

WASHINGTON STATE  
MINORITY AND JUSTICE COMMISSION

COMMISSION MEETING



18000 INTERNATIONAL BOULEVARD, 11TH FLOOR, SUITE 1106  
SEATAC, WASHINGTON  
FRIDAY, JUNE 30, 2017  
8:45 A.M.-1:00 P.M.



# MINORITY AND JUSTICE COMMISSION

AOC SEATAC OFFICE  
18000 INTERNATIONAL BLVD., SUITE 1106  
FRIDAY, JUNE 30, 2017  
8:45 A.M. – 1:00 P.M.  
JUSTICE MARY YU, CO-CHAIR  
JUSTICE CHARLES W. JOHNSON, CO-CHAIR

Teleconference: 1-877-820-7831  
Passcode: 358515#

## AGENDA

### CALL TO ORDER 8:45 – 8:50 a.m. (5 minutes)

- Welcome
- Approval of April 7, 2017 Meeting Minutes 1

### CO-CHAIRS' REPORT 8:50 – 9:20 a.m. (30 minutes)

- Symposium Debrief



### STAFF & COMMITTEE REPORTS

- **Updated Juvenile Defense Guidelines Discussion – Annie Lee, Kitara Johnson, Professor Bob Boruchowitz, Travis Stearns** 9:20 – 9:50 a.m. (30 minutes) 10
- **Staff Report – Carolyn Cole & Cynthia Delostrinos** 9:50 – 10:20 a.m. (30 minutes)
  - Co-sponsorship criteria 41
  - Follow-up from April 7 meeting
    - India Association of Western Washington request for funding 45
    - Immigration bench guide updates
  - National Consortium on Racial and Ethnic Fairness in the Courts Conference
  - Tribal State Consortium – July 21, 9 am – 4 pm, Colville Tribal Government Center 47
  - Institutional Challenge Grant
  - Pre-Trial Justice Task Force Launch
  - LFO Consortium
  - Youth Events:
    - Seattle Youth and Law Forum
    - Color of Justice, August 17, 9 am – 3 pm, Pierce County Superior Court 48
    - Tri-Cities Youth and Justice Forum – November 3, Columbia Basin College, Pasco, WA
  - Spokane Community Forum with Ron Davis
  - Eliminating the Pipeline School Discipline Series
  - Annual Report
  - Budget 50
  - Shout-outs
- **Recognition of 2016-2017 Law Student Liaisons** 10:20 – 10:30 a.m. (10 minutes)
- **Education Committee – Justice Stephens** 10:30 – 10:45 a.m. (15 minutes)
  - SCJA Conference
  - ATJ Conference
  - Fall Judicial Conference – September 17-20, Heathman Lodge, Vancouver, WA
  - WASCLA Conference – October 13-14, Wenatchee, WA
  - Collaborative Efforts

- **Outreach Committee – Judge Yule** 10:45 – 11 a.m. (15 minutes)
- **Workforce Diversity Committee – Judge Glenn** 11:00 – 11:15 a.m. (15 minutes)
  - Justice C.Z. Smith WA Supreme Court Memorial Service
  - Justice C.Z. Smith Awards
  - Judges and Commissioners of Color Directory
  - Judges of Color Reception – Fall Judicial Conference, September 17, Vancouver, WA
- **Juvenile Justice Committee – Annie Lee** 11:15 – 11:30 a.m. (15 minutes)

**Working Lunch and Committee Meeting Time 11:30 a.m. – 1 p.m.**

**NEXT MJC MEETING: September 22, 2017, Hibulb Cultural Center (6410 23<sup>rd</sup> Avenue NE Tulalip, WA 98271), 8:45 am – 2 pm. Travel information, meeting agenda, and materials will be shared closer to the meeting date.**

 <p>WASHINGTON COURTS</p>	<p><b>Washington State Minority and Justice Commission (WSMJC)</b> Friday, April 7, 2017 8:45 am – 12:45 pm Seattle University School of Law</p> <p><b>Teleconference: 1-877-820-7831 Passcode: 358515#</b></p>	
<p><b>MEETING NOTES</b></p>		

**Commission Members Present**

Justice Charles Johnson, Co-Chair  
Justice Mary Yu, Co-Chair  
Justice Debra Stephens  
Judge Veronica Alicea-Galvan  
Judge Lisa Atkinson  
Prof. Lori Bannai  
Prof. Robert Boruchowitz  
Ms. Lisa Castilleja  
Mr. Steve Clem  
Ms. Katherine Svoboda  
Judge Linda Coburn  
Sgt. Adrian Diaz  
Mr. Mike Diaz  
Judge Lisa Dickinson  
Judge Theresa Doyle  
Professor Jason Gillmer  
Mr. Anthony Gipe  
Judge Bonnie Glenn  
Mr. Abdullahi Jama  
Ms. Kitara Johnson  
Ms. Angela Jones  
Judge Linda Lee  
Judge LeRoy McCullough  
Ms. Kim Morrison  
Ms. Karen Murray  
Ms. Jasmin Samy  
Mr. Benjamin Santos  
Judge Lori K. Smith  
Mr. Travis Stearns  
Ms. Lisa van der Lugt  
Ms. P. Diane Schneider

**AOC Staff Present**

Ms. Michelle Bellmer  
Ms. Carolyn Cole  
Ms. Cynthia Delostrinos  
Ms. Nichole Kloepfer

**Guests**

Ms. Aneelah Afzali  
Dean Annette Clark  
Mr. Kerem Levitas  
Ms. Lalita Uppala

**Student Liaisons Present**

Ms. Renee Ambacher  
Ms. Kidane Astor  
Ms. Lia Baligod  
Ms. Maia Bernick  
Ms. Geraldine Enrico  
Mr. Peter Alexander Gale  
Ms. Jodilyn Gilleland  
Mr. Jamison Nichols  
Ms. Kate Sanburn

## CALL TO ORDER

The meeting was called to order at 9 a.m.

The meeting minutes from the February 27, 2016 meeting were approved as presented.

The Commission welcomed the following guests:

- **Dean Annette Clark**, Seattle University School of Law
- **Lalita Uppala**, Director, India Association of Western Washington (IAWW) <http://www.iaww.org/>
- **Kerem Levitas**, past President and Community Engagement Board member of Middle Eastern Legal Association of Washington (MELAW) <http://melegal.org/>
- **Aneelah Afzali**, Executive Director, American Muslim Empowerment Network <http://www.mapsredmond.org/2016/12/18/how-you-can-help/>

## CO-CHAIRS REPORT

### New Member Introductions, Re-Appointments, Recognition of Emeritus Members

Welcome new members:

- Diana Bob – Native Law PLLC
- Lisa Castilleja – UW School of Law
- Katherine Svoboda (WAPA alternate) – Grays Harbor Prosecuting Attorney
- Anthony Gipe – Shatz Law Group PLLC
- Abdullahi Jama – Independent Consultant
- Kitara Johnson – Excelsior Youth Center
- Angela Jones – Eastern Washington University
- Judge Linda Lee – Washington State Court of Appeals
- Rosalba Pitkin – Clark College
- Jasmin Samy – Council on American-Islamic Relations Washington State
- Ben Santos – King County Prosecuting Attorney's Office
- Lisa van der Lugt – Commission on Hispanic Affairs
- Judge G. Helen Whitener – Pierce County Superior Court

Re-appointed members:

- Judge Bonnie Glenn – Office of Administrative Hearings
- Judge LeRoy McCullough – King County Superior Court
- Karen Murray- King County Associated Counsel for the Accused Division

Emeritus members:

- Professor Bob Boruchowitz – Seattle University School of Law
- Russell Hauge – Washington State Sentencing Guidelines Commission
- Uriel Iniguez – Past Director, Commission on Hispanic Affairs

- P. Diane Schneider – WA State Coalition for Language Access
- Judge Dennis Yule – Retired, Superior Court Benton and Franklin Counties

## STAFF REPORT

### **Judges and Commissioner of Color Directory – Judge Glenn and Judge Alicea-Galvan**

The Workforce Diversity (WFD) Committee considered feedback from Commission membership at the February 27<sup>th</sup> meeting and made the following recommendations:

1. The directory should be renewed as originally intended as it serves an important purpose to identify and showcase our Judges and Commissioners of color, making it easier for Judges and Commissioners of color, and those persons of color aspiring to be Judges and Commissioners to network and build community.
2. The Commission should retain the term “judges of color” and changing the title of the directory to “Bridging the Gavel Gap: A Directory of Judges and Commissioners of Color of the State of Washington.”
3. The WFD Committee should send out an email to all judges who responded to the directory survey informing them of our intent to publish and distribute to ensure that we can the correct information and confirm that they understand that at their request they will be included in the directory.
4. Earmark \$1,000 to support the renewal of the directory.

**Vote:** The Commission discussed the recommendations and voted unanimously to approve all four recommendations.

### **Recommendations and next steps:**

- The foreword of the directory should include an explanation of the rationale that was presented to the Commission:
  - The mission of the Minority and Justice Commission is clear: to identify and to eradicate the effects of ethnic, racial, and cultural bias in our state court system.
  - This Directory does not prohibit the creation of other directories or other tools to build relationships within other groups. This in no way diminishes other kinds of oppression prevalent in our society.
  - The purpose and need of the directory is more relevant than ever to inspire persons of color and communities of color to aspire to be Judges and Commissioners. There is a continued gap of those on the bench that is real.  
***People of color are 40% of the population, but less than 20% of state judges. When 90% of US cases are tried in state courts, diversity matters. (Gavel Gap Report)***
- Make clear how judges are supposed to respond to the email and what will happen if they do or do not confirm their information (confirmation = inclusion in the directory and self-identification as a person of color).
- WFD Committee will re-word the foreword and email to judges for clarity and will run it by the Commission.
- This directory does not prohibit the creation of other types of directories. The Commission should discuss ways that it can support other identity groups who wish to do something

similar (i.e., women judges directory, LGBTQ judges directory, religious minority judges directory).

### **Follow-up from February 27<sup>th</sup> Meeting**

Following our discussion about the ramifications of recent federal immigration executive orders:

- Annie Benson will be enlisting the help of UW law student, Francisco Carriedo, to make updates to the MJC immigration bench guide. **Annie's team hopes to have the updates completed by June 30.**
- Judge Lori Smith invited Annie Benson to speak to her court about family emergency plans developed in the event that a parent is deported.

### **LFO Stakeholder Consortium**

The Commission has brought on two researchers to help with data collection:

**Michelle Bellmer** worked for the Thurston County District Court for 10 years as a Clerk. She started as a civil clerk and worked her way up to being a court clerk. She most recently served as an accounting clerk.

**Joel McAllister** managed LFO operations in King County for over 15 years before his retirement. He has been responsible for the collection and analysis of the data behind the Clerks' Association's annual statewide reports to the legislature since 2003.

Research areas will be expanded to include victims and restitution because it isn't well understood and is often used as an argument against LFO reform. Consortium will begin working with Microsoft to develop the LFO Calculator at no cost to the Commission.

### **Pre-Trial Justice Task Force**

The launch has been rescheduled for June 22 at the AOC's SeaTac Office (18000 International Blvd., Suite 1106). The task force is a joint effort between the SCJA, DMCJA, and the Commission, and Washington has officially joined the Pretrial Justice Institute's 3DaysCount Campaign. Stakeholders invited include representation from all three government branches, bail bondsmen, and community/advocacy organizations.

<http://projects.pretrial.org/3dayscount/>

### **Legislative Updates**

The LFO bill has been stalled in the Senate, but may be revived. Racial Impact Statement bill is dead. Did not make it out of the Senate Rules Committee.

### **Jury Diversity Symposium**

Planning group is still in the process of confirming all presenters. Still trying to locate any individuals who have been excluded from jury service on the basis of race or defendants tried by homogenous juries.

## **Youth Events**

### *UW Law Academy*

Event was held on March 10 at the law school. Lisa Castilleja reported that the event was a success. High school students from diverse backgrounds were invited to participate in a day of workshops to connect with law students, attorneys, and judges and learn about how to make a difference in their communities by choosing a career in the law. Sponsored by the UW School of Law and the Law School Admissions Council as part of Discoverlaw.org events.

### *Wenatchee Diversity Justice Day for Youth*

Event was held on March 28 at Wenatchee Valley College. Carolyn Cole reported the event was very well-organized and included diverse student representation. Approximately 200 students attended.

*Seattle Youth and Law Forum: April 29, 8 a.m. – 3 p.m., First A.M.E. Church (1522 14<sup>th</sup> Ave., Seattle)*

Flyer included in the meeting packet. Attendance highly encouraged. The event will include a thought-provoking keynote address by Angela Rye, an American attorney and the Principal and CEO of IMPACT Strategies, a political advocacy firm in Washington, DC. She currently is running the boards of the Congressional Black Caucus Institute, Congressional Black Caucus Political Action Committee, Seattle University School of Law Alumni, and Women in Entertainment Empowerment Network. The Forum will also feature guests from our local and federal court system, local Police and Sheriff Offices and the WA State Bar. Against the backdrop of recent political and election issues, it is critical that we have representation from young men and women from all racial, cultural and socioeconomic backgrounds.

## **Spokane Community Forum Event with Ron Davis: April 24, 5-8 pm, Eastern Washington University**

The Washington State Minority and Justice Commission, in partnership with Eastern Washington University and the NAACP Spokane Chapter, will screen the award-winning movie *3 ½ Minutes, 10 Bullets*. The movie screening will be followed by a forum on productive community responses to hate featuring Ron Davis, father of Jordan Davis and founder of the Jordan Davis Foundation, and Spokane community leaders. Heavy appetizers and refreshments will be served. The event is free and open to the public. Attendance is encouraged and travel for first 5 Commission members to RSVP will be covered.

Event page: <http://www.courts.wa.gov/index.cfm?fa=home.sub&org=mjc>

Facebook event: <https://www.facebook.com/events/409216202769032/>

Panel:

Phillip Tyler – President, NAACP Spokane Chapter

Judge Aimee Mauer – Spokane County District Court



Chief Craig Meidl – Spokane Police Department

Caleb Dawson – Gonzaga University Student Body President and Act Six Scholar

Dulce Gutierrez Vasquez – Diversity Outreach, Associated Students of Eastern Washington University

**Eliminating the Pipeline School Discipline Series Part 1: April 27, 5:30 – 8:30 pm, Tukwila Community Center Social Hall**

The free five-part workshop series will focus on disrupting the school-to-prison pipeline, with the overall goal of improving the educational experience for students of color and lessening the number of children of color in juvenile justice systems in King County and Washington State. The series will culminate with a conference dedicated to action steps for change at the intersection of education and the juvenile justice system. Future workshops will take participants through the school-to-prison pipeline covering the topics of early learning and discipline, discipline in the school building, action and reaction to disciplinary measures and involvement with the courts. The Commission is thankful for the opportunity to partner with the Equity in Education Coalition on this initiative. Please contact [Discipline@eec-wa.org](mailto:Discipline@eec-wa.org) with any questions or for more information. Attendance highly encouraged.

Will be reaching out to members, possibly the Juvenile Justice Committee, to help plan the last workshop session on Courts Igniting Change scheduled for 2018. Have reached out to Judge Saint Clair.

**Annual Report**

Carolyn has begun the process of putting together the Annual Report. She will be reaching out to members to help provide content. The cover will be the portrait of Justice Smith. Hope to have it available by the May symposium.

**Budget**

Commission has spent approximately \$36,925 of its \$70,000 available funds to date. Will be pushing to make sure all funds are used before fiscal year ends on June 30<sup>th</sup>.

**LAW STUDENT LIAISONS**

*Seattle University School of Law*

Liaisons were commended for the success of their second campus event on the topic prosecutorial discretion and implicit bias held on March 8. Speakers included Judge Bill Bowman (King County Superior Court), Travis Stearns (Washington Appellate Project), Professor Jan Ainsworth (Seattle University School of Law), and Stephan Thomas (King County Prosecuting Attorney's office).

*Gonzaga School of Law*

Liaisons will hold their Careers in Law event on April 19 on campus and give an update at the next Commission meeting.

*University of Washington School of Law*

**Vote:** Funding for Youth Justice Film Screening proposal was unanimously approved.

**Update:** Planned event canceled. Liaisons encountered problems securing rights to screen the film and securing a venue. Liaisons will continue to support the Race Equity Training at UW Law's 1L Orientation by the Seattle Office for Civil Rights, which was approved for \$400 funding by the Commission for the fall.

## COMMITTEE REPORTS

### **Outreach Committee – Judge Yule**

Committee mission statements and goals have been updated on the Commission website. Working on updating the member bio and picture information on the website. **The committee welcomes suggestions for locations for future meetings and guest presentations to help build community outreach.**

### **Workforce Diversity Committee – Judge Bonnie Glenn**

Judge Glenn shared that the committee would like to move forward with planning another Judges of Color reception. **Looking for a location.** She also shared the law school award resolution for Justice Smith and reported that it is **awaiting signatures from the deans and Commission Co-Chairs.** The law school award will begin in 2018. Each law school chooses a student award winner and the location of the award ceremony will rotate between the law schools. Seattle University School of Law will host the first award ceremony.

The WA Supreme Court Memorial Service for Justice Smith will be held on June 1 at 9 am at the Temple of Justice. Judge Glenn will present the Commission's framed resolution to Justice Smith's family. All are welcome to attend and the event will be livestreamed by TVW.

### **Education Committee – Justice Stephens**

Justice Stephens announced Judge Lori Smith as the committee's new Co-Chair.

#### *Appellate Conference*

- "Beyond Balls and Strikes: Judging in a Diverse Society"
- April 5, 8:30 am – 12 pm, Walla Walla, Washington
- Mr. Bob Chang and Professor Anna Roberts presented. Session included a mock Batson hearing. Justice Stephens reported that it was a well-received session with full participation.

#### *SCJA Spring Conference*

- Davenport Grand Hotel, Spokane, Washington
- Sunday, April 23: Ron Davis – 3 ½ minutes 10 Bullets (Judge McCullough)
- Monday, April 24: Professor Butler – Race, Law, and Politics: Implications for the Court in the 21<sup>st</sup> Century (Judge Darvas)
- Tuesday, April 25: Professor Anna Roberts - Juror implicit bias (Judge Doyle)
  - This session will give judges an opportunity work through the new U.S. District Court for the Western District of Washington implicit bias jury instructions and video.

#### *Fall Judicial Conference*

- Heathman Lodge, Vancouver
- Better Judging Through Science (Sept. 18<sup>th</sup> 1:30-5 pm plenary session) – Prof. Tony Greenwald

- In the process of collecting research and putting together a panel.
- ER 609 (September 19<sup>th</sup> 10:30 am – 12 pm choice session) – Prof. Anna Roberts
  - Justice Yu asked that the committee make sure that the session is balanced and isn't only pro-ER 609.

*ATJ Conference Proposals not accepted*

ATJ felt that the audience wasn't correct for the proposals we submitted and they could not guarantee enough time for the Commission to do the poverty simulation. Committee agreed that we needed enough time to do it well. **Will work to schedule it for another date/time.**

### **Juvenile Justice Committee – Annie Lee**

Justice Yu is interested in finding data about LFOs for juveniles' parent recoupment for incarceration costs. **Judge Glenn suggested contacting the Office of Financial Recovery for the data.**

Smart on Juvenile Justice Reform Grant Project under the Department of Social and Health Services has launched. It's a two-year grant to address racial and ethnic disparities in juvenile justice and the significant proportion of lower-level delinquent and status offenders being held in detention facilities.

## **GUEST PRESENTATIONS**

- Lalita Uppala presented information about the IAWW's Hate Crime Info Sessions <https://www.youtube.com/watch?v=sqmw8fScFuk&feature=youtu.be>. They plan to replicate the event in communities across Washington. **Would appreciate any funding for future sessions. They are also seeking volunteers to serve on the panels, especially judges. If interested, please email her at [lujab@hotmail.com](mailto:lujab@hotmail.com).**
- Kerem Levitas presented on the recent executive orders and how they have created increased fears of engaging with the government in the Muslim community. Muslim community members are canceling travel plans and making contingency plans with immigration attorneys. He also shared that MELAW will be holding legal clinics in February and April. MELAW would like to sponsor more legal clinics and know your rights workshops with CAIR. **Recommendations for Commission action:**
  - Implicit bias training on Islamophobia mandatory for judges at Judicial College
  - Training for court staff on how to serve Muslim community members and language access issues.
  - Support GR 36 and implicit bias jury instructions.
  - Members should participate and support campaigns to promote interactions with Muslims. CAIR has a program that allows professionals to host Muslim high school students and the "Eat with Muslims" campaign – can sign up to attend a dinner. Important to promote positive stories on social media.
- Aneelah Afzali shared that MAPS will be hosting various events, including a Hate Crime forum in Renton on April 20 and a banquet on April 22. Supports more judicial education around Islamophobia and would be willing to help with that.

Meeting adjourned at 1 p.m.

## **NEXT COMMISSION MEETINGS:**

DRAFT  
FOR MJC USE ONLY  
DO NOT CIRCULATE

- “Jury Diversity in Washington: A Hollow Promise or Hopeful Future?” Symposium, May 24, 9 am – 12 pm (reception to follow) at the Temple of Justice
- June 30, 8:45 am – 1 pm, AOC SeaTac Office (18000 International Blvd., Suite 1106)



# **Washington State Bar Association**

## **PERFORMANCE GUIDELINES FOR JUVENILE OFFENSE REPRESENTATION**

**[Date]**

91004-1100/135638013.1

**TABLE OF CONTENTS**

		<b>Page</b>
GUIDELINE 1.	JUVENILE DEFENSE COUNSEL’S’ ROLE IS TO PROVIDE QUALITY REPRESENTATION TO CLIENTS AT ALL STAGES OF THE JUVENILE CRIMINAL PROCESS .....	3
	1.1 The paramount obligation of defense counsel is to provide conscientious, diligent, and quality representation to their clients at all stages of the juvenile criminal process. ....	3
	1.2 Obligation Regarding Adequate Resources for Effective Assistance .....	3
	1.3 Scope of Representation .....	4
	1.4 Explain Client Confidences and Confidential Information .....	5
GUIDELINE 2.	QUALITY REPRESENTATION REQUIRES EFFECTIVE, DEVELOPMENTALLY-APPROPRIATE COMMUNICATION WITH JUVENILE CLIENTS .....	5
	2.1 Effective Communication with Juvenile Clients .....	5
GUIDELINE 3.	QUALITY REPRESENTATION OF JUVENILES REQUIRES SPECIALIZED TRAINING AND EXPERIENCE .....	6
	3.1 Counsel shall be knowledgeable about, and utilize, current statutes, case law, rules of procedure, rules of evidence, and rules of appellate procedure that affect juvenile practice;.....	6
	3.2 Use of Supporting and Consulting Resources .....	7
GUIDELINE 4.	QUALITY REPRESENTATION REQUIRES THAT JUVENILE DEFENSE COUNSEL PROTECT CLIENTS IN NEED OF SPECIAL PROTECTION.....	7
	4.1 Obligation Representing Non-Citizen Clients .....	7
	4.2 Obligation Regarding Shackling of Juveniles.....	7

Error! Bookmark not defined.

Deleted: 5

ERROR! BOOKMARK NOT DEFINED.

Deleted: 6

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
	4.3 Obligation to Protect Clients’ Right Against Self Incrimination .....	7
	4.4 Obligation of Counsel Regarding Disparate Treatment of Clients .....	8
	4.5 Obligation of Counsel to Investigate and Address Custodial Mistreatment.....	8
	4.6 Capacity of Youth.....	8
	4.7 Competence of Youth.....	8
GUIDELINE 5.	EACH STAGE OF THE JUVENILE CRIMINAL PROCESS REQUIRES DILIGENCE, SKILL AND EFFECTIVE, DEVELOPMENTALLY APPROPRIATE CLIENT COMMUNICATION .....	9
	5.1 Formal and Informal Discovery.....	9
	5.2 Initial Client Contact.....	9
	5.3 Obtaining Further Information from the Client.....	11
	5.4 Maintain Regular Contact with the Client .....	11
	5.5 Parents and Other Interested Third Parties .....	11
	5.6 Early Stages .....	12
	5.7 Prosecution Requests for Non-Testimonial Evidence.....	13
	5.8 Role of Counsel in Advising on Diversion.....	13
	5.9 Role of Counsel at Arraignment, Probable Cause Hearings and Detention Hearings .....	13
	5.10 Prepare Client and Parent for Probation Interviews.....	14
	5.11 Review of Detention Decisions .....	14
	5.12 Investigation, Pretrial Motions and Pleas .....	14
	5.13 Adjudicatory (Fact-finding) Hearing .....	18
	5.14 Disposition .....	19
	5.15 Post Disposition Matters.....	21
GUIDELINE 6.	JUVENILES FACING ADULT PROSECUTION REQUIRE COUNSEL WITH SPECIAL TRAINING AND EXPERTISE .....	23

Deleted: 18

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
	6.1 Prosecution of Client as an Adult .....	23
	6.2 Specialized Training and Experience Necessary .....	24
	6.3 Obligation of Counsel to Inform the Client of the Possibility of Adult Prosecution and Potential Consequences .....	24
	6.4 Obligation to Investigate Factors Relating to Possible Adult Prosecution .....	24
	6.5 Duty to Advocate for Client’s Expressed Interest Regarding Decline .....	25
	6.6 Preserve the Client’s Opportunity to Appeal a Judicial Decision to Prosecute in Adult Court .....	26
	6.7 Obligations Following a Determination to Prosecute the Client in Adult Court .....	26
GUIDELINE 7.	PUBLIC DEFENSE COUNSEL HAVE SPECIAL RESPONSIBILITIES TO IMPROVE THE JUVENILE CRIMINAL JUSTICE SYSTEM.....	27
	7.1 Role of Counsel in Systemic Issues .....	27
	7.2 Sharing Information and Developing Alliances .....	27



## PREFACE

These *Performance Guidelines for Juvenile Offense Representation* are intended to be used as a guide to professional conduct and performance. These guidelines are specific to representation of juveniles in criminal cases.

Attorneys should consider these *Performance Guidelines for Juvenile Offense Representation* in conjunction with the Washington State Bar Association *Performance Guidelines for Criminal Defense Representation*, approved June 3, 2011. Attorneys appointed by the court in juvenile criminal proceedings also shall comply with Juvenile Criminal Rule (JuCR) 9.2 and the Washington Supreme Court's *Standards for Indigent Defense*.

These Guidelines emphasize the unique demands placed upon counsel when communicating with young clients and the need to use developmentally appropriate language. Counsel should be aware of, and use, listening and speaking skills that address developmental and other age-related factors necessary to facilitate effective communication with juvenile clients.

As stated in the U.S. Department of Justice's Statement of Interest, filed March 13, 2015 in *N.P., et al. vs. The State of Georgia, et al.*, Superior Court of Fulton County No. 2014-CV-241025, at page 11:

*"Indeed, the unique qualities of youth demand special training, experience and skill for their advocates. For example, although the need to develop an attorney-client relationship is the same whether an attorney is representing an adult or a child, the juvenile defense advocate's approach to developing the necessary trust-based relationship differs when the client is a child.*

*'Because the client in juvenile court is a minor, counsel's representation is more expansive than that of a criminal defense lawyer for an adult. Lawyers for children must be aware of their clients' individual and family histories, their schooling, developmental disabilities, mental and physical health, and the client's status in their communities in order to assess their capacities to proceed and to assist in their representation. Once those capacities are understood, the lawyer must vigorously defend the juvenile against the charges with that capacity in mind, and then prepare arguments to obtain rehabilitative treatment should the child be found guilty.'* [footnote omitted].

### Guiding Principles

These Guidelines draw upon the 2012 *National Juvenile Defense Standards*, developed by the National Juvenile Defender Center and Models for Change. As with those standards, the Guiding Principles for these guidelines acknowledge juvenile defense as a specialized practice requiring specialized skills, that juvenile court is an adversarial forum, and that juvenile court adjudication carries with it serious, direct and long-term consequences.

**Comment [Office1]:** The full CPD has not yet decided whether or not to include all text in "Guiding Principles" and/or whether or not to include items 11 and 12 of the "Guiding Principles". The Standards Committee is not unanimous on including these.

1. Juvenile defenders play a critical role in the fair administration of justice for children;
2. Juvenile defense is a specialized practice anchored in juvenile-specific training and practice skills;
3. Juvenile defense requires zealous advocacy;<sup>1</sup>
4. Juvenile defense requires competence and proficiency in court rules and the law;
5. Juvenile defense requires legal representation that is individualized;
6. Juvenile defense requires developmentally appropriate communication with the client;
7. Juvenile defense is based on the clients' expressed interests;
8. Juvenile defense requires that clients be meaningful participants in their defense;
9. Juvenile defense includes counseling clients through the legal process with attention to both direct and indirect consequences;
10. Juvenile defense includes ensuring that clients and their families are treated with dignity and respect and that there is decorum in the courtroom;
11. Juvenile defense requires identifying and challenging barriers and deficiencies that impair juvenile defenders' abilities to provide high-quality representation; and
12. Juvenile defense requires identifying and challenging systemic barriers and deficiencies that lead to disproportionate involvement of vulnerable, underserved populations in the juvenile criminal system.

The object of these guidelines is to identify the courses of action that may be necessary, advisable, or appropriate, and thereby to assist the attorney in deciding upon the particular actions to be taken in a case to ensure that the client receives the best representation possible.

The steps taken should be tailored to the requirements of a particular case. The guidelines recognize that representation in criminal and juvenile offender cases is a difficult and complex responsibility. Attorneys must have the flexibility to choose a strategy and course of action that competently and diligently pursue the objectives of representation.

---

<sup>1</sup> As used in these Guidelines, "zealous" refers to the active exercise of skill, hard work, judgment and dedication necessary to understand the individual client's case and vigorously, effectively and professionally protect the client's rights and advocate for his/her interests.

**Comment [Office2]:** We do not have unanimity on these 2 provisions.

As used in these Guidelines, “must” and “shall” are intended to describe mandatory requirements.

“Should” is not mandatory but is used when providing guidance about what attorneys can and are encouraged to do in the interest of providing quality representation.

In addition to the duties described in the *Performance Guidelines for Criminal Defense Representation (2011 Guidelines)* approved June 3, 2011 by the Washington State Bar Association Board of Governors, counsel representing juvenile clients should use these *Performance Guidelines for Juvenile Offense Representation (Juvenile Guidelines)* as a guide to professional conduct and performance.

**Guideline 1. Juvenile Defense Counsel’s’ Role Is to Provide Quality Representation to Clients at All Stages of the Juvenile Criminal Process**

**1.1 The paramount obligation of defense counsel is to provide conscientious, diligent, and quality representation to their clients at all stages of the juvenile criminal process.**

This requires special training in issues unique to juveniles and the active exercise of skill, knowledge, hard work, judgment and dedication necessary to understand the individual juvenile client and case. Further, this requires counsel vigorously, effectively and professionally to protect the client’s rights and advocate for his/her interests. Counsel should litigate the client’s case vigorously and challenge the state’s ability to prove its case beyond a reasonable doubt. Attorneys also have an obligation to abide by ethical requirements and act in accordance with the rules of the court.

- (a) Counsel shall not substitute his or her own view of the client’s best interests for those expressed by the client;
- (b) Where counsel believes that the client’s directions will not achieve the best long-term outcome for the client, counsel shall provide the client with additional information to help the client understand the potential outcomes and offer an opportunity to reconsider; and
- (c) If the client is not persuaded, counsel shall continue to act in accordance with the client’s expressed interests regarding the objectives of representation.

**1.2 Obligation Regarding Adequate Resources for Effective Assistance**

- (a) Effective representation in a juvenile case often requires access to professionals with training in social work, educational advocacy, and other disciplines relevant to juveniles;
- (b) Counsel shall advocate for resources necessary to provide effective, high-quality representation, including legal, investigative, social work, expert witness, and

educational resources;

- (c) Counsel shall not accept new cases and should consider moving to withdraw from existing cases when lack of resources prevents him or her from providing quality representation; and
- (d) Counsel shall make a record if counsel is not able to provide quality representation to the client. This may include documentation of limited or denied access to clients in custody and late or denied discovery. Counsel should consider seeking interlocutory appellate review and assistance from *amicus* counsel.

### 1.3 Scope of Representation

- (a) In addition to the duties outlined in the *2011 Guidelines*, counsel shall consult with the client and provide representation at the earliest stage possible;
- (b) Counsel should maintain continuous representation in all phases of the adjudication process, including, arraignment, pre-trial detention hearings, discovery, trial, pleas, and disposition, unless qualified counsel is available to provide representation at arraignment and pre-trial detention hearings. Ideally, to provide continuity of representation the same lawyer should represent the client from arraignment through disposition and any restitution, modification, and probation violation hearings. If local practice does not provide for that continuity of representation for appointed counsel, counsel at the outset of the representation should seek to clarify the scope of appointment and to assure that counsel's work will be appropriately compensated. In cases in which counsel is appointed, the attorney's work must be accurately and completely accounted for in complying with caseload limits. As contemplated by the Washington Court Rules CrR 3.1, CrRLJ 3.1 and JuCR 9.2 *Standards for Indigent Defense*, attorney time required for arraignment and pre-trial detention hearings and for post-disposition hearings must be accounted for in determining attorney caseload limits;
- (c) If possible, when the client is facing an ancillary proceeding that coincides with the offender charge, such as dependency, status offenses, school discipline and re-entry, and driver license suspension hearings, the lawyer should assist the client in obtaining the services of social workers, educational advocates such as TeamChild or other qualified individuals if the client does not already have such assistance and coordinate with the provision of such services. If the client has counsel or other representative in such a proceeding, the lawyer should consult and coordinate with that representative; and
- (d) When possible, counsel should represent a client at post-disposition hearings, institutional disciplinary hearings, and extension of incarceration determinations;
- (e) Counsel shall be clear with the client what the scope of representation will be.

**Comment [Office3]:**  
Committee does not have unanimity on this section. The full CPD has not yet decided on this.

#### 1.4 Explain Client Confidences and Confidential Information

- (a) Counsel shall explain that the client's privileged conversations with counsel are protected from disclosure to anyone, including the client's parent, the prosecutor, and the court. Counsel shall also explain that the attorney-client privilege may be deemed waived if anyone else, including a parent, is present during a conversation between the client and counsel, unless a parent-child communication falls within the exceptions of RCW 5.60.060;
- (b) Counsel shall be familiar with local case law, statutes, and codes of professional conduct regarding disclosure of privileged attorney-client conversations, as well as information that may embarrass or be harmful to the client. Counsel has a duty to keep all client communications, as well as information arising out of the representation, confidential;
- (c) Counsel shall discuss with the client what personal or privileged information the attorney is authorized to share with others, such as parents or probation counselors;
- (d) Counsel shall zealously protect confidential information from public disclosure. Counsel should not discuss the case or any confidential information when people other than the client are present and able to hear. Counsel shall not knowingly use a confidence or secret of the client unless the client provides informed consent or does so as required by rules of professional conduct; and
- (e) Counsel shall exercise discretion in revealing the contents of psychiatric, psychological, medical, social, and educational reports that bear on the client's history or condition. Counsel shall not disclose data or conclusions contained in such reports unless the client provides informed consent or release is impliedly authorized in order to carry out the representation, and even then, only if doing so will advance the client's stated objectives. Prior to requesting reports from outside institutions (e.g., educational reports), counsel shall obtain informed consent from the client.

#### **Guideline 2. Quality Representation Requires Effective, Developmentally-Appropriate Communication with Juvenile Clients and Specialized Training and Experience**

##### **2.1 2.1 Effective Communication with Juvenile Clients**

In addition to the duties in *2011 Guidelines* 1.4 (b), counsel shall:

- (a) Make sufficient time available with the client to ensure communication is effective and the client fully understands the communication, and enlist the help of appropriate experts and interpreters and other third parties when necessary;

- (b) Work to ensure that differences between the client and attorney, such as maturity, disabilities, literacy, culture and language, do not inhibit attorney-client communication or counsel's ability to ascertain and effectively discuss the client's expressed interests; and
- (c) Communicate in an age appropriate and developmentally appropriate manner.

**2.2 Counsel shall be knowledgeable about, and utilize, current statutes, case law, rules of procedure, rules of evidence, and rules of appellate procedure that affect juvenile practice.**

- (a) Counsel shall be knowledgeable about a juvenile's right to counsel, determination of indigency, waiver of counsel, right to effective representation of counsel, and other issues specific to representation of juveniles, such as shackling of juveniles and conditions of confinement;
- (b) Counsel should be knowledgeable about the key aspects of developmental science and other research, such as discussed in *Roper v. Simmons*, 543 U.S. 551 (2005), and *Miller v. Alabama*, 567 U. S. 460, (2012), that informs specific legal questions regarding capacities in legal proceedings, amenability to treatment, and culpability;
- (c) Counsel should be familiar with and consider the implications of research specific to juveniles, including, but not limited to, brain development, language and literacy development, and the impact of adverse childhood experiences ("ACEs") [as identified by the Centers for Disease Control and Prevention, <http://www.cdc.gov/violenceprevention/acestudy/index.html>] and the manner in which those experiences are assimilated by the youth;
- (d) Counsel should be knowledgeable about any risk assessment tools used by the court, probation officers, and prosecutors;
- (e) Counsel should be knowledgeable about issues related to special education;
- (f) Counsel should be knowledgeable about the specialized skill of communicating with young clients in a developmentally appropriate and effective manner;
- (g) Counsel should be knowledgeable about the consequences of juvenile adjudication;
- (h) Counsel should be knowledgeable about the educational and social services protections and resources that are available to youth that are not available to adults; and
- (i) Counsel should be knowledgeable about where racial disparities exist in the juvenile justice system, how racial bias affects youth of color, and how racial bias can affect counsel's practice.

### **2.3 Use of Supporting and Consulting Resources**

- (a) If the lawyer does not have enough experience or training to provide effective representation alone in a case or type of cases, the lawyer shall undertake to obtain guidance from a more experienced attorney and/or seek more experienced co-counsel, and “brainstorm” the work, to be able to provide effective representation. The lawyer should seek funding for that assistance if it is not immediately available in the lawyer’s office;
- (b) Counsel should seek opportunities to consult regularly with other lawyers representing juvenile clients and seek support from colleagues and appropriate organizations;
- (c) Counsel should seek support from colleagues and appropriate organizations when systemic barriers interfere or conflict with counsel’s duties to clients; and
- (d) Counsel should seek evaluative feedback from more experienced counsel if it is not provided in counsel’s own office.

### **Guideline 3. Quality Representation Requires That Juvenile Defense Counsel Protect Clients in Need of Special Protection**

#### **3.1 Obligation Representing Non-Citizen Clients**

Counsel shall identify whether the client is a U.S. citizen. When the client is a non-citizen, counsel shall identify the client’s immigration status and history and consult with available resources such as the Washington Defender Association’s Immigration Project. This consultation should also include discussion of avenues for undocumented clients to obtain lawful status. If the client may be Special Immigrant Juvenile Status (SIJ Status) eligible, counsel should, where possible, assist the client to obtain available immigration legal resources to pursue an SIJ Status application.

Counsel shall advise the client about possible adverse immigration consequences and, unless otherwise advised by the client, shall advocate for a resolution to the charges that avoids adverse immigration consequences and preserves avenues to obtain lawful status.

#### **3.2 Obligation Regarding Shackling of Juveniles**

Counsel should challenge the indiscriminate shackling of clients in the courtroom or in any location that affects communication with the client.

#### **3.3 Obligation to Protect Clients’ Right Against Self Incrimination**

Counsel should seek to protect clients’ right against self-incrimination. This includes advising clients about their right to remain silent, notifying the detention facility that an incarcerated client has a lawyer, and seeking to prevent law enforcement from interrogating an in-custody juvenile before the juvenile has consulted with an attorney.

### **3.4 Obligation of Counsel Regarding Disparate Treatment of Clients**

Counsel should be informed about racial disproportionality in the juvenile justice system and affirmatively represent the client to prevent adverse consequences of institutional bias. Counsel should identify when other personal factors presented by a client, such as gender identity and/or sexual orientation, risk triggering institutional and/or individual biases and affirmatively represent the client to prevent adverse consequences associated with them. Counsel should consider using empirical data to advocate for clients in detention hearings, motion practice, trial, and sentencing and any other hearings.

Counsel should also be aware of their personal and implicit biases and the potential impact these may have on the representation and the discharge of ethical duties to the client.

### **3.5 Obligation of Counsel to Investigate and Address Custodial Mistreatment**

If counsel learns that the client has experienced abuse or misconduct by law enforcement, detention officials, or other persons in a custodial facility, counsel, with the client's consent, should document and take appropriate steps to stop the mistreatment of the client, including informing the facility and seeking release or transfer of the client.

### **3.6 Capacity of Youth**

Counsel shall be versed in the rules, statutes, and case law governing juvenile capacity to commit a crime, including in particular age-related presumptions of incapacity. Counsel shall become familiar with experts qualified to assess capacity and learn the mechanisms for requesting an evaluation. Counsel shall learn the procedures for a capacity hearing in his or her jurisdiction and fully comprehend the ramifications if the client is found to have capacity.

### **3.7 Competence of Youth**

- (a) In addition to the duty prescribed by Rules of Professional Conduct (RPC) 1.2 (Scope of Representation and Allocation of Authority Between Lawyer and Client) and 1.14 (Client with Diminished Capacity), counsel shall learn to recognize when a client's ability to participate in his or her own defense may be compromised due to developmental immaturity, mental health disorders, or developmental/intellectual disabilities;
- (b) Counsel shall be versed in the rules, statutes, and case law governing juvenile competence to stand trial in the jurisdiction. Counsel shall become familiar with experts qualified to assess competence to stand trial and learn the mechanisms for requesting an evaluation. Counsel shall learn the procedures for a competence hearing in his or her jurisdiction and fully comprehend the ramifications if the client is found incompetent to stand trial;
- (c) Counsel shall assess whether the client's level of functioning limits his or her ability to communicate effectively with counsel, as well as his or her ability to have a factual and rational understanding of the proceedings. When counsel has reason to doubt the client's competence to stand trial, counsel shall gather



additional information and consider filing a pre-trial motion requesting a hearing for competence determination. Counsel should consult with the client's family when possible; and

- (d) If counsel decides to proceed with a competency hearing, counsel shall secure a qualified, independent expert to evaluate the client's competence. Counsel shall then advise the client about the evaluation and proceedings, analyze the results of the evaluation, prepare the expert for testimony, and prepare his or her case substantively and procedurally for the hearing. Counsel shall advise the client about the content of the hearing and assist the client in navigating the complexities of the proceedings.

**Guideline 4. Each Stage of the Juvenile Criminal Process Requires Diligence, Skill, and Effective, Developmentally Appropriate Client Communication**

**4.1 Formal and Informal Discovery**

Counsel has a duty to pursue, as soon as practicable, discovery as provided by JuCR 1.4 and CrR 4.7 and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.

**4.2 Initial Client Contact**

- (a) In addition to the duties in *2011 Guidelines* 1.4 and 2.2, counsel shall explain and discuss, in developmentally appropriate language, the role of both the client and counsel;
- (b) Early Contact. Counsel shall make contact with the client at the earliest possible time, even prior to formal appointment, when possible. Counsel for a detained client shall visit the client in detention and ensure that the meeting occurs in a setting that allows for a confidential conversation. If the client is in custody, contact should be within 24 hours of appointment and shall be within no more than 48 hours, unless there is an unavoidable extenuating circumstance. Counsel should send a representative to see the in-custody client within 24 hours if counsel is not able to see the client within 24 hours; and
- (c) The initial interview should be in person in a private, legally privileged setting; e.g., away from the client's parents or others. Counsel should explain and maintain the attorney-client privilege and assure that the client knows the communication is confidential.
- (d) During the first meeting with the client, counsel shall discuss, in developmentally appropriate language:
  - (i) How the client can contact counsel;

- (ii) The attorney-client relationship, including confidentiality;
  - (iii) The objectives of the representation; and
  - (iv) The expected court schedule.
- (e) In addition to bail information for adults discussed in the *2011 Guidelines 2.2* and *2.3*, counsel at the initial meeting should seek to obtain information about:
- (i) The client's ties to the community, family relationships, employment record and history, school record and history;
  - (ii) The client's age;
  - (iii) The client's residence, physical and mental health, child welfare status, and school status;
  - (iv) Information regarding the client's needs for immediate medical or mental health care;
  - (v) The client's citizenship status;
  - (vi) The need for signed releases for information from the client's school, medical, and psychological service providers and if possible obtain them;
  - (vii) Contact information for the client's closest family or caretaker; and
  - (viii) Any previous arrests and experience the client has had in juvenile court.
- (f) If appropriate, during the initial meeting counsel may discuss with the client:
- (i) The conduct alleged in the police report and charging documents, including potential evidence or witnesses;
  - (ii) The legal criteria, options, and conditions the court may set for pre-trial release;
  - (iii) Diversion, detention, and placement options; and
  - (iv) The next procedural steps.
- (g) At an early stage of the representation, counsel shall discuss, in developmentally appropriate language:
- (i) The role of parents in the proceedings and how counsel will interact with them;
  - (ii) The elements of each charged offense and the potential dispositions for such offenses;

- (iii) The roles of each juvenile court stakeholder; and
- (iv) The consequences of a finding of guilt including enhancement of future sentencing for subsequent juvenile and adult offenses.

#### **4.3 Obtaining Further Information from the Client**

Unless the information is obtained during the first meeting with the client, counsel shall promptly attempt to obtain from the client, outside the presence of any third party including the client's parent, and in a legally privileged setting:

- (a) Circumstances of any police interrogations, searches, seizures, and identification procedures;
- (b) Information about how the client was treated while in custody of the police, other investigative agencies, mental health departments, or the prosecution;
- (c) Names, addresses, phone numbers, or any other information about witnesses who may be relevant to suppression hearings, the fact-finding hearing, or disposition; and
- (d) Information about the client's prior contact(s) with the system, including the nature of any relationships with a probation officer.

Unless the information is obtained during the first meeting with the client, counsel shall at an early stage of the representation obtain the client's account of the incident.

#### **4.4 Maintain Regular Contact with the Client**

Counsel shall maintain regular contact with the client. Because of the unique characteristics of youth, the attorney should seek out the client rather than expect the client to initiate communication. If a youth is in custody, counsel shall visit on a regular basis. If a client is out of custody, counsel shall arrange phone contacts and face-to-face meetings as appropriate before future court hearings. Regardless of the client's custodial status, counsel shall provide the client with a phone number at which counsel can be reached.

Counsel shall promptly respond to telephone calls and other types of communications from the client, ideally within one business day. At every stage of the proceeding, counsel shall work to provide the client with complete information concerning all aspects of the case.

#### **4.5 Parents and Other Interested Third Parties**

Counsel shall inform the client and third parties that he or she is required to maintain confidentiality even when third parties are providing services to the client.

Counsel shall not substitute a parent's or third party's interests or view of the client's best interests for those expressed by the client, even if a parent or third party is paying for the

representation. In addition to the duties outlined in *2011 Guideline 1.3(b)*, counsel shall not serve as both defense counsel and *guardian ad litem* for the same child.

- (a) Counsel shall know state case law, statutes, and codes of professional conduct regarding all disclosures to third parties;
- (b) Counsel shall explain to the client the need to share information with third parties, and specify the information to be shared, the purpose of sharing it, and the possible consequences. Counsel shall obtain authorization, express or implied as permitted by RPC 1.6, from the client prior to communicating information to third parties; and
- (c) Counsel should allow clients to consult with family members before making critical decisions about their case. When a third party, including a parent, is trying to direct the representation of the client, counsel should inform that person of counsel's legal obligation to represent only the expressed interests of the client. In the event of a disagreement, counsel is required to abide exclusively by the wishes of the client.

#### **4.6 Early Stages**

##### **a. Pre-Charge Representation of the Client**

When representing a client prior to his or her initial hearing is possible, counsel shall protect the client's interests by:

- (i) Protecting the client from making incriminating statements or acting against the client's own interests, including advising the client, in developmentally appropriate language, about the right to counsel and the right to remain silent; and
- (ii) Advocating for the client's release under conditions most favorable and acceptable to the client.

##### **b. Protect the Client's Interests During Police Identification and Investigative Procedures**

- (i) Counsel shall be familiar with all laws and local rules regarding availability of counsel during police identification and investigative procedures;
- (ii) Counsel should consider challenging any statements made in an in-custody interrogation when the client has not consulted with counsel;
- (iii) Counsel should consider challenging any evidence obtained from the client when the client is in custody;

- (iv) In addition to the duties in *2011 Guideline* 3.3, when counsel is able, he or she should seek to be present at all phases of the identification proceedings to act as the client's advocate;
- (v) Counsel should advocate for notification of and attendance at police interrogation, identification and other investigative procedures involving the client, including when the police explain identification or other investigative procedures to the client;
- (vi) Counsel should seek to meet with the client in a legally privileged setting and advise the client on how to behave during the investigative processes;
- (vii) After a lineup, counsel, with an investigator if possible, should attempt to speak to any witness to the identification process as soon thereafter as possible; and
- (viii) Counsel should advocate for recording of any police interviews with the client.

#### **4.7 Prosecution Requests for Non-Testimonial Evidence**

Counsel shall be familiar with the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars and physical specimens), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the record of the proceedings required to be maintained. Counsel shall challenge probable cause as appropriate prior to the prosecution's obtaining of non-testimonial evidence.

#### **4.8 Role of Counsel in Advising on Diversion**

When counsel is representing a client who may be offered diversion, counsel shall assess, in light of discovery and the diversion program requirements, how to advise the client whether to answer questions about alleged offenses. Counsel should obtain a copy of the diversion agreement to be able to review it and to be able to advise the client about it.

#### **4.9 Role of Counsel at Arraignment, Probable Cause Hearings and Detention Hearings**

In addition to the duties in *2011 Guidelines* 2.3 and 3, and Juvenile Court Rule 1.6, counsel, when representing a client at arraignment, probable cause hearings and detention hearings, shall preserve the client's options until appropriate investigation, diversion, consultation and research can be completed.

- (a) Counsel shall advise the client, using developmentally appropriate language, of the importance of not waiving the right to representation and all other client rights;
- (b) Counsel should confirm that all hearings are recorded as required by JuCR 10.2;

- (c) As required by JuCR 7.3, at the probable cause hearing, counsel shall require the state to meet its burden of showing through a signed affidavit or live testimony that there is basis of knowledge for believing the account of a reliable informant that the act charged was committed and establish that the client committed the alleged offense;
- (d) Counsel shall seek immediate release of a detained client if doing so is consistent with the client's expressed interests. Counsel shall advocate for the removal of all physical restraints. Counsel should present the court with alternatives to detention and a pre-trial release plan;
- (e) Counsel shall request and review any detention risk assessment, checking for inaccuracies or mitigating factors that may affect the accuracy of risk scores assigned to the client; and
- (f) Counsel shall raise any factors, such as medical, psychological, or educational needs that may be adversely affected by detention, if the client permits their disclosure.

**4.10 Prepare Client and Parent for Probation Interviews**

- (a) Counsel shall advise the client, using developmentally appropriate language, that anything the client says to the probation officer may be shared with the court. Counsel should prepare the client for any interview with a probation officer; and
- (b) Counsel should advise the client to be respectful at the interview and not to discuss the alleged incident. Counsel should similarly prepare the client's parents and request they express their willingness to support the youth.

**4.11 Review of Detention Decisions**

Counsel shall consider seeking review, as the case progresses, of court decisions to detain the client. Review may consist of motions to reconsider, motions for revision of adverse decisions by a court commissioner, and motions for discretionary review in an appellate court. When appropriate, counsel shall file motions to reconsider the level of detention while a revision or an interlocutory appellate review is pending.

When all other remedies have been exhausted, counsel may consider filing a writ to challenge the client's imprisonment or detention at any relevant point during the proceeding.

**4.12 Investigation, Pretrial Motions and Pleas**

**a. Investigate Facts of the Case**

In addition to the duties in *2011 Guideline 4*, JuCR 9.2 (d), and *State v. A.N.J.*, 168 Wn.2d 91 (2010), counsel, using developmentally appropriate language, shall discuss with the client a prompt, thorough and independent investigation.

**b. Develop a Theory of the Case**

Counsel must have a thorough understanding of the elements of each alleged offense, as well as the affirmative or general defenses to each.

During investigation and trial preparation, counsel should develop and continually reassess a theory of the case, even if the case is on track to end in a plea.

**c. Interview Defense and State Witnesses**

Counsel presumptively should interview all known state witnesses and any other relevant witnesses the investigation or discovery may reveal. As part of the obligation to investigate the client's case, counsel shall consider whether to interview all witnesses named by the client. If new evidence is revealed in the course of interviewing witnesses, counsel shall attempt to locate and assess the value of the new evidence.

- (i) Counsel shall be familiar with state statutes, case law, and the code of professional conduct regarding the conducting and recording of interviews. Counsel shall be familiar with reciprocal discovery rules.
- (ii) Counsel shall attempt to confirm the availability of every known witness.
- (iii) Counsel should investigate factors that may affect witnesses' capacity for observation.
- (iv) Counsel shall document all efforts to locate and speak with witnesses, as well as information gathered from such interviews.
- (v) Counsel should conduct interviews with an investigator present to avoid the possibility of being required to withdraw from the case should impeachment testimony about the interview be needed.

**Comment [Office4]:** The committee will review whether this should be "shall"

**d. Obtain the Client's Social History**

- (i) Counsel shall be familiar with rules and procedures for obtaining and using information about the client, including the use of release forms and subpoenas.
- (ii) Counsel should investigate the client's social history. This includes acquiring documentation and interviewing persons with information relevant to the client's background, character, and any special education status, learning disability, and adverse childhood experiences, including physical and mental trauma.
- (iii) Counsel should seek records concerning the client's mental health, involvement with the child welfare system, educational background and/or intellectual abilities, as well as documents detailing school achievement

and discipline, positive community or extracurricular activities, employment, and prior police and court involvement.

**e. Pre-Trial Motion Practice**

In addition to the duties in *2011 Guideline 5*, counsel should make all colorable motions. Motions should be made in writing.

**f. Alternative Resolutions**

- (i) Counsel shall be knowledgeable about entry requirements, the operation, and the benefits and risks of alternative resolution programs in the jurisdiction.
- (ii) Counsel shall advise the client about alternatives in developmentally appropriate language and the consequences of any statements or agreement required for entry into the alternative program.
- (iii) Counsel shall be informed about juvenile records which may be created by the client's participation in any non-adjudicatory solution. Counsel must advise the client of any issues related to immigration, driver licensing, sex offender registration, ownership of firearms, and possible enhancement of any future sentencing for subsequent juvenile and adult offenses.
- (iv) Counsel should advise the client that there may be other possible consequences including licensing, housing, education, and government benefits, that can be affected by an alternative resolution. When possible, counsel should refer the client to other resources to assist with these possible consequences.
- (v) When consistent with the client's expressed interest, counsel should advocate for diversion, informal resolution, or referrals outside of the traditional court process.

**g. Plea Negotiations**

- (i) Counsel shall communicate every plea offer to the client.
- (ii) During plea negotiations, counsel shall zealously represent the expressed interests of the client, including advocating for some benefit for the client in exchange for the plea.
- (iii) Counsel shall protect the client's right to be provided adequate time to consider the plea and alternative options.
- (iv) Counsel shall communicate with the client to identify the consequences of a conviction that are most important to the client. In addition to the duties in *2011 Guideline 6*, counsel shall explain, in developmentally appropriate



language, the strengths and weaknesses of the prosecution's case, the benefits and consequences of accepting a plea agreement, and any rights the client may be forfeiting by pleading guilty. Counsel shall work to help the client make an informed decision about whether to accept a plea offer.

- (v) Counsel should seek in any plea negotiations to address the consequences that matter to the client.
- (vi) Counsel must advise the client of any issues related to immigration, driver licensing, sex offender registration, ownership of firearms, and possible enhancement of any future sentencing for subsequent juvenile and adult offenses.
- (vii) Counsel should advise the client that there may be other possible consequences including licensing, housing, education, and government benefits, that can be affected by a guilty plea. When possible, counsel should refer the client to other resources to assist with these possible consequences.
- (viii) Counsel should attempt to effect a resolution that minimizes or avoids these consequences.

**h. Obligations When the Client Decides to Accept a Plea Offer**

In addition to the duties in *2011 Guidelines* 6.3 and 6.4, counsel is obliged to ensure that the client's acceptance of the plea is voluntary and knowing, and reflects an intelligent understanding of the plea, including the rights the client forfeits by pleading guilty.

- (i) Counsel shall explain to the client, in developmentally appropriate language, the process for making an admission or plea, the questions the court will ask in the colloquy, and the rights that the client will forfeit. Counsel shall also inform the client that, notwithstanding the client's decision to accept the plea, the court may reject the plea agreement if the court disagrees with the terms of the plea or determines the waiver of rights has not been knowing, intelligent, and voluntary. Counsel shall explain the consequences of the court's rejection.
- (ii) If, during the plea colloquy, it becomes clear that the client does not understand the colloquy, counsel shall request a recess or a continuance to assist the client. When the client makes a plea or admission, counsel shall ensure that the full content and conditions of the plea agreement are placed on the record.
- (iii) If the client may be taken into custody after the plea, counsel shall prepare the client and be prepared to offer an appropriate alternative to the court.

**i. Obligations Regarding Revision, Interlocutory or Collateral Review, Writs, and Stays**

Counsel should strategically pursue motions for revision from commissioner decisions and interlocutory appeals and collateral reviews of rulings adverse to the client. Counsel should request a stay when appropriate.

**4.13 Adjudicatory (Fact-finding) Hearing**

**a. Prepare Client for Adjudicatory Hearing**

In addition to the duties in *2011 Guideline 7*, counsel shall, prior to the adjudicatory hearing, communicate to the client, in developmentally appropriate language, what is expected to happen before, during, and after the hearing. Counsel should provide the client with clear instructions regarding appropriate courtroom attire and conduct.

**b. Adjudicatory Hearing**

As of this publication date, Washington State juvenile trials are bench trials, with the judge playing a dual role as the finder of fact and the interpreter of law. RCW 13.04.021. Counsel should consider moving for a jury trial and challenging the denial of juries. In the event juries are provided, counsel needs to be familiar with preparing for and conducting jury trials.

Counsel shall always be conscious that all information in pre-trial hearings and pleadings may adversely influence the judge. When pre-trial information has potentially biased a judge's view of the client's culpability sufficient to interfere with the client's due process rights, counsel may consider moving for the judge's recusal.

The duties to prepare, present the defense case, including opening and closing statements, and all other duties in *2011 Guideline 7*, other than those relating to the selection of a jury and jury instructions, apply to bench trials in juvenile court proceedings.

**c. Client's Testimony**

- (i) The decision to testify rests with the client. Counsel shall communicate, in developmentally appropriate language, the advantages and disadvantages of testifying, including the risk of self-incrimination and the effect in other proceedings.
- (ii) Counsel shall be familiar with state law regarding examination of the client, including whether it permits the use of prior juvenile adjudications to impeach the client.

**d. Request of Specific Findings of Fact and Conclusions of Law**

Counsel shall make a clear record for appeal. Counsel should consider proposing findings of fact and conclusions of law and/or making objections to findings and conclusions proposed by the prosecutor, and should ensure that any proposals and objections are included in the record.

#### 4.14 Disposition

##### a. Role of Counsel at Disposition

In addition to the duties in *2011 Guideline 8*, counsel shall advise the client, in developmentally appropriate language, about disposition sentencing guidelines, potential out of home placement options, including group homes, foster care, residential programs and treatment facilities. Counsel should visit programs and facilities to be able effectively to advise a client or advocate on the client's behalf.

Counsel shall be aware of the different assessment tools and other evaluative instruments used to inform dispositions. Counsel shall be prepared to challenge the validity and reliability of risk assessment tools, both facially and as applied to the client, where appropriate. Counsel shall understand the mechanics of such instruments and keep abreast of challenges to their application to the client. If appropriate, counsel should use expert witnesses to challenge the use of, validity of, and conclusions drawn from risk assessments and/or other evaluative instruments for disposition decisions.

##### b. Role of Counsel When Preparing Client for the Disposition Process

- (i) Counsel shall advise the client, in developmentally appropriate language, about the disposition process, the dispositions the court will consider, and the consequences of failure to comply with a disposition order.
- (ii) Counsel shall explain to the client what likely will happen in interviews with probation officers developing a social history report, as well as psychological or other evaluative testing ordered by the court or requested by counsel. Counsel should attend court-ordered predisposition interviews.
- (iii) Counsel shall be familiar with and explain in developmentally appropriate language the use of evaluation instruments and tests.
- (iv) Counsel shall advise the client about standard disposition conditions the court is likely to impose and challenge their imposition if they are unrelated to the offense or the client's needs;
- (v) Counsel shall inform the client of his or her right to speak at the disposition hearing, the potential benefits and detriments of doing so, and the proper decorum and behavior for such hearings; and
- (vi) Counsel shall confer, when appropriate, with the client's parents to explain the disposition process and inquire about the parents' willingness to support the client's proposed disposition.

**c. Role of Counsel in Advocating for a Disposition Plan**

- (i) Counsel shall only recommend a disposition to the court with the client's consent.
- (ii) Counsel shall request an advance copy of any written disposition memorandum submitted by the prosecution or probation department and verify that the information presented is accurate.
- (iii) Counsel should submit an independent written memorandum describing factors in the client's life that address the judge's anticipated concerns and point out how the defense plan contributes to the client's rehabilitation. The memorandum should highlight the client's strengths and establish the circumstances under which the client is most likely to succeed.
- (iv) Counsel shall submit any evidence in support of the defense's proposed disposition plan, including recommendations from a social worker when appropriate.
- (v) Counsel shall confirm that the client has received credit for time served.
- (vi) Counsel should address the appropriateness of any court-ordered educational, vocational, and rehabilitative services, as well as the location and duration of the services, the place of confinement if any, eligibility for aftercare/parole if appropriate, requirements for evaluations or treatment, and/or assignment to drug rehabilitation.
- (vii) Counsel shall advocate, consistent with the client's wishes, that any court-ordered services are provided in the least restrictive setting.

**d. Counsel's Obligation to Review Court Ordered Disposition Plan and the Consequences of Disposition with the Client**

- (i) Counsel shall carefully review the disposition order to make sure that it contains all the provisions of the disposition plan and that it accurately reflects the court's verbal order. Counsel shall verify that it properly records detention credits, plea agreements, opportunities for restitution hearings, and information that may favorably affect the client.
- (ii) Counsel shall review the written order with the client, in developmentally appropriate language, and advise him or her of the nature, conditions, obligations, duration, and consequences of the disposition. When the client agrees, counsel should seek to inform the client's parent of the disposition conditions, obligations, duration, and consequences of the disposition.
- (iii) Counsel shall notify the client of the right to move for revision of a commissioner's ruling when that is available and of the right to appeal.

Counsel should seek a timely revision or pursue an appeal, with permission from the client, if the order fails to meet the state's obligation to provide for educational and special needs.

- (iv) Counsel shall seek information about the requirements of any program or service ordered and explain to the client what the programs require.
- (v) Counsel shall be aware of statutes and case law regarding the disclosure of the client's record and the legal mechanisms available to limit or foreclose distribution of the client's arrest and court records. Counsel shall advise the client on the timing and procedure for moving to limit disclosures where disclosure is not automatically prohibited.

**e. Obligations to a Client Awaiting Placement**

- (i) Counsel should pursue efforts to keep the client in the least restrictive environment prior to placement in a treatment setting.
- (ii) Counsel should be prepared to advocate for the client who is being held in secure confinement while awaiting placement; and if the placement does not occur as ordered, counsel should move for the client's release. If counsel does not prevail, counsel shall seek provision of interim services for the client's educational, physical, mental health, and other needs.

**4.15 Post Disposition Matters**

**a. Trial Counsel's Obligations Regarding Appeals**

- (i) In addition to the duties in *2011 Guideline 9.2*, counsel shall advise the client, in developmentally appropriate language, of the right to appeal and the process of the appeal. Trial counsel shall explain to the client the consequences of any decision to waive the right to appeal.
- (ii) When the client chooses to appeal, trial counsel shall file a notice of appeal and preserve the client's right to appeal, including presenting a motion to proceed in *forma pauperis*. Trial counsel shall assist the client in obtaining appellate representation.
- (iii) Trial counsel shall be familiar with and follow rules for obtaining a stay of the disposition order pending appellate review. Trial counsel shall discuss with the client whether to seek a stay and shall request one should the client desire a stay.
- (iv) When the client at the time of disposition is unable to decide whether to appeal, trial counsel shall make clear to the client the deadline for filing the appeal, seek a decision from the client in time to meet the deadline, and be prepared to file the appeal should the client decide to file the appeal.

- (v) To preserve issues for appeal, counsel should consider proposing findings of fact and conclusions of law and/or making objections to findings and conclusions proposed by the prosecutor or entered by the court, and should ensure that counsel's proposed findings, conclusions, and objections are included in the record.
- (vi) As of publication date of these guidelines, juveniles cannot be assessed costs of appeal. Counsel should verify that this remains true and explain to the client that there will be no costs for the appeal unless this has changed. The decision regarding whether to appeal belongs to the client.

**b. Obligations of Trial Counsel to Appellate Attorney**

Trial counsel should be available to appellate counsel to answer questions and issues regarding the appeal and to provide documents as requested by the appellate counsel to the extent authorized by the client.

**c. Role of Counsel to Clarify Scope of Any Post Disposition Representation**

Counsel shall be clear with the client what the scope of post-disposition representation will be, if any. When possible and when the client requests, counsel should assist the client in efforts to ensure that the client is receiving the services ordered by the court.

**d. Role of Counsel in Addressing Possible Post-Disposition Challenges**

While the client is a juvenile, counsel should help the client to obtain representation on issues raised by the client that relate to the validity of the conviction and could lead to a motion to set aside the conviction or a *habeas corpus* petition or a personal restraint petition, as well as issues relating to the safety of the client or conditions of the client's confinement.

**Comment [Office5]:** The committee does not have unanimity on this, and the full CPD has not decided on it.

**e. Role of Counsel at Post-Disposition Trial Court Hearings**

Ideally, the same lawyer should represent the client from arraignment through disposition and any modification and probation violation hearings. To provide continuity of representation, counsel should represent the client in restitution and modification and probation violation hearings. See Guideline 1.3 (b).

**f. Representation at Restitution, Review and Modification Hearings**

- (i) Counsel shall be knowledgeable about current applicable cases and statutes regarding restitution, modification, and probation.
- (ii) Counsel shall provide the same level of zealous representation at restitution, review and modification hearings as counsel would provide for any other proceeding.
- (iii) Counsel shall explore the factual basis of the client's alleged failure to abide by conditions of the court's order, including whether the probation

officer and designated social service providers have met their obligations to the client.

- (iv) Counsel should be prepared to challenge the client's alleged failure to abide by the court's order in an evidentiary hearing.
- (v) When counsel's investigation reveals that the client's probation officer, service providers, or others subject to the court's order have not complied with the court's order, counsel should either request the court enforce its existing order or propose appropriate modification to the order.
- (vi) Counsel shall explore and offer any available mitigation to explain the client's failure to abide by the order.

**g. Sealing Juvenile Records**

Counsel shall be familiar with the laws governing the sealing of the client's record and the agencies and organizations permitted by statute to have access to the client's arrest and court records. Counsel shall advise the client of processes and resources for sealing juvenile records. If requested, counsel should assist the client with this process whenever possible.

**Guideline 5. Juveniles Facing Adult Prosecution Require Counsel With Special Training and Expertise**

**5.1 Prosecution of Client as an Adult**

- (a) Counsel shall be knowledgeable about statutes and case law governing the decline of a juvenile to adult court for prosecution, including presumptions in favor of or against keeping youth in juvenile court and the burden of proof necessary to overcome such presumptions;
- (b) Counsel shall be aware of the timing and process of decline hearings and required findings for decline of jurisdiction to adult court. Counsel shall be aware of adult sentencing guidelines and advise the client about them. In jurisdictions in which the attorney handling the decline hearing will also represent the client at any adult court proceedings, counsel shall be aware of adult criminal court rules, and rules of evidence;
- (c) Counsel shall be familiar with the extent to which adult facilities provide juvenile clients legally mandated safety protections, medical and mental health care, rehabilitative treatment, and mandatory education services, and advocate for the client to receive appropriate services;
- (d) Counsel shall pursue specialized training, including in the areas of child and adolescent development, to ensure the requisite level of knowledge and skill to represent a client in a decline hearing or in adult court, and be familiar with developmental issues that may affect competence to stand trial;

- (e) Unless counsel has been sole or lead counsel in a previous decline case, counsel shall be supervised by or consult with an attorney who has experience representing juveniles in decline hearings; and
- (f) Counsel representing a client facing a possible life sentence should be familiar with current resources regarding representation of a juvenile client facing a possible life sentence, including lawyers who are experienced in representing such clients and the expert witnesses available.

## **5.2 Specialized Training and Experience Necessary**

- (a) Counsel shall be knowledgeable about statutes and case law governing the decline of a juvenile to adult court for prosecution, including presumptions in favor of or against keeping youth in juvenile court and the burden of proof necessary to overcome such presumptions. Counsel shall be aware of the timing and process of transfer hearings and required findings for decline of jurisdiction to adult court. In jurisdictions in which the attorney handling the decline hearing will also represent the client at any adult court proceedings, counsel shall be familiar with adult criminal court rules, sentencing guidelines, and rules of evidence;
- (b) Counsel shall also be knowledgeable about the extent to which adult facilities provide juvenile clients legally mandated safety protections, medical and mental health care, rehabilitative treatment, and mandatory education services to which they are entitled;
- (c) Unless counsel has been counsel alone of record in a previous decline case, shall be supervised by or consult with an attorney who has experience representing juveniles in decline hearings.

## **5.3 Obligation of Counsel to Inform the Client of the Possibility of Adult Prosecution and Potential Consequences**

- (a) Counsel shall advise a client, using developmentally appropriate language, about the procedures that may lead to adult prosecution; and
- (b) Counsel shall explain to the client or, if counsel does not have experience with adult felony practice, ask an attorney who has such experience to explain to the client, the consequences of prosecution in adult court, including possible sentences, likelihood of deportation if the client is not a citizen, and direct and indirect consequences.

## **5.4 Obligation to Investigate Factors Relating to Possible Adult Prosecution**

- (a) Counsel shall conduct a timely and thorough investigation of the allegations and the client's background;
- (b) Counsel shall assess what factors weigh for and against decline to adult court and shall investigate the case accordingly; and



- (c) Counsel shall promptly compile and coordinate all evidence and information bearing on the decline decision, including mitigation information such as educational and mental health and developmental history, case law and research regarding adolescent development.

#### **5.5 Duty to Advocate for Client's Expressed Interest Regarding Decline**

- (a) After consultation with the client, counsel shall develop cogent arguments that support the client's expressed interests;
- (b) Counsel shall advocate for the client's expressed interests regarding jurisdiction to prosecutors and probation officers. This obligation applies both when a decline proceeding is possible in juvenile court and when counsel is able to advocate for the client before the prosecutor has made a decision about direct filing in adult court when direct filing is possible;
- (c) When the client seeks to remain in juvenile court, counsel's pleadings during the decline proceeding shall specify with particularity the grounds for opposing adult prosecution, including, but not limited to:
  - (i) the nature of the offense;
  - (ii) the prosecutor's failure to establish probable cause;
  - (iii) the client's amenability to rehabilitation in the juvenile system;
  - (iv) information concerning adolescent development as it relates to the client;
  - (v) the client's incompetence to proceed in adult court; and
  - (vi) other criteria established by case law and statute.
- (d) If the prosecutor ultimately files charges that could lead to adult prosecution, and the client has sought to remain in juvenile court, counsel should advocate to the prosecutor either to amend the charge to one that would permit proceeding in juvenile court or to waive application of exclusive adult criminal jurisdiction and to seek the court's approval of that waiver;
- (e) Counsel shall obtain and review any report developed by the probation officer prior to the hearing;
- (f) Counsel shall consider use of expert witnesses to address issues such as the client's capacity to proceed in adult court, amenability to rehabilitation in juvenile court, and related developmental issues;
- (g) At the hearing, counsel shall:

- (i) Challenge any defect in the charges that would deprive the adult court of jurisdiction;
- (ii) Raise any credible facial or “as applied” state or federal constitutional challenges to adult prosecution; and
- (iii) Present all facts, mitigating evidence, and testimony that may convince the court to keep the client in juvenile court, such as the client’s amenability to treatment, amenability to rehabilitation in juvenile court and related developmental issues, the availability of tailored treatment options in juvenile court, and immigration and significant direct and indirect consequences.

**5.6 Preserve the Client’s Opportunity to Appeal a Judicial Decision to Prosecute in Adult Court**

- (a) Counsel shall confirm that all hearings are recorded. Counsel shall adequately preserve the record for appeal;
- (b) Counsel shall apprise the client, in a timely manner and using developmentally appropriate language, of the opportunity and procedures to appeal a judicial decision to prosecute the client in adult court;
- (c) Counsel shall comply with Guideline 4.15 above, concerning advising the client and perfecting appellate rights. Counsel shall adhere to statutory requirements for the timing and/or perfecting of the appeal of the judicial decision to prosecute the client in adult court. When appropriate, counsel should move for interlocutory appeal of the judicial decision in a timely manner to reduce the length of time a detained client spends incarcerated and to avoid the removal of the client to an adult jail; and
- (d) Counsel shall consider proposing findings of fact and conclusions of law and/or making objections to findings and conclusions proposed by the prosecutor or entered by the court, and shall ensure that counsel’s proposed findings, conclusions, and objections are included in the record.

**5.7 Obligations Following a Determination to Prosecute the Client in Adult Court**

- (a) Upon determination that the client will be prosecuted in adult court, counsel, consistent with the client’s expressed interests, shall zealously oppose placement of the client in adult jail or detention. Counsel shall be aware of and raise the risks associated with incarcerating young people among adults, and advocate for alternative placements in the juvenile justice system and/or release of the client on personal recognizance or on bail;
- (b) If the case is transferred to adult court and the client is assigned a different lawyer, counsel should work closely with the new attorney to ensure a smooth transition of the case; and

- (c) When a client is tried in adult court, in addition to complying with the *2011 Guidelines*, counsel should use child developmental research and case law supporting the lessened culpability of adolescent offenders in arguing intent, capacity, and the appropriateness of rehabilitative sentencing options and use appropriate expert witnesses.

**Guideline 6. Public Defense Counsel Have Special Responsibilities to Improve the Juvenile Criminal Justice System.**

**6.1 Role of Counsel in Systemic Issues**

- (a) Public defense counsel who have a significant juvenile court practice are in a unique position to identify and challenge any harmful or unlawful conditions and systemic issues adversely affecting both their clients and other juveniles, particularly, but not limited to, issues involving the right to counsel, the right to effective assistance of counsel, the unlawful shackling of juveniles in court, and harmful or unlawful conditions of confinement; and
- (b) In addition to representation of individual clients, attorneys who have a significant juvenile court practice should consider advocating to change practices or orders that abridge or threaten to abridge the constitutional, statutory, or court rule rights of juveniles appearing in the courts in which they practice. Compare, *Vovos v. Grant*, 87 Wn.2d 697, 700-01, 555 P.2d 1343, 1345-46 (1976).

**6.2 Sharing Information and Developing Alliances**

When counsel becomes aware of systemic concerns affecting issues such as right to counsel, harmful or unlawful conditions of confinement of juveniles, or shackling, counsel should consider sharing information and developing alliances with bar associations, prosecutors, law enforcement, judges, community groups, and others to correct those conditions.



# Washington State Minority and Justice Commission

## Criteria for Co-Sponsorship Requests



### How to Submit a Co-Sponsorship Request

Co-sponsorship requests must be submitted in writing (2 pages maximum) and include the following information:

- Full name and contact information (address, telephone number, and email) of organization and persons making the request.
- Type of co-sponsorship (publicity, funding, guest speaker).
- If funds are requested, the total amount of funds requested and budget.
- Purpose and objectives of the request.
- Name, date, time, and location of the event or project.
- Event agenda or project schedule, if available.
- Target audience
- Expected attendance or number of persons who will benefit.
- Other methods or sources being used to raise funds, if any.
- Other co-sponsors, if any.
- Plan to collect outcome data and evaluate the impact of the project (i.e., survey).

**Please complete attached form and send to Carolyn Cole at [Carolyn.cole@courts.wa.gov](mailto:Carolyn.cole@courts.wa.gov).**

**All requests will be referred to the MJC Co-Chairs. If approved, the request is presented to MJC membership for a vote. Requests can take up to 90 days to process. You will be notified via email if your request has been approved.**

### Evaluation Criteria for Co-Sponsorship Requests

Requests for the Washington State Minority and Justice Commission's (MJC) co-sponsorship will be evaluated on the basis of the following criteria:

- The request furthers the mission of the Commission to foster and support a fair and bias-free system of justice in the Washington State courts and judicial systems by: 1) identifying bias of racial, ethnic, national origin and similar nature that affects the quality of justice in Washington State courts and judicial systems; 2) taking affirmative steps to address and eliminate such bias, and taking appropriate steps to prevent any reoccurrence of such bias; and 3) working collaboratively with the other Supreme Court Commissions and other justice system partners.
- The request would strengthen the Commission's relationship with judicial system partners.
- The organization appears to have the capacity, knowledge, and experience to carry out the project.
- There is an adequate plan to collect outcome data and evaluate the impact of the project.
- The requester is willing to collaborate with MJC and list MJC as a co-sponsor of the project on all promotional materials.
- The requester communicates with MJC in a timely manner and has successfully implemented funded programs in the past.
- MJC capacity and available funds.



# Washington State Minority and Justice Commission

## Criteria for Co-Sponsorship Requests



### **Restrictions**

In general, MJC will not co-sponsor:

- Requests submitted 30 business days before the event or program is scheduled to be held.
- Individuals
- Lobbying or social events.
- Administrative costs of an organization.
- Travel expenses that are not related to a guest speaker's travel.
- Alcohol, services related to preparing alcoholic beverages, and drugs.
- Gifts
- Programs promoting religious content.
- Organizations that discriminate on the basis of race, ethnicity, national origin, sexual orientation, age, disability, or similar nature.

### **If Your Request is Approved**

- If request was for funding:
  - MJC does not make advance payments. Funds will only be disbursed as a reimbursement to the requester after the event or program has concluded.
  - Requester will be sent a letter of agreement that must be signed and returned to [Carolyn.cole@courts.wa.gov](mailto:Carolyn.cole@courts.wa.gov).
  - Requester will send an invoice within 30 days after the event or program has concluded to:  
  
Minority & Justice Commission  
Administrative Office of the Courts  
Post Office Box 41170  
Olympia, WA 98504-1170  
  
Event schedule or agenda and list of attendees must be attached to the invoice.
  - If funding is approved for guest speaker travel, all travel arrangements must be organized by MJC.
- MJC must be listed as a co-sponsor on all promotional materials.
- Requester must be open to collaborating with MJC to plan and implement the project.
- Within 30 days after the event, requester will send a short summary (1 page maximum) of the event or project and its impact with 2-3 pictures from the event to [Carolyn.Cole@courts.wa.gov](mailto:Carolyn.Cole@courts.wa.gov).



Washington State Minority and Justice Commission  
 Criteria for Co-Sponsorship Requests



**Co-Sponsorship Request Form**

<p><b>Full name and contact information of organization and persons making the request:</b></p>	
<p><b>Type of co-sponsorship requested (please check all that apply and provide details):</b></p> <p><b>Publicity – MJC listed as a co-sponsor on all promotional materials and helps advertise</b></p> <p><b>Funding – MJC provides monetary support</b></p> <p><b>Guest speaker – MJC member(s) provide speaking services on behalf of the Commission</b></p>	<p><input type="checkbox"/> Publicity</p> <p><input type="checkbox"/> Funding</p> <p><input type="checkbox"/> Guest speaker</p> <p>Details:</p>
<p><b>If funding is requested, total amount of funds requested and budget:</b></p>	
<p><b>Purpose and objectives of the request:</b></p>	
<p><b>Name, date, time, and location of the event or project:</b></p>	
<p><b>Event agenda or project schedule, if available:</b></p>	



# Washington State Minority and Justice Commission

## Criteria for Co-Sponsorship Requests



<b>Target audience:</b>	
<b>Expected attendance or number of persons who will benefit:</b>	
<b>Other methods or sources being used to raise funds, if any:</b>	
<b>Other co-sponsors, if any:</b>	
<b>Plan to collect outcome data and evaluate the impact of the project (i.e., survey):</b>	



## *India Association of Western Washington Community Program*

### **1. Title: Mobile Hate Crime Info Workshops**

**Date: Sunday, March 19<sup>th</sup>, June 25<sup>th</sup>, August, October 2017**

**Time: 1.30 p.m. to 4.30 p.m.**

**Location: Bellevue (3/19), Sammamish (6/25). Seattle (August) and Bothell (October), Redmond tbd.**

**Purpose:** To empower community members. Tackling real life scenarios and offering practical advice on how to deal with hate crimes, racist comments and incidents for adults and kids. To de-escalate a situation and above all else be safe. All scenarios are based on real life situations that have been reported to us.

**Agenda:** Provide a panel of attorneys, law enforcement officials, immigration experts, school district representatives and mindfulness meditation experts to offer factual, practical responses and solutions for the community while initiating a conversation that addresses rights and responsibilities. Each panelist provides his/her opinion along with the facts to educate and empower attendees. Panelists are then provided real life scenarios (gathered from community reporting) to offer their expertise on how best to handle such scenarios. The Q&A session that follows is intended to bring honest conversation to the floor among law enforcement and community.

Panel statements

Scenarios

Q&A

One on one conversation

### **Contact Information:**

Lalita Uppala (Director, IAWW Community Program) [directorcommunity@iaww.org](mailto:directorcommunity@iaww.org)

Rita Badh (Outreach Specialist IAWW) [rita@iaww.org](mailto:rita@iaww.org)

### **Amount Requested:\$3000**

Amount requested includes venue rentals, marketing costs, and refreshments for taking the Hate Crime Info Session to Sammamish. Additional hate crime workshops are being planned for Seattle, Redmond and Bothell.

### **2. Title: Legal Clinics Open for All Communities**

**Dates: Third Thursdays every other month (Thursday May 25<sup>th</sup> upcoming clinic)**

**Time: 6.30 p.m. to 8.30 p.m.**

**Location: North Bellevue Community Center**

**Purpose: To** offer free, limited legal advice and referrals in collaboration with SABAW (South Asian Bar Association of WA) to ALL communities where members may have not access the legal system either due to their socio-economic status, cultural issues or transportation



limitations. By offering such clinics every other month to communities on the Eastside area where significant number of immigrant families reside, we address transportation and hosting the clinics in familiar territory which they visit for our programming every week, we provide families familiar spaces with those who can understand their cultural limitations. Bilingual attorneys and interpreters are available in Hindi, Tamil, Gujarati, Telugu, Bengali, Punjabi and Spanish. It is a goal of the program to make the clinics accessible regardless of barriers such as income, education, language or disability.

Agenda: Offer appointments one on one on a pre-booked basis or walk ins at the local community centers with follow ups occurring outside our clinic time.

Contact Information: Lalita Uppala (Director, IAWW Community Program)

directorcommunity@iaww.org

Rita Badh (Outreach Specialist IAWW) [rita@iaww.org](mailto:rita@iaww.org)

**Amount Requested:\$2000**

Amount requested includes venue rentals, marketing costs, and refreshments for attorneys. We have four more clinics this calendar year and have paid rentals for two clinics already.

*IAWW Community Program is a registered non-profit with the state of WA ID # 91-126-8802*  
Unite Cultures, Serve Communities, Create Bridges

# Save The Date

July 21, 2017  
9am - 4pm

## Washington's Tribal State Court Consortium

*"The Value of Tribal State Court Consortiums"*

Eastern Regional Meeting

July 21, 2017

9:00 am - 4:00 pm

Hosted by the Colville and Kalispel Tribes &  
The Gender and Justice Commission & Minority and Justice  
Commission

Location:

Colville Tribal Government Center  
21st Colville Street, Nespelem, WA 99155



### Guest of Honor- Judge B.J. Jones

BJ Jones is the Director of the Tribal Judicial Institute at the University of North Dakota School of Law where he also teaches Indian law and social justice issues as an Adjunct Professor. He has been a Tribal Judge for over 25 years now serving as the Chief Judge for Sisseton-Wahpeton in South Dakota and Prairie Island in Minnesota. He also serves as an Associate Judge for Standing Rock, Oglala Sioux Supreme Court, White Earth, and as a pro tem Judge for numerous other Tribes in Minnesota, Montana, and the Dakotas. He serves as a member of both the North Dakota Tribal-State Court forum and the Minnesota Committee on Tribal and State Courts and was the Co-Chair of the South Dakota Committee on ICWA compliance.

# THE COLOR OF JUSTICE EVENT

This is a one-day event to encourage minority girls between the ages of 11-18 to consider legal and judicial careers by bringing them together with female Judges. This event will feature networking and empowerment panels on the law and the legal profession and why diversity and minority perspectives matter. The event will educate and empower young minority girls who desire to understand how the Justice system works.



Justice Mary Yu  
Washington State Supreme Court



Judge Linda Lee  
Washington State Court of Appeals  
Division II



Judge Veronica Alicea-Galvan  
King County Superior Court



Judge G. Helen Whitener  
Pierce County Superior Court

## Meet A Diverse Panel Of Judges Who Believe In YOU!



Thursday, August 17, 2017, 9:00 am to 3:00 pm  
Pierce County Superior Court, Room 100

ALL Minority Students Are Encouraged To Apply  
**SPACE IS LIMITED TO THE FIRST 60 registered applicants ages 11-18**  
**APPLICATION DEADLINE: JULY 14, 2017**

Lunch will be provided and an agenda will follow registration

[PCColorofJustice@co.pierce.wa.us](mailto:PCColorofJustice@co.pierce.wa.us)

See reverse side for application



Pierce County Superior Court



WA State Minority & Justice Commission



National Association of Women Judges

48  
Gender & Justice Commission

WA State SCJA: Equality & Fairness Committee

**THE COLOR OF JUSTICE 2017 ENROLLMENT FORM**

**REGISTER EARLY AS SPACE IS LIMITED TO THE FIRST 60 REGISTERED FEMALE STUDENTS AGES 11-18.**

**STUDENT INFORMATION:**

Student Name: \_\_\_\_\_

AGE: \_\_\_\_\_

**PARENT OR GUARDIAN INFORMATION:**

Name: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

**NOTE: UNSIGNED FORMS WILL NOT BE ACCEPTED.**

**PARENTAL DECLARATIONS:**

1. **PARTICIPATION** - I hereby give consent for my child to attend and participate in the program **The Color of Justice 2017**, to be held **Thursday, August 17, 2017, from 9:00 a.m. to 3:00 p.m.** at the **Pierce County Superior Court, 930 Tacoma Avenue South, courtroom 100.**
2. I understand that the event organizers assume no responsibility for the travel and transportation of my child to or from this event. I have made arrangements for the supervision of my child to and from this event as well as an alternative meal for my child if the child has any food sensitivities.

\_\_\_\_\_  
*Parent or Guardian Signature*

\_\_\_\_\_  
*Parent or Guardian Signature*

**Mail or E-mail this completed and signed form to:**

**Judge G. Helen Whitener, Pierce County Superior Court, Department 11**

**930 Tacoma Avenue South, Rm 334, Tacoma, WA 98402**

**[PCColorofJustice@co.pierce.wa.us](mailto:PCColorofJustice@co.pierce.wa.us)**

**\*\* USE OF PHOTO & NAME - I hereby give consent for my child's name and image to be included in any publication or broadcast specifically about this Color of Justice program 2017.**

\_\_\_\_\_  
*Parent or Guardian Signature*

\_\_\_\_\_  
*Date Signed*



# 2016-2017 MJC Budget Updated 6-14-17

Starting available funds	\$70,000.00	\$70,000.00
Estimated Funds used to date	\$70,511.00	\$70,511.00

You're over budget by \$511.00

Item	Description	Allotted	Spent	Remaining	Notes
Total based on AOC Travel total for Budget Code 16301 and other misc. travel reimbursements charged through May 2017, but not calculated under "travel" by AOC; also includes estimate for anticipated costs by 6/30 ; need to increase amount allotted for next year					
<b>Commission Meetings</b>	Member & staff travel costs, lodging, and per-diem for all MJC sponsored events	\$15,000.00		-\$19,037.00	
Travel			32,037		
<b>Anticipated travel costs incurred by 6/30 (estimates)</b>			2,000		
National Consortium travel reimbursement		\$600			
6/30 MJC meeting food (light breakfast/coffee and lunch)		\$800			
6/30 MJC meeting travel		\$300			
Symposium		\$200			
Pre-trial Task Force launch		\$100			
<b>General Operating Expenses</b>		\$4,000.00		\$1,181.00	
AOC Copy Center and Mailing			\$930		Includes Justice Smith Resolution framing, annual report printing, and poster reprints
Outside Printing Services			\$661		
Office Supplies			\$118		
Teleconferences			\$700		
Software			\$410		
<b>Commission Staff &amp; Member Continuing Education</b>		\$5,000.00		\$1,275.00	
Department of Enterprise Services			\$375		
Seattle University Sponsorship			\$500		
UW Support Training-Legal Study			\$1,500		
National Consortium Registration			\$1,350		
<b>EDUCATION - non-travel (i.e., honorariums)</b>					
Judicial College		\$2,000.00	\$0	\$2,000.00	Travel expenses only - included in Commission meeting total
Institute for New Court Employees		\$1,200.00	\$0	\$0.00	No travel or honorariums
Fall Conference - Perceptions of Justice Part II		\$1,200.00	\$1,200	\$0.00	Gregory Taylor honorarium
Fall Conference - Jury Diversity and Implicit Bias		\$600.00	\$0	\$600.00	Travel expenses only - included in Commission meeting total
Spring Conference - DMCJA		\$500.00	\$0	\$500.00	Travel expenses only - included in Commission meeting total
Spring Conference - SCJA		\$8,000.00	\$8,000	\$0.00	Professor Butler (\$4000) and Ron Davis (\$4000) honorariums
Spring Conference - Appellate Courts		\$500.00	\$0	\$500.00	Travel expenses only - included in Commission meeting total
DMCMA Conference			\$1,000	-\$1,000.00	Anticipated charge; not budgeted for
Flexible spending for other education sponsorships		\$0.00	\$0	\$0.00	
<b>LAW STUDENT LIAISONS (non-travel)</b>					
Gonzaga project		\$1,500.00	\$0	\$1,500.00	Still waiting for an invoice (deadline given to liaisons to submit 6/30)
SU project		\$1,500.00	\$1,374	\$126.00	
UW project		\$1,500.00	\$0	\$1,500.00	Canceled event; \$400 approved for FY 17-18 Budget
Leadership Training & Travel		\$1,000.00	\$0	\$1,000.00	Liaison travel included in Commission meeting total
<b>YOUTH PIPELINE PROGRAMS (non-travel)</b>					
Yakima Youth & Justice Forum (October 2016)		\$1,000.00	\$1,000	\$0.00	
Spokane Youth & Justice Forum (December 2016)		\$1,000.00	\$1,000	\$0.00	
Tri-Cities Youth & Justice Forum		\$1,000.00	\$0	\$0.00	Event moved to November 2017; budget additional \$1000 FY 2017-2018
Wenatchee Youth & Justice Forum (March 2017)		\$1,000.00	\$1,000	\$0.00	
Seattle Youth & Justice Forum (April/May 2017)		\$1,000.00	\$1,000	\$0.00	
<b>SYMPOSIUM (non-travel)</b>		\$6,000.00		\$3,444.00	
Honorariums			\$1,200		Professor Chernoff honorarium (\$1,000); Ausha Byng stipend (\$200)
Food			\$1,356		Food
<b>INITIATIVES (non-travel)</b>					
Judicial Institute		\$2,000.00	\$2,000	\$0.00	
Tribal State Court Consortium		\$2,500.00	\$0	\$2,500.00	Travel expenses only - included in Commission meeting total
Pre-trial Task Force		\$2,000.00	\$0	\$2,000.00	
Eliminating the Pipeline Seminar Series		\$1,000.00	\$1,000	\$0.00	Anticipated charge
Spokane Community Forum with Ron Davis		\$1,500.00	\$0	\$1,500.00	Included in Commission meeting total for travel and SCJA total for honorarium
Town Hall		\$0.00	\$0	\$0.00	
<b>SPONSORSHIPS</b>		\$0	\$0	\$0.00	
<b>RESEARCH</b>					

Item	Description	Allotted	Spent	Remaining	Notes
Jury Survey Project		\$4,500	\$5,000	-\$500.00	Need to increase amount allotted for next year
<b>COMMITTEE WORK (non-travel)</b>					
Committees		\$1,200	\$0	\$1,200.00	
Judges of Color Reception		\$800	\$800	\$0.00	
Immigration bench guide updates			\$3,000	-\$3,000.00	Anticipated charge; not budgeted for
<b>Total</b>		<b>\$70,000.00</b>	<b>\$70,511</b>	<b>-\$511.00</b>	

# Draft Budget FY 17-18

Starting available funds

\$70,000.00

\$70,000.00

Estimated Funds used to date

\$0.00

You're under budget by

Item (Project Code-Sub-Project Code)	Description	Allotted	Spent	Remaining	Notes
<b>M&amp;J Overhead</b>					
Commission Meetings (1600-01)	All travel costs, lodging, and per-diem	\$30,000.00			
General Operating Expenses (1600-02)	Printing, teleconferences, office supplies, software, etc.	\$3,000.00			
Commission Staff & Member Continuing Education (1600-03)	National Consortium & other conferences, educational training/technology	\$3,000.00			
<b>EDUCATION - non-travel (i.e., honorariums)</b>					
Judicial College (1601-01)		\$1,500.00			
Institute for New Court Employees (1601-02)		\$1,500.00			
Fall Conference (1601-03)		\$1,500.00			
Spring Conference - DMCJA (1601-04)		\$1,500.00			
Spring Conference - SCJA (1601-05)		\$1,500.00			
Spring Conference - Appellate Courts (1601-06)		\$1,500.00			
DMCMA Conference (1601-07)		\$1,500.00			
WASCLA Conference (1601-08)		\$0.00			No honorarium funding. Travel reimbursements only. Use Commission meeting code 1600-01
<b>LAW STUDENT LIAISONS (non-travel)</b>					
Gonzaga project (1602-01)		\$1,000.00			
SU project (1602-02)		\$1,000.00			
UW project (1602-03)		\$1,000.00			
<b>YOUTH PIPELINE PROGRAMS (non-travel)</b>					
Yakima Youth & Justice Forum (1603-01)		\$1,000.00			
Spokane Youth & Justice Forum (1603-02)		\$1,000.00			
Tri-Cities Youth & Justice Forum (1603-03)		\$1,000.00			
Seattle Youth & Justice Forum (1603-04)		\$1,000.00			
Color of Justice (1603-05)		\$500.00			
<b>SYMPOSIUM (non-travel) (1604-00)</b>					
		\$3,000.00			
<b>COMMUNITY SPONSORSHIPS (1605-00)</b>					
		\$2,000.00			
<b>INITIATIVES (non-travel)</b>					
Judicial Institute (1606-01)		\$1,000.00			
Tribal State Court Consortium (1606-02)		\$1,000.00			
Pre-trial Task Force (1606-03)		\$1,000.00			
Eliminating the Pipeline Seminar Series (1606-04)		\$1,000.00			
Community Forum (1606-05)		\$1,000.00			
<b>RESEARCH</b>					
Jury Survey Project (1607-01)		\$5,000.00			
<b>COMMITTEE WORK non-travel (i.e., Judges of Color Reception) (1608-00)</b>					
		\$1,000.00			
<b>Total</b>		<b>\$70,000.00</b>			