

“Race, Equity and Access to Justice” Agenda

Joint Meeting of the Access to Justice Board, Gender and Justice Commission, Interpreter Commission, and Minority and Justice Commission

Friday, December 2, 2016, 8:45 AM to 11:00 AM

Washington State Bar Association, 1325 4th Avenue, Suite 600, Seattle

8:45 a.m. – Presentations

Registration will begin at 8:15 a.m. with breakfast in the Conference Center until 8:45 a.m., where all attendees will gather for the joint meeting.

- **Welcome** – WSBA Executive Director Paula Littlewood
- **Opening Remarks** – WA Supreme Court Chief Justice Barbara Madsen
- **Case Study of Innovative Justice: Community Court** – Francis Adewale (Spokane Office of Public Defender) and Justin Bingham (City of Spokane Prosecutor’s Office)
- **Panel Discussion: Overview of the Work of the Board and Commissions** – Geoffrey Revelle (Access to Justice Board), Cynthia Delostrinos (Minority and Justice Commission), Kristi Cruz (Interpreter Commission) and Justice Sheryl Gordon McCloud (Gender and Justice Commission)

10:10 a.m. – Breakout Sessions

Each of the following commissions/board will break out into separate rooms, share in more depth about their priorities, and welcome feedback and ideas for collaboration from members from the other commissions/board and members of the public.

- **Access to Justice Board:** Attendees will go into more depth about their work including updating the State Plan for Delivery of Civil Legal Services, race equity, and updating the Access to Justice Technology Principles. (Adams/Rainier)
- **Gender and Justice Commission:** Attendees will go into more depth about their work on updating the Gender Bias Study: Access to the courts for women in Washington and the intersectionality of poverty, race, mass incarceration, and gender. (St. Helens/Baker)
- **Interpreter Commission:** Attendees will go into more depth about their work on language access in Washington courts. (Hearing Room)
- **Minority and Justice Commission:** Attendees will interactively discuss the mission of the Minority and Justice Commission and how we can work collaboratively on upcoming projects addressing LFOs, Jury Diversity, and Pre-trial reform. (Conference Center)

11:30 a.m. – Regular Meetings

The following Commissions and Board will have their respective regularly scheduled monthly meetings that are open to the public. All are welcome to attend.

- 11:30 a.m. – 12:30 p.m. – **Access to Justice Board** (Adams/Rainier)
- 11:30 a.m. – 1:30 p.m. – **Minority and Justice Commission** (Conference Center)
- 11:30 a.m. – 2:00 p.m. – **Interpreters Commission** (Hearing Room)



MINORITY AND JUSTICE COMMISSION

WASHINGTON STATE BAR ASSOCIATION, SEATTLE, WASHINGTON

FRIDAY, DECEMBER 2, 2016

(11:00 A.M. – 1:30 P.M.)

JUSTICE MARY YU, CO-CHAIR

JUSTICE CHARLES W. JOHNSON, CO-CHAIR

AGENDA

CALL TO ORDER

PG

- **Call to Order and Introductions**
- **Approval of September 23, 2016, Meeting Minutes**
- **Debrief Joint Meeting**

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CO-CHAIRS' REPORT

- **Welcome New Staff – Carolyn Cole**
- **Commission Membership – Appointment Committee**
- **2017 Supreme Court Symposium: Wednesday, May 24, 2017**
 - Jury Diversity

STAFF & COMMITTEE REPORTS

- **Staff Report – Carolyn Cole & Cynthia Delostrinos**
 - 2017 Budget
 - Upcoming Youth and Justice Forum – Spokane (Dec. 9)
 - Youth & Law Stakeholders Newsletter
 - 2016 Shout-outs
- **Law Student Liaisons – Project Proposals (Gonzaga, UW, SU)**
- **Juvenile Justice Committee – Annie Lee**
 - WSBA Council on Public Defense Proposed Guidelines
- **Education Committee – Justice Stephens**
 - Appellate Conference
 - SCJA Conference
 - DMCJA Conference
- **Workforce Diversity Committee – Judge Bonnie Glenn**
 - Justice C.Z. Smith Award
 - Judges of Color Directory
- **Outreach Committee**

6

7-8

9-13

14-45



Washington State Minority and Justice Commission (WSMJC)
Friday, September 24, 2016
8:30 a.m. – 12:00 p.m.
Seattle University of Law
Seattle, Washington



MEETING NOTES

Commission Members Present

Justice Charles Johnson, Co-Chair
 Justice Mary Yu, Co-Chair
 Prof. Lori Bannai
 Ms. Anne Benson
 Prof. Robert Boruchowitz
 Mr. Steve Clem
 Judge Linda Coburn
 Mr. Mike Diaz
 Sgt. Adrian Diaz
 Judge Lisa Dickinson
 Judge Theresa Doyle
 Ms. Marie Eggart
 Ms. Bonnie Glenn
 Prof. Jason Gillmer
 Mr. Uriel Iñiguez
 Ms. Anne Lee
 Ms. P. Diane Schneider
 Judge Lori Smith
 Mr. Travis Stearns
 Judge Dennis Yule, Ret.
 Judge Kimberly Walden

