

# ROLE AND ETHICAL DUTIES OF THE JUVENILE DEFENDER

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# Duty to Represent Client's Interest

Advocate for the client's expressed interest not the child's "best interest"

# Duty to Represent Client's Interest

## American Bar Association Model Rules of Professional Conduct 1.2 *(Scope & Allocation of Authority)*

- “A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.”

# Scenario #1

**The client is charged with battering a parent. They reveal to you the parent is sexually abusing them. The client wants to admit the charge, return home on probation, and does not want you to reveal that they are being abused. What do you do?**

- a. Report since you are a mandatory reporter
- b. Get a psychological evaluation
- c. Admit the kid and argue for them to return home on probation
- d. Tell the non-offending parent to see if they can reason with the client for a better outcome

# Scenario #2

The client is 14-years old and before the court on their 3<sup>rd</sup> probation violation. The client is being severely neglected at home. Violations include not attending school, violating curfew, not attending court mandated programs, and testing positive for marijuana. Wraparound services were offered, family declined. A relative placement is available; they can provide strong parenting and are willing to do wrap services. The court indicates they are vacillating between giving the kid one more chance, but will stay a long custodial disposition, OR 30-days house arrest and placement with the relative. The client wants you to argue that they return home. What do you do?

- a. Ask for a continuance so you can talk the kid into the relative placement
- b. Sincerely argue for the court to give the kid one more chance and send them home
- c. Argue for the kid to be placed at home but “hint” that the kid will be more successful with the relative
- d. Contact the prosecutor and tell them your honest opinion that placement with the relative will be successful and ask that they support that since your hands are “tied”

# Duty of Confidentiality and Privilege

American Bar Association Professional Rules of  
Conduct 1.6

Confidentiality and privilege applies to juvenile  
clients to the same extent as adult clients

# Scenario #3

The client's parent is insisting that they be present when you talk with the client. You have not had an opportunity to discuss a "waiver" with the client and are uncomfortable with this particular parent interfering with the case. The parent is refusing to allow you any independent contact with the client. What do you do?

- a. Speak with the parent and child together and ask the child to waive the privilege
- b. Tell the parent that unless they back off and let you do your job, they should get another attorney
- c. At the next hearing tell the court the parent is interfering with your representation and ask they order the parent to "stand down"
- d. Set the matter for a Motion for Informal Supervision, which has a good chance of being successful, and avoids the confidentiality problem

# Duty of Competence and Diligence

*Competent and diligent representation of juvenile clients require a holistic approach*



# Duty of Competence and Diligence

- American Bar Association Professional Rule of Conduct 1.1 – (b)apply the learning and skill, and mental, emotional, and physical ability reasonably necessary for the performance of such service.
- American Bar Association Professional Rule of Conduct 1.3 – diligent & prompt
- California Rule of Court 5.664 – training for entry, and ongoing

# Duty to Represent Free of a Conflict of Interest

American Bar Association Rules of Professional Conduct 1.7 through 1.10

California Welfare and Institutions Code Section 634.2 – Right to public defender, and conflict counsel

*The duty to represent free of a conflict of interest is a duty owed to the client and is an ongoing obligation*

# Scenario #4

**You are retained by the client's parents. The case involves potential civil liability. The parent wants you to aggressively pursue every possible defense and to vigorously defend against the charges. The client wants to admit and move on. The parents indicate if you admit the child they will fire you. What do you do?**

- a. Speak with the child and encourage them to “fight” the case at all costs
- b. Tell the parent that unless they back off and let you do your job, they should get another attorney
- c. At the next hearing tell the court the predicament and ask the court to “fix” the problem
- d. Declare that a conflict has developed and ask the court to remove you from the case as retained counsel

# Duty to Communicate

American Bar Association Professional Rule of  
Conduct 1.4

“Reasonably informed”

*Juvenile defense counsel should take care to use fitting language when communicating with their clients*

# Scenario #5

**Your client denies the charges and the parent is outraged that the client was charged. The evidence is not great but could be enough for a true finding at trial. On the other hand the client is an excellent candidate for informal probation. When you bring that up the client and parent accuse you of not “fighting” for them and they want their day in court. What do you do?**

- a. Set the case for an Adjudication Hearing
- b. Tell the parent they are making a mistake and you will not be a party to it
- c. Set the case for a Motion for Informal Supervision and tell the client and parent you know what's best
- d. Continue the case and set up a meeting so you can discuss the realities of trial and explain what successful informal probation means

# Duty to Advise and Counsel

American Bar Association Model Rule of Conduct 2.1

*Duty to render candid and realistic advice.*

Initiate advice/investigation when requested, or when in the client's interest

Advise based on relevant “moral, economic, social and political factors”

# Scenario #6

Client insists he is innocent. Based on the evidence you have received, you don't believe him. You are also sure that a judge would not believe him. Client wants to fight the case. Do you?

- a. Go to trial (you've been wanting one anyway)
- b. Give your client the blunt answer that he CANNOT win
- c. Tell your client the worst possible disposition he could be facing, to convince him to enter an admission and receive a less severe dispo.
- d. Outline for your client why you don't think his case is winnable, but leave the decision up to him.



Questions?



# Resources

- ❑ American Bar Association Rules of Professional Conduct (<https://www.uspto.gov/sites/default/files/documents/AbavsUSPTO.pdf>)
- ❑ California Rules of Professional Conduct (last updated 2018)  
([Current Rules of Professional Conduct \(ca.gov\)](#))
- ❑ California State Bar Ethical Hotline: **800-238-4427**