants, and any other relevant information.

- g. if the client is detained, one focus of the initial interview and investigation will be to obtain information relevant to the determination of pre-adjudication conditions of release. Such information should generally include:
 - i. client's residence and length of time at that residence;
 - ii. client's legal custody (parent, family, state agency) and physical custody (person responsible to supervise client): names, addresses and phone numbers;
 - iii. health (mental and physical) and employment background;
 - iv. client's school placement, status, attendance and special education designation;
 - v. whether the client or his or her family has had previous contact with the juvenile court system, and the nature and status of that contact;
 - vi. possible adults willing to assume responsibility for the child.

Performance Standard 7: Juvenile Defender's Duty at Detention/Probable Cause Hearing

Commentary:

Juvenile Defenders should be aware that juvenile clients have the same Constitutional rights as adult defendants.

7.1 Preparation for the hearing:

- a. Counsel should be familiar with the elements of each offense alleged.
- b. Counsel should prepare the client and parent for the hearing.
- c. Counsel should consult with presenting authority (presenting authority includes, but is not limited to, prosecutors, probation officers, Department of Juvenile justice caseworkers and police officers) concerning the facts of the case and the possibility of resolution of the case at this stage.
- d. Counsel should consult the Detention Assessment Instrument and be prepared to make arguments against secure detention.
- e. Counsel should know the detention facilities, community placements and other services available in the jurisdiction.

7.2 During the Hearing:

- a. Counsel should be familiar with the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.
- b. Counsel should use the testimony at the hearing as a discovery tool, and elicit as much information as possible with regards to the facts and circumstances of the case.
- c. If probable cause is found, counsel should argue for the least restrictive placement for the client pending arraignment.

Performance Standard 8: Juvenile Defender’s Duty to Conduct Investigation

- 8.1** Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client’s wish to admit guilt, ensure that the charges and disposition are factually and legally correct and the client is aware of potential defenses to the charges.
- 8.2** When conducting the investigation counsel should:
- a.** Obtain the arrest warrant, petition, and copies of all charging documents in the case to determine the specific charges that have been brought against the child.
 - b.** Research relevant statutes and caselaw to identify:
 - i. the elements of the offense(s) with which the child is charged;
 - ii. the defenses, ordinary and affirmative, that may be available;
 - iii. any lesser included offenses that may be available; and
 - iv. any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.
 - c.** If not done previously, conduct an in-depth interview of the client as soon as described in Performance Standard Six.
 - c.** Attempt to interview all witnesses, favorable or adverse, and obtain any criminal or juvenile history of the witnesses.
 - d.** Examine the police reports and any other records, documents and statements obtained through discovery.
 - e.** Counsel should ascertain whether any physical evidence exists and should make a prompt request to examine such evidence.
 - f.** Counsel should attempt to view the scene of the alleged offense. If possible, this should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions).
 - g.** Counsel should ascertain whether the assistance of an expert is needed in preparation of the defense case or to understand or rebut the prosecution’s case.
 - h.** Counsel should, where appropriate, obtain DFCS records of the client and/or any witnesses.

Performance Standard 9: Juvenile Defender’s Duty to Conduct Discovery

Commentary:

Formal discovery in juvenile court is governed by OCGA 15-11-75; however, in Georgia discovery varies according to local practice. Counsel should identify the local practice prior to filing a formal request for discovery taking into account that such requests may trigger reciprocal discovery obligations.

- 9.2** Counsel should consider seeking discovery, at a minimum, of the following items:
- a.** potential exculpatory information;

- b. potential mitigating information;
- c. the names and addresses of all prosecution witnesses, their prior statements, and criminal or juvenile record, if any;
- d. all oral and/or written statements by the client, and the details of the circumstances under which the statements were made;
- e. the prior juvenile or criminal record of the client and any evidence of other misconduct that the government may intend to use against the client;
- f. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
- g. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
- h. statements of co-defendants;
- i. all investigative reports by all law enforcement and other agencies involved in the case; and
- j. all records of evidence collected and retained by law enforcement.

Performance Standard 10: Juvenile Defender’s Duty in Plea Negotiations

Commentary:

After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel should explore all alternatives to trial, including the possible resolution of the case through a negotiated plea or admission.