AOC Staff Present

Ms. Cynthia Delostrinos
 Ms. Nichole Kloepfer

Members Not Present

Judge Veronica Alicea-Galvan
 Judge Lisa Atkinson
 Mr. Jeffrey Beaver
 Prof. William Covington
 Mr. Russell Hauge
 Ms. Yemi Fleming-Jackson
 Ms. Carla Lee
 Commissioner Joyce McCown, Ret.
 Judge LeRoy McCullough
 Ms. Karen Murray
 Justice Debra Stephens
 Judge Gregory Sypolt
 Mr. John Yasutake

Guests

Ms. Annette Clark
 Ms. Jaime Hawk
 Ms. Breanne Schuster
 Mr. Miguel Willis

Student Liaisons Present

Mr. Peter Alexander Gale
 Ms. Sara Erickson
 Ms. Astor Kidane
 Ms. Katherine Sanburn
 Mr. Jamison Nichols
 Ms. Maia Crawford-Bernick
 Ms. Renee Ambacher
 Ms. Camille M. McDorman
 Ms. Jodilyn Gilleland
 Ms. Erica Freelong

APPROVAL OF MINUTES

The meeting was called to order at 8:50 a.m.

The meeting minutes from the June 24, 2016, meeting were approved.

CO-CHAIRS REPORT

Pre-trial Justice Task Force – 3 Day Count Campaign

Judges interpret a presumption of release in Rule 3.2, but many feel that they don't have enough information to make these important decisions of whether to order release or not. An important question is how to change current practices to be more in line with Rule 3.2. Judge Sean O'Donnell, SCJA incoming president, took the initiative to contact two organizations to help get the SCJA involved in pretrial reform. The first SCJA meeting is next week and next steps, parameters, and the role of SCJA to disseminate the information is in the planning stages. SCJA and DMCJA will collaborate with the Commission on these efforts. Risk assessment tools have been developed to evaluate bias in terms of how it contributes to over-incarceration. A judge will present next week to explain how it works in jurisdictions. We are looking for an extern to work on this project. Professor Bowen, a University of Seattle faculty member, has indicated an interest in partnering on this effort, and has also recruited students to help.

2017 Supreme Court Symposium – Theme Brainstorm

Date of event: Wednesday, May 24, 2017

- Mental health in the judicial system
- 50th Anniversary of In Re Gault – Juvenile Justice
- Jury Diversity

➤ Generate a list and email confirmation, then get the committee started.

50th Anniversary of Gault – One idea that was mentioned was to partner with the law schools to do a moot court reenactment of In re Gault. We could do one presentation in the Seattle area and then one at Gonzaga Law.

Commission Awards

Justice Smith's memorial service is on Sunday. There has been a request for a resolution to honor him. Ms. Bonnie Glenn, Judge McCullough, and Mr. Kaelen Brodie have volunteered to edit. Copies of the resolution were disseminated for final review. Judge McCullough asked if there was a more appropriate time to deliver the resolution, aside from the memorial. On the last sentence of the third paragraph of the resolution, it should specifically identify him as the first African-American Supreme Court justice in Washington state history. Additional suggestions can be sent to kaelen.brodie@courts.wa.gov. Professor Boruchowitz commented that Justice Smith also ran the first free legal services clinic at UW.

Justice Yu asked for someone to make a motion to approve the resolution with the caveat that appropriate amendments be made and not be cost prohibitive. Justice Yule first made the motion, Judge Doyle seconded, and all were in favor (unanimously passed). Judge Yule gave his thanks and asked if there was more than one award from the Commission and Washington State Bar Association. Justice Yu suggested that a group collaborate to discuss the ideas further. Volunteers include: Judge Lori Kay Smith, Ms. Bonnie Glenn, and Ms. Astor Kidane.

LFO Grant

The Commission applied for and received a three-year \$500,000 grant from the Department of Justice to address LFOs in Washington State. The Center for Court Innovation, based out of New York, was selected as the Technical Assistance provider for the grant. The other states that received the grant include Louisiana, Texas, California, and Missouri. Letters from stakeholders expressing significant support should be credited for helping us secure the grant. They are meeting with the core group and working out the next steps.

The Commission is unique on the national front because we constantly address issues of racial bias in the judicial system. We are one of the few states that pulls together a group that maintains this conversations. It's critical to maintain the trust and confidence of the public and create solutions that other states can embrace. However, there are challenges ahead. Justice Yu encouraged everyone to read the decisions every Thursday, such as the recent decision in *Wakefield* on www.courts.wa.gov.

PRESENTATIONS

Team Child Hack: Disrupting the School to Prison Pipeline – Miguel Willis

On October 7-8, Team Child and Code Fellows are hosting a Hackathon at Seattle University. The TeamChild Hack is one of the first-ever hackathons in the country to specifically address the “school-to-prison pipeline.” It’s a historic and collaborative event where affected youth, law students, lawyers, legal service providers, coders, and designers will create technology-enabled open source solutions to address the numerous challenges faced by underserved teenagers who cannot afford a lawyer and legal services. The goal of the hackathon is to improve the delivery of services and help students obtain the services that could mean the difference between graduation and incarceration. If you would like more information about the event, please contact Miguel Willis at Miguel@socialjusticehackathon.com.

Voter Rights Restoration – Jaime Hawk, ACLU

Twenty-five percent of Washington residents surveyed believed that they would never get their rights back after a conviction. It was suggested that there should be a basic bench card for judges. We should contact the Governor’s office for movement on this issue. Bonnie Glenn and Judge Theresa Doyle offered to help share resources and connect with ACLU further.