- 10.1** Counsel is responsible for assuring that the juvenile and parent understand the concept of plea bargaining in general, as well as the details of any specific plea offer made to him or her.
- 10.2** Counsel should make it clear to the client that the ultimate decision to enter a plea has to be made by the client. Counsel should investigate and candidly explain to the client the prospective strengths and weaknesses of the case for the prosecution and defense, including the availability of prosecution witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of an adjudication of delinquency. Counsel should also ascertain and advise the client of the court’s practices concerning disposition recommendations and withdrawing pleas or admissions.
- 10.3** Counsel’s recommendation on the advisability of a plea or admission should be based on a review of the complete circumstances of the case and the client’s situation. Such advice should not be based *solely* on the client’s acknowledgement of guilt or *solely* on a favorable disposition offer.
- 10.4** The client shall be kept informed of the status of the plea negotiations.
- 10.5** Where counsel believes that the client’s desires are not in the client’s best interest, counsel may attempt to persuade the client to change

his or her position. If the client remains unpersuaded, however, counsel should assure the client he or she will defend the client vigorously.

- 10.6** Notwithstanding the existence of ongoing plea negotiations with the prosecution, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to an adjudicatory hearing on the merits.
- 10.7** Counsel should make sure that the client is carefully prepared to participate in the procedures required and used in the particular court.
- 10.8** Counsel must also be satisfied that the plea is voluntary, that the client understands the nature of the charges, that there is a factual basis for the plea or the admission, that the witnesses are or will be available, and that the client understands the rights being waived.
- 10.9** Counsel must consider whether an admission will compromise the client's or the client's family's public assistance or immigration status. If it does, the client may need to reconsider the decision to plead.
- 10.10** Counsel should be aware of the effect the client's admission will have on any other court proceedings or related issues, such as probation or school suspension.

Performance Standard 11: Preparation for Adjudicatory Hearing

- 11.1** Counsel should develop a theory of the case.
- 11.2** Pretrial Motions:
 - a.** Counsel should review all statements, reports and other evidence to determine whether a motion is appropriate.
 - b.** Counsel should file motions as soon as possible due to the time constraints of juvenile court, but within three days prior to the adjudicatory hearing. (UJCR 7.9)
 - c.** Counsel should be aware of the burdens of proof, evidentiary principles and court procedures applying to the motions hearing.
 - d.** Counsel has the continuing duty to file pretrial motions as issues arise or new evidence is discovered.
- 11.3** Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the hearing process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudicatory hearing.
- 11.4** Counsel should be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review.

- 11.5 Counsel should advise the client as to suitable courtroom dress and demeanor.
- 11.6 Counsel should take all necessary steps to ensure full official recordation of all aspects of the court proceeding.

Performance Standard 12: Juvenile Defender’s Duty at Adjudicatory Hearing

- 12.1 Counsel should remember that:
 - a. juveniles have all rights afforded by the United States Constitution and the Constitution of the State of Georgia, except the right to a trial by jury.
 - b. the state has the burden of proving the allegations beyond a reasonable doubt;
 - c. the rules of evidence apply to all juvenile court proceedings;
 - d. the rules of criminal procedure apply to all juvenile court proceedings.
- 12.2 Counsel should be aware that except for certain circumstances, juvenile proceedings are confidential. (See O.C.G.A. §15-11-78 (b)).
- 12.3 Counsel should be aware that a parent or legal guardian must be present during the adjudicatory hearing. This requirement cannot be waived by the child. If a parent is unable or unwilling to participate, a legal guardian can be appointed.
- 12.4 Counsel should use the opening statement as an opportunity to educate the judge as to counsel’s theory of the case. Counsel should consider the advantages and disadvantages of the disclosure of information during the opening statement.
- 12.5 During the prosecution’s case counsel should:
 - a. be alert to and object to attempts to admit inadmissible evidence or testimony;
 - b. be prepared to cross examine witnesses. Any cross examination should be conducted to advance the defense’s theory of the case;
- 12.5 At the conclusion of the prosecution’s case, counsel should move for a dismissal of the proceedings and an order of acquittal pursuant to UJRC 11.2.
- 12.6 When presenting the client’s case, counsel should:
 - a. consider whether any evidence needs to be presented;
 - b. discuss with your client all the implications of testifying, keeping in mind that the decision whether to testify is solely the client’s. Counsel should also be aware of his or her ethical responsibilities if counsel knows that the client will testify untruthfully;
 - c. be prepared for direct examination and redirect of any witnesses;
 - d. be prepared to assert any affirmative defenses;

- 12.7** At the conclusion of the defense case, counsel should renew the motion for dismissal and order of acquittal and renew all earlier relevant objections and motions.
- 12.8** Counsel should use the closing argument to summarize the evidence and testimony as it applies to the theory of the case and remind the judge of the prosecution's burden of proof.

Performance Standard 13 Juvenile Defender's Duty at the Disposition Hearing

Commentary:

The active participation of counsel at disposition is essential. In many cases, counsel's most valuable service to clients will be rendered at this stage of the proceeding. An important part of representation in a juvenile case is planning for disposition.

13.1 Preparation for Hearing:

- a.** Counsel should explain to the client and parent the nature of the disposition hearing, the issues involved and the alternatives open 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;
- b.** Counsel should be familiar with and consider:
- i. the dispositional alternatives available to the court and any community services that may be useful in the formation of a dispositional plan appropriate to the client's circumstances;
 - ii. the official version of the client's prior record, if any;
 - iii. the position of the probation department with respect to the client;
 - iv. the sentencing recommendation, if any, of the prosecutor;
 - v. using a creative interdisciplinary approach by collaborating with educational advocates, social workers, and civil legal service providers;
 - vi. the collateral consequences attaching to any possible disposition;
 - vii. the disposition practices of the judge;
 - viii. referrals to court clinics or community agencies;
 - ix. any victim impact statement to be presented to the court;
 - x. requesting a continuance for disposition at a later date;
 - xi. securing that assistance of psychiatric, psychological, medical or other expert personnel needed for the purposes of evaluation, consultation or testimony with respect to the formation of a dispositional plan;

- xii. preparing a letter or memorandum to the judge to assist the court in deciding the client's disposition. Because judges may have a strong idea of the dispositions they are likely to impose before they begin the hearing, a thoughtful written presentation of a disposition plan that highlights the client's strengths and the appropriateness of the disposition plan should be delivered to the judge and opposing counsel in advance of the disposition hearing. This letter is an opportunity to anticipate and address any concerns the judge may have about the client and the disposition plan. It also an opportunity to address specifically issues of punishment, deterrence, community safety, and rehabilitation as they relate to the client in this case.

13.2 During the Hearing:

- a. Counsel should insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence.
- b. Counsel should subpoena witnesses and present evidence to support counsel's proposed disposition plan.
- c. Counsel should fully cross examine adverse witnesses, and challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court.
- d. Counsel should consider whether the client should make a statement to the court.

- 13.3** When a dispositional decision has been reached, it is the lawyer's duty to explain the nature, obligations and consequences of the disposition to the client and the client's family and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but counsel must advise compliance with the court's decision during the interim.

Performance Standard 14: Juvenile Defender's Continuing Duty to Client

- 14.1** Whether or not the charges against the client have been disposed of, if counsel is aware that the client or the client's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services.
- 14.2** If the client is committed to the Department of Juvenile Justice, counsel should attempt to ensure that client is placed in the most appropriate, least restrictive placement available.

Performance Standard 15: Juvenile Defender's Postdispositional Duties

- 15.1 Counsel should be prepared to represent and inform the client with respect to proceedings to review or modify adjudicative or dispositional orders or to pursue any affirmative remedies that may be available to the client under local juvenile court law.
- 15.2 Counsel appointed to represent a client charged with violation of his or her probation should prepare in the same way and with as much care as for an adjudicatory hearing.

Performance Standard 16: Child’s Right to an Appeal

Commentary:

Appeals from judgments in juvenile court are handled in the same manner as appeals from superior court.

- 16.1 Counsel should inform the client of his or her right to an appeal, the steps necessary to appeal and the likelihood of success.
- 16.2 Counsel should know the rules of both the Supreme Court and the Court of Appeals concerning the filing of appeals.

Performance Standard 17: Juvenile Defender’s Duty during Transfer Hearings under O.C.G.A. 15-11-30.2

Commentary:

A new, inexperienced juvenile defender should not handle a transfer hearing without the supervision or assistance of a more experienced juvenile defender. A transfer hearing, while not a hearing on the merits of the case, could result in the loss of the protections afforded in juvenile court. Therefore, counsel should prepare in the same way and with as much care as for an adjudicatory hearing, in accordance with all previously annotated performance standards.

- 17.1 Counsel should be aware of the statutory findings the court must make before transferring jurisdiction to superior court.
- 17.2 Counsel should be aware of the current statutory and case law governing these findings.
- 17.3 Counsel should be prepared to present evidence and testimony to prevent transfer, including testimony by people who can provide helpful insight into the client’s character, such as teachers, counselors, psychologists, community members, probation officers, religious affiliates, employers, or other persons with a positive personal and/or professional view of the defendant.
- 17.4 Counsel should ensure that all transfer hearing proceedings are recorded.
- 17.5 Counsel should preserve all issues for appeal.

- 17.6 Counsel should consider obtaining independent evaluation from a defense expert.
- 17.8 Counsel should investigate possible placements for the client if the case remains in juvenile court.

Performance Standard 18: Juvenile Defender’s Duty in Designated Felony Cases, under O.G.C.A. 15-11-63

Commentary:

A new, inexperienced juvenile defender should not handle a designated felony case without the supervision or assistance of a more experienced juvenile defender.

- 18.1 Counsel should be aware of the special statutory provisions governing designated felonies and ensure that the client has been properly charged.
- 18.2 Counsel should inform the client of the consequences of being adjudicated a designated felon.
- 18.3 Counsel should work with the probation department to learn its recommendation and negotiate regarding the contents of its report to the court.
- 18.4 Counsel should use caution in pleading to a designated felony act due to the dispositional consequences.
- 18.5 Counsel should be aware of the statutory provisions regarding restrictive custody and be prepared to argue against restrictive custody.

Performance Standard 19: Juvenile Defender’s Duty: Mental Competency

- 19.1 Counsel should be familiar with procedures for a determination of mental incompetence under O.C.G.A. §15-11-150 through §15-11-155.
- 19.2 If at any time the client’s behavior or mental ability indicate that the he or she may not be competent, or may be mentally retarded, counsel should make a motion for a competency evaluation.
- 19.3 Counsel should prepare for and participate fully in the competency hearing.
- 19.4 Counsel should be aware that the burden of proof is on the child to prove incompetency and that the standard of proof is a preponderance of the evidence.
- 19.5 If the client is found dependent, counsel should participate, to the extent possible, in the development of the mental competency plan and in any subsequent meetings or hearings regarding the child’s mental competency.

Performance Standard 20: Special Considerations

Commentary:

There are related legal issues and unique considerations in the juvenile justice system that do not exist in the criminal justice system. Juvenile defenders should be aware of the following matters:

- 20.1** Venue: Counsel should be aware that venue is proper in either the county where the alleged delinquent offense occurred or in the county of the child's residence. Counsel may make a motion for change of venue based upon tactical considerations.
- 20.2** Time Limits: Counsel should be aware of the time limits applicable in juvenile court.
- 20.3** Confidentiality of Proceedings and Records: Counsel should be aware that, except in certain circumstances, the general public is excluded from all juvenile court proceedings and that juvenile records are not available to the public.
- 20.4** Sealing of Records: Counsel should be aware of and inform the client that an application must be made to the juvenile court to have the client's record sealed.
- 20.5** Unrulies and Status Offenses: Counsel should be aware of the definition of an "unruly child" and "status offender" and know the procedural safeguards applicable to such designations.
- 20.6** Immigration: Counsel should be aware of the collateral effects of a juvenile court proceeding on the client or client's family's immigration status and consult with an expert if necessary.
- 20.7** Special Education: Counsel should be aware of any rights the client may have under special education laws and that any special education records should be presented to the court.

Adopted by the Georgia Public Defender Standards Council on December 10, 2004.

Emmet J. Bondurant

Chairperson

Attested:

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Secretary