Special Guest: Lori Bannai¹ invited Karen Korematsu as a guest. Ms. Korematsu’s father challenged the constitutionality of the Executive Order that ordered Japanese internment camps during World War II. She now travels the country to promote civil engagement and fairness. Her father spoke to the University of Puget Sound and felt it was so important to speak to lawyers and judges to further educate them about diversity and injustice. Be the pebbles in the pond and educate others to make the change. Her father would say, “Stand up for what is right and when you see something wrong don’t be afraid to speak up.”

STAFF REPORT

Staff Report – Cynthia Delostrinos

The proposed budget is included in the materials. We will be making it a regular practice to present the budget at every meeting. This budget is fluid and changes can be made as needed.

Staffing updates: Stacy Smith resigned her position as Court Program Analyst. We received 28 applications for the position and there are many great candidates. We have completed the first round of interviews and we are moving on to the second round. We hope to have a new Analyst join us by the end of October.

The upcoming Yakima Youth and Justice Forum will be held at Heritage University for the second year. Over 200 students in Yakima came last year. We need volunteers. If anyone wants to go to Yakima, please let Cynthia know. Justice Yu noted that the University of Washington has a very strong presence at this event. Perhaps the other law schools would like to participate? It’s a chance

for high school students to learn about the law and experience it. The event will take place on October 6th in Toppenish.

The Youth and Justice Forum in Spokane will take place on Dec 9th.

Our next meeting on December 2nd will be held at the WSBA office from 8:45 a.m. to 12:00 p.m. The joint commission meeting is scheduled first, followed by separate commission meetings. It's another way to connect with the Access to Justice Board.

COMMITTEE REPORTS

Juvenile Justice Committee – Ms. Annie Lee

The committee discussed various upcoming conferences that may be of interest to the Commission. Please see attachments. If anyone wants to be on the advocacy panel for the Juvenile Reentry Conference, let Annie Lee know.

Education Committee – Justice Stephens

Judge Doyle reported on the fall judicial conference where the Minority and Justice Commission sponsored two presentations. One of the presentations was a follow-up to the Perceptions of Justice Trainings that were done last year, with Greg Taylor as faculty. During Mr. Taylor's presentation, Judge Alicea-Galvan also had a chance to speak to the judges about juror bias. Judges need to be comfortable with having uncomfortable conversations about race if they come up during jury selection. The second presentation was on Jury Diversity. Professor Gillmer began the presentation, Judge Rosen talked about juror demographic survey project. Sal Mungia discussed the proposed general rule that would strengthen *Batson* to allow the court to use subjective standards to determine racial motive. This was followed by a discussion about implementation. Not everyone agreed with the ideas, but it stimulated thinking.

SCJA Spring Conference 2017 - Judge McCullough has asked Ron Davis to come back to Washington (Spokane) to speak about the Jordan Davis trial, media, and high-profile cases in the 21st century.

DMJCA Spring Conference – Judge Walden is working with Judge Logan on ways to combine presentations involving pretrial and risk assessment tools. The groups had originally sent in separate proposals, but we have been asked to combine the sessions, as some of the issues overlap. They are trying to work on the logistics without compromising quality, but there are time constraints.

There was a comment on how we need to take the great education offered to courts and offer it to the advocates and legal partners. The best practices committee chose jury selection and how to avoid jury selection issues as the topic of the conference.

Workforce Diversity Committee – Bonnie Glenn

The Judges of Color Directory is currently being updated. A survey has been created requesting updated information and it will be sent to judicial associations, administrative law judges, and minority bar associations.

The Judges Of Color reception went really well and was well attended. A tribute to Justice Smith was given by Justice Gonzales, Justice Yu, and a recent law grad from Gonzaga. See page 43 for the full agenda. The report at www.gavelgap.org used baselines to measure and see who's on state courts, with the idea that the court system should reflect the populations it serves. Frank Ovono gave a great presentation. We hope it's something that can continue.

We would like for the Judges of Color Directory to include federal, tribal, and administrative judges. It will be released after the election, likely sometime in 2017.

Outreach Committee – Judge Yule

The Commission solicits artwork from Northwest artists that reflect the constituency and mission of the Commission.

Commissioner McCown suggested that the tribute painting of Justice Smith, currently hanging at the Supreme Court, should be the poster for 2017.

It was also suggested that the 2017 Annual Report be dedicated to Justice Smith and his portrait can be used as the cover.

Judge Yule noted that the Commission's webpages have undergone major changes over the last couple of years. If you haven't done so already, please submit your photograph and biography to Nichole to put online. We want the webpage to be as fresh and current as possible.

Brief discussion about recognizing the student liaisons. Their photos and biographies will be added to the website.

Reminder to all of the committees that each committee's goals are not current as they are for 2005-2015. Please take a look and submit any changes.

The committee is exploring venues for future Commission meetings outside of the typical area. We want to take geography into account and get outside of the usual geographic meeting area a couple of times a year. Ms. Glenn mentioned Green Hill for example or other appropriate areas and sites.

The Youth Forum in Tri-Cities was supposed to be in December, but it was moved to the end of March. There was one piece of art by a student from Green Hill for the poster. Perhaps the Commission can partner with a traveling art exhibit?

Meeting adjourned at 12:00 p.m.

STUDENT LIAISON ORIENTATION – 12:00 p.m. – 4:30 p.m.

NEXT COMMISSION MEETINGS:

- Friday, December 2, 2016, 8:45 a.m.-12:45 p.m., location WSBA Office
- 2017 Commission proposed meeting schedule; 8:30 a.m.-12:30 p.m.; locations TBD, April 7, 2017, June 30, 2017, September 22, 2017, December 1, 2017

**Minority and Justice Commission
Updated Budget (2016-2017)**

Starting balance = \$70,000		PROJECTED SPENDING	Spent	Remaining
Commission Meetings	Member & staff travel costs, lodging, and per-diem for all regular MJC meetings and Y&J Forums	\$15,000		
General Operating Expenses	Printing, teleconferences, office supplies, etc.	\$5,000		
Annual Report	Design and printing	\$1,000		
Commission Staff & Member Continuing Education	National Consortium & other conferences	\$7,000		
EDUCATION		\$10,500		
	Judicial College	<i>\$1,000</i>		\$1,000
	Institute for New Court Employees	<i>\$500</i>		\$500
	Fall Conference <ul style="list-style-type: none"> • Perceptions of Justice Part II (\$1,200) • Jury Diversity and Implicit Bias (\$600) • Pre-trial Justice 	<i>\$2,500</i>	\$1,900	\$600
	Spring Conferences <ul style="list-style-type: none"> • DMCJA (\$1,500) • SCJA (\$1,500) • Appellate Courts (\$1,500) 	<i>\$4,500</i>		\$4,500
	Flexible Spending for Other Education Sponsorships	<i>\$2,000</i>		\$2,000
LAW STUDENT LIAISONS	Project/s (\$4,500, \$1,500 per law school) Leadership Training & Travel (\$1,000)	\$5,500	\$1,500	\$4,000
YOUTH PIPELINE PROGRAMS	Youth and Justice Forums <ul style="list-style-type: none"> • Yakima (Oct. 2016) (\$1,000) • Tri-Cities (March 2017) • Spokane (Dec. 2016) • Seattle (April/May 2017) • Tribal Youth (Spring 2017) 	\$5,000 <i>(\$1,000 each)</i>	\$1,000	\$4,000
SYMPOSIUM		\$6,000		\$6,000
INITIATIVES		\$10,000	\$450	\$9,550
	Tribal-State Court Consortium (\$2,500) (-\$450 for Fall Conf.) Pre-trial Task Force (\$2,000) Eliminating the Pipeline Seminar Series (\$1,000) Spokane Community Forum (\$3,000) Town Hall (\$1,500)			
SPONSORSHIPS	TBD	\$2,000		\$2,000
RESEARCH	TBD <ul style="list-style-type: none"> • Jury Survey Project 	\$1,000		\$1,000
COMMITTEE WORK		\$2,000	\$800	\$1,200
	<ul style="list-style-type: none"> • Outreach, Workforce Diversity, Juvenile Justice, Legislative, Evaluation and Implementation • Judges of Color Reception (\$800) 			
TOTALS		\$70,000	\$5650	\$36,350



WASHINGTON YOUTH AND LAW STAKEHOLDERS NETWORK

A monthly newsletter provided by the Washington State Minority and Justice Commission to support a network committed to fostering pre-college youth diversity pipeline programs in the field of law.

Transformative actions:

- Attend or volunteer at a Youth & Justice Forum
- Send us news about interesting projects
- Provide or support platforms for youth-led initiatives
- Include local youths in strategy meetings

Join us for the 3rd Annual Spokane Youth & Justice Forum!

Date: Friday, December 9, 2016

Location: Spokane Falls Community College, Spokane, Washington

Time: 9:30 a.m.— 3:30 p.m.

Contact: Gloria Ochoa-Bruck at gochoabruck@spokanecity.org or Eric Roth at rothlawoffices@comcast.net

Reflections from the Yakima Valley Youth & Justice Forum

Over 200 students (Grades 8-12) gathered for the 2nd Annual Yakima Valley Youth & Justice Forum on October 26, 2016. The event was hosted by Heritage University in Toppenish, Washington, and featured the UW Law Academy. Students from traditionally under-represented backgrounds had the opportunity to meet with legal professionals, law enforcement, and law students to learn about different careers in the justice system and develop relationships with potential mentors. Washington Supreme Court Justice Mary Yu inspired students with her personal story of overcoming barriers and pursuing a career in law. The UW Law Academy provided students with the opportunity to work through a mock trial scenario with attorneys, law students, and other community volunteers. Cameron Young, a law student volunteer, noted, "The Yakima Valley Youth & Justice Forum was as much of a benefit for me as I believe it was for the students. This event illuminated the importance of providing young students with role models from professions that they are interested in. As a first-generation college student, I questioned whether I was truly capable of going to law school until I met my mentor who told me that I could be a great attorney. Although my parents always supported me in my journey to attend law school, I never truly believed it was possible until an attorney expressed his belief in me. For this same reason, I believe that the conversations at the Yakima Valley Youth & Justice Forum, facilitated between the volunteers and students, were extremely valuable because these interactions confirmed a belief in the students to achieve their dreams. It was powerful to see how the students transformed over the course of the day. Some students began shy and timid when they discussed some of the potential legal arguments that could be made with their mock trial groups, but by the end of the day, these students were comfortable and confident when they delivered a closing argument in front of 200 of their peers. Needless to say, I am grateful to have volunteered for an event that I believe is a necessary component to actualizing a positive social influence within our communities."

"...I believe that the conversations at the Yakima Valley Youth & Justice Forum...were extremely valuable because these interactions confirmed a belief in the students to achieve their dreams."

*- Cameron Young
Student, UW School of Law*



University of Washington School of Law Academy Representatives with Justice Yu, Co-Chair of the Washington State Minority and Justice Commission, at the 2016 Yakima Valley Youth and Justice Forum

Spotlight

- The Washington Coalition of Sexual Assault Programs explores youth-led prevention of sexual violence. [More information](#)
- The Seattle Times reported on November 22, 2016, that petitioners, between 12 and 16 years old, asked a state judge in a Seattle court to step in and hold the state Department of Ecology in contempt for not doing a better job of curbing greenhouse gas emissions. [More information](#)
- Legal Outreach, a legal organization based in New York, explains the model for their successful Early-Intervention Pipeline Diversity Program. [More information](#)

Want to subscribe? Questions? Comments? Contributions?
Contact Carolyn Cole at carolyn.cole@courts.wa.gov

"We have a powerful potential in our youth, and we must have the courage to change old ideas and practices so that we may direct their power toward good ends." - Mary McLeod Bethune

“Careers in Law” Panel

- Purpose of the event
 - Reach racial minority students in Spokane high schools
 - Discuss how a career in law gives them the tools to do something about the most salient topics for them right now
 - Social media reports of police brutality and hate crimes
 - The election of Donald Trump
- Assemble a panel of judges, lawyers and legal scholars who have experience with racial minority issues
 - We would like to have men and women of color on the panel
 - Possibly have four panelists
 - Potential speakers:
 - Steven Gonzalez, WA State Supreme Court Justice
 - Nicholas Brown, Governor Jay Inslee’s General Counsel, Former Assistant U.S. Attorney for Western Washington
 - Stephan Thomas, King County Prosecutor
 - Local Spokane attorneys, judges, recent law grads
 - Does the MJC have panelist recommendations?
 - If speakers are flying in, use our budget to pay for travel and lodging
- School-wide event
 - This event will be held during the school day at an assembly
 - We will work with local high school(s)
 - Possibly hold this event on four different dates at four different high schools in Spokane
- Tentative speaking points
 - Issues dealing with race in the justice system
 - The importance of diversity and minority representation in the legal profession
 - Provide a roadmap to law school
 - College; undergrad majors; GPA; LSAT
- Follow-up
 - Distribute resource materials explaining how to get started in a legal career
 - How to pay for college and law school
 - Financial aid
 - Scholarships
 - Student loans
 - Internship opportunities
 - Youth Programs
 - Mentoring/shadowing opportunities
 - Websites/brochures for how to get started in legal careers
 - Variety of legal careers

UW Project Proposal

Project Summary: First, conduct “Know Your Rights” workshops for local high school students covering protected rights during protests; de-escalation/intervention tactics during verbal confrontations; and information on how/when to report hate crimes and incidents of discrimination. Second, continue the Race Equity Training at 1L Orientation at UW School of Law.

Purpose: First, support local youth engaging in protests/political expression and provide resources for students of color and students from religious minority groups that have faced increased hostility post-election. Second, build on the successful Race Equity Training last year by ensuring it continues next year. This training lays the foundation for ongoing conversations about power, privilege, and equity at UW School of Law.

Activities:

- 1) Know Your Rights Workshop with local high school students
 - a) Estimated Budget: \$1,100
- 2) Race Equity Training with incoming 1L UW law students
 - a) Estimated Budget: \$400

Target Audience:

- Seattle high school students, especially students of color who will potentially be victims of hate crimes and also students engaged in acts of political expression. Considering the following locations for the workshops: Garfield High School, West Seattle High School, and Rainier Beach High School.
- Incoming class of UW law students.

Outcomes:

- Local youth (approximately 40 high school students) will be better informed of their rights and obligations when engaging in public protests.
- Stronger connection between UW law students and local youth.

Feedback From 2016 UW Project

UW Liaisons’ 2016 project was a Race Equity Training lead by the Seattle Office for Civil Rights during the 1L Orientation. The feedback was overwhelmingly positive. Most criticism was due to timing and a request for smaller group discussions. Some students expressed concern about only having one speaker (a gay white male). The following are excerpts from student feedback:*

“I felt that this conversation was so crucial and I was glad that UW Law took the initiative to get it started. I have friends at several other high-profile, ‘progressive’ law schools, and I can say that their orientations didn't include anything about racial equity, nor any type of similar discussion to the one

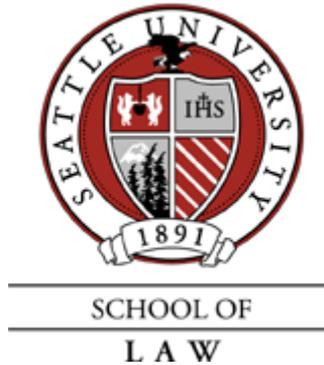
we had. As a person of color in a predominantly white 1L class, I was happy that these issues were addressed and that the conversation was real, tangible, and applicable to all those in the audience. I was so impressed with the speaker, and I would highly encourage that he be at next year's FLS, and that this conversation be had."

"I thought the experience was incredibly informative. I would, however, made it more interactive. Those who chose not to listen really had nothing resisting them to do so. I would have loved to interact with my classmates regardless this very important topic, especially as a woman of color."

"I loved it. It was extremely enlightening."

"As a former 'cultural competency' and equity trainer, I thought this session was excellent. I appreciated the history lesson, especially for those who may have never learned this framework, the challenging self-awareness exercise, and the 'strategies' offered to tackle systemic racism. Even though time was limited, I wished there was more opportunity to reflect, share, and connect with our fellow classmates to discuss these topics. I personally believe this is a critical element of this work."

*This feedback is confidential but students agreed to allow it to be shared with MJCOMM members.



MJC Speaking Series

Presented by: Geraldine Enrico, Harkiran Sekhon, Jodilyn Gilleland, Maia Crawford-Bernick

EVENT OUTLINE

When: Feb. 22nd; March 8th; 22nd

Time: Feb. 22nd: 5:30p - 7:30p; March 8th and 22nd: 5:30p-7:00p

Location: TBD (2nd Floor Gallery is our first choice)

Target Audience: Law school community; undergraduate students; local high school students

Discussion Point/Issue: To engage students, faculty and the wider community in a discussion of how/whether the prison-industry complex is counterintuitive to criminal justice reform, and what is being done to mitigate the harm.

Title: In considering the title we are looking at the following factors:

- How does this tie into the themes of the MJC?
- What is it that we want our target audience to get out of the series?
- What is the common thread of all three events?
 - What is the effect on criminal justice reform?
- Future impacts?

EVENT SCHEDULE

Feb. 22nd (RSVP by Feb. 1st): School to Prison Pipeline

- Reception/Kick-off
 - Welcome from the Justices (if available)
- Discussion points:
 - What it is?
 - Why does the community need to know?
 - Who is most impacted?
 - Alternative solutions?
- Speakers
 - Speaker from Team Child
 - Speaker from CLS Institutions Project

- Youth defendant
 - If they are comfortable, they may tell their story.
- Q & A

March 8th (RSVP by Feb. 15th.): Prosecutorial Discretion

- Introduction
- Discussion points:
 - What it is?
 - Why does the community need to know?
 - Who is most impacted?
 - Alternative solutions?
- Speakers:
 - Prosecutor
 - Public Defender
 - Judge
 - Community Activist
- Casual Q & A at the end

March 22nd (RSVP by March 1st): Jury Selection/bias/diversification

- Introduction
- Discussion points:
 - What it is?
 - How does this come about?
 - Why does the community need to know about this?
 - Who is most impacted?
 - How can juries become more diversified?
- Speakers
 - Justice or Judge if available
 - Speaker from MJC Commission
 - Additional Speaker
- Casual Q & A

NB:

- *Do any commission members have recommendations for panel members?*

BUDGET

Feb. 22st (Kick-off) \$650:

- Catering (Bon Appetit) -- \$575
 - ◆ Food
 - Veg Platter (\$92, serves 30-40)
 - Sliders (Meat 19.50/dzn) (Veg 19.00/dzn)
 - Burrito Builder (\$16.30/person?)
- Beverages -- *Part of Catering Total*

- ◆ Our own alcohol
 - \$10 liquor license
 - \$3.05/person bar service glassware
 - \$31.50/hr bartender ($\$31.50 \times 3 = \94)
- Gifts ~\$75

March 8th \$425:

- Catering -- \$215
 - ◆ Pizza *or*
 - ◆ Jimmy John's

- Beverages -- \$150
 - ◆ Soda
 - ◆ Water

- Gifts ~\$60

March 22nd \$425:

- Catering -- \$215
 - ◆ Pizza *or*
 - ◆ Jimmy John's

- Beverages -- \$150
 - ◆ Soda
 - ◆ Water

- Gifts: ~\$45

Total Cost of Event: \$1500

We enjoyed creating this proposal for you, and we look forward to fielding your questions!



October 31, 2016

SENT VIA ELECTRONIC MAIL TO mary.yu@courts.wa.gov AND J.C.Johnson@courts.wa.gov

The Honorable Mary Yu and the Honorable Charles Johnson, Co-Chairs
Washington Minority and Justice Commission

Dear Justice Yu and Justice Johnson:

Chief Justice Barbara Madsen has asked the Washington State Bar Association Council on Public Defense (“CPD”) to develop performance Guidelines for attorneys who represent juveniles. A CPD subcommittee has developed the attached Guidelines, which will be discussed at the next meetings of the full CPD. The subcommittee is in agreement on the core of its recommendations but not on several outstanding issues, which are described below. We are asking the Washington Minority and Justice Commission and its Juvenile Justice Committee for its comments to help inform the discussion by the full CPD as it decides what Guidelines should be forwarded to the Board of Governors for approval.

The Board of Governors established the CPD in 2004 to address issues relating to public defense in Washington. Past CPD work includes development of Criminal Defense Performance Guidelines and Standards for Indigent Services. The Criminal Defense Performance Guidelines were approved by the Board of Governors in 2011. The Standards for Indigent Defense Services were adopted by the Board that same year and several of the Standards were subsequently adopted by the Washington Supreme Court.

The issues on which the subcommittee has not been able to reach agreement are the scope and duration of representation and whether the Guidelines include an obligation that an attorney should challenge systemic issues outside the actual representation. With the attached proposed Guidelines are two memos with more background on the issues.

We invite the Washington Minority and Justice Commission to give its feedback using the hyperlinks below in any or all of the following ways:

- Provide [general feedback](#)
- Provide specific feedback on the [Guiding Principles](#), Guideline [1](#), [2](#), [3](#), [4](#), [5](#), [6](#), [7](#), [8](#), and/or [9](#)
- Email [feedback](#) on the issues on which the subcommittee could not agree—duration, scope and obligation to challenge systemic issues.
- Share your feedback at our meeting on December 16, 2016 from 12:00 to 2:30 p.m. which will take place in Seattle at location to be determined. Please [RSVP here](#).

We would appreciate your valuable input no later than **Friday, December 2, 2016**. If you have any questions, please contact Diana Singleton, WSBA Access to Justice Manager, who is the CPD liaison. You can reach her at 206-727-8205 or dianas@wsba.org.

Sincerely,

Eileen Farley
Council on Public Defense Chair

encl: Draft Performance Guidelines for Juvenile Offense Representation
Two memos outlining differing viewpoints on the guidelines

Memorandum

To: Members, Council on Public Defense

From: Bob Boruchowitz

September 8, 2016

I would like to share the following information as context for some of the proposed Juvenile Guidelines.

The National Juvenile Defender Center has adopted the following five principles as part of its Gault at 50 Campaign:

The *Gault* at 50 Campaign seeks to ensure that every child has an effective attorney in America's juvenile courts.

Therefore, we believe:

- Every child should be provided a juvenile defense attorney at the earliest possible moment.
- Every child should be automatically eligible for a publicly funded juvenile defense attorney.
- A child's juvenile defense attorney should represent the child throughout the time the child is under the jurisdiction or supervision of the juvenile justice system, from arrest through post-disposition, which may include incarceration, probation, and/or parole, related appeals, and reentry.
- Every juvenile defense attorney must receive specialized training and support to be an effective advocate for children.
- Publicly funded defense systems must provide the necessary training, leadership, funding, tools, and resources to develop juvenile defenders with specialized knowledge and expertise.

These principles have been endorsed by many state and national organizations, including the Washington Defender Association, Children and Family Justice Center at Northwestern Pritzker School of Law, TeamChild, and a variety of public defender offices, including the San Francisco Public Defender's Office. [web page at <https://gaultat50.org/get-involved/sign-on-statement-of-principle/>.]

The Washington Supreme Court has held that defenders have standing to raise systemic issues affecting their clients.

The Spokane Public Defender challenged a juvenile court practice regarding fingerprinting. The Court held that the Defender "in his representative capacity of legal counsel for indigent and certain other juveniles brought before the Spokane County Juvenile Court, has standing to challenge the order." *Vovos v. Grant*, 87 Wn.2d 697, 700-01, 555 P.2d 1343, 1345-46 (1976).

The Spokane Public Defender was established pursuant to RCW 36.26.070 which the Court noted states that the public defender 'must represent' on court appointment certain indigent persons arrested or charged with a crime. The Court also cited then current JuCR 7.2(b)—(c),

which discussed the role of the defender. Importantly for our consideration, the Court also noted:

In fact, the affidavit of the assistant public defender, on behalf of the petitioning public defender, states that in his capacity as such an assistant specifically assigned to practice in juvenile court, ‘he represents more than one-half of all juveniles before the court both on initial fact finding hearings and those juveniles on probation.’

Vovos v. Grant, 87 Wash. 2d 697, 700.

This provides support for the proposition that juvenile public defense counsel, whether in a statutorily established district, a county department, a non-profit association, or operating under a for-profit contract, has standing as the representative of juveniles charged with crime.

The Court also noted that in addition to “the statutory duties of the public defender to represent juveniles before the juvenile court,” juveniles have difficulty in vindicating their rights on their own.” So, the Court wrote,

we find it particularly appropriate for the public defender to file this petition in his public capacity. The public importance of the issue presented, and the direct effect its resolution will have upon all juveniles in Spokane County who become subject to the juvenile court's jurisdiction, reinforce our conclusion.

Vovos v. Grant, 87 Wn.2d 697, 700-01.

Karl Tegland, citing Vovos, has written: “Interest in the subject matter of litigation sufficient to confer standing may be established either in a personal or representative capacity.” 3A Wash. Prac., Rules Practice CR 17 (6th ed.) August 2016.

The Court has continued to cite Vovos for the concept of representational standing. In City of Seattle v. State, 103 Wash. 2d 663, 669, 694 P.2d 641, 646 (1985), the Court wrote, citing Vovos: “In addition, a party may have standing in either a personal or a representative capacity.”

And in Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn. 2d 791, 803, 83 P.3d 419, 424 (2004), the Court again cited Vovos for the principle of representational standing.

...this court has recognized that a party may also have standing in a representative capacity. *City of Seattle v. State*, 103 Wash.2d 663, 669, 694 P.2d 641 (1985). For example, municipalities acting on behalf of their residents have standing to raise constitutional issues. *Id.* Further, **when a controversy is of substantial public importance, immediately affects significant segments of the population, and has a direct bearing on commerce, finance, labor, industry, or agriculture, this court has been willing to take a “less rigid and more liberal” approach to standing.** *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wash.2d 94, 96, 459 P.2d 633 (1969). However, we have applied this liberal approach to standing only in cases where the plaintiff whose standing was challenged was the *only* plaintiff in the case

and the liberal approach was necessary to ensure that the important public issues raised did not escape review.
[Emphasis added.]

And I would note the following language from the Preamble to the Rules of Professional conduct:

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] [Washington revision] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the court and a public citizen having special responsibility for the quality of justice.
... [6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

These authorities support the idea that juvenile defenders should when able to do so challenge systemic practices or conditions that affect their clients and work with others to seek remedies for those practices or conditions.

(Bob emailed CPD the following information about systemic advocacy on 10/17/16):

I also would like to bring to your attention a recent development in Whatcom County that demonstrates the essential and effective role that defenders can play when they identify systemic problems affecting their clients. The Whatcom Defender has been representing children in truancy matters at the first hearing pro bono. As you may know, the Court of Appeals a few years ago ruled that children are entitled to counsel at the first truancy hearing, but the state supreme court reversed that holding. The Whatcom Defenders have been challenging the sufficiency of the truancy petitions and have been obtaining dismissals of those petitions. This represents an outstanding commitment to clients by a government defender office that has a history of zealous representation for its clients. It also is a demonstration of how representation of individual clients, even when authorities have not appointed defenders, can have a positive systemic impact.

Memorandum To: Council on Public Defense

From: Eileen Farley

September 8, 2016

The discussions regarding the proposed Juvenile Standards have been thorough and lively. Subcommittee members reached agreement on the majority of the proposed standards. The largest issues remaining are:

1-whether the performance guidelines should be limited to the representation to be provided in individual cases or whether the guideline should describe a more sweeping representation that encompasses a client's need for assistance with matters such as school discipline or driver's license suspension arising from, but not a part of, the proceeding in juvenile court

2-whether the performance guidelines should state that representing juveniles in offender matters creates a duty to address systemic issues. This latter issue is still being discussed but comments from the full Council would be helpful.

Scope of Representation

Creating an obligation to represent a client "when possible" in collateral matters and/or after the original case is completed undercuts the caseload standards. The caseload standards did not assume that representation of a juvenile in an individual case would encompass representation in collateral matters or long after the original incident had been adjudicated. If a full caseload is a full-time job when is it "possible" to provide the additional representation called for in these guidelines?

If the guidelines are aspirational they can be ignored, or easily dismissed, if an attorney fails to provide the representation they describe. As written, the performance guidelines describe representation that potentially continues for years. The obligations to last year's clients, or clients represented three or four years ago, will overwhelm the obligations owed to the current year's clients. In particular:

Guideline 1.7g "When possible, counsel should represent a client at post-disposition hearings, institutional disciplinary hearings, and extension of incarceration determinations;

Guideline 6.9 "Counsel must be familiar with the laws governing the sealing of the client's record, the agencies and organizations permitted by statute to have access to the client's arrest and court records, and direct and indirect consequences of arrest and court records. Counsel must advise the client of available legal processes for sealing juvenile records. If requested, counsel should assist the client with this process whenever possible."

Guideline 1.6 "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.” (The subcommittee agreed that if this section is limited to the time in which counsel represents a current client it should be included. Some subcommittee members believe the obligation should continue even after counsel has withdrawn.)

Guideline 7.3 Counsel should 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.

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.

Obligation to Challenge “Systemic” Issues

The subcommittee has included, but is still discussing, Guideline 9. That Guideline, and Principles 11 and 12 contained in the Preface, state that attorneys in addition to the representation provided to clients, have an obligation to challenge system-wide issues outside the offender proceeding. Again, this presents significant workload and office management issues. In addition, I do not believe the WSBA should or can, tell an attorney that he or she cannot speak on an issue. Just as strongly, I believe the WSBA should not and cannot tell an attorney he or she must speak about an issue. For these reasons I do not believe Principles 11 and 12 and Guideline 9 should be included.

Principle 11. Juvenile defense requires identifying and challenging barriers and deficiencies that impair juvenile defenders’ abilities to provide high-quality representation; and

Principle 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.

9.1 Role of Counsel in Systemic Issues

- i) Public defense counsel routinely representing juveniles are in a unique position to identify and address 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.

In addition to representation of individual clients, attorneys who have a significant juvenile court practice should consider their role as representatives of the class of juveniles appearing in court,

and should consider challenging practices or orders that adversely affect juveniles appearing in the courts in which they practice, as recognized by the Washington Supreme Court in *Vovos v. Grant*, 87 Wn.2d 697, 700-01, 555 P.2d 1343, 1345-46 (1976).

9.2 Protecting Right to Counsel

- a. Counsel must be familiar with the rules, regulations, and processes for determining indigency of clients;
- b. Counsel should work to ensure youth are not denied counsel.

9.3 Understanding Laws about Conditions of Confinement

- a. Counsel should be aware of applicable local, state, and federal laws regarding treatment of youth in police custody, detention centers, jails, training schools, and other custodial facilities,

9.4. 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 and community groups to correct those conditions.



Washington State Bar Association

**PERFORMANCE GUIDELINES FOR
JUVENILE OFFENSE REPRESENTATION
[Date]**

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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 must 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.

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;¹
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 that must be taken in a case to ensure that the client receives the best representation possible.

The steps actually 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.

¹ 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.

In addition to the duties described in 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 – Role of Juvenile Defense Counsel

1.1 Role of Juvenile Defense Counsel

- a. 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. Attorneys also have an obligation to abide by ethical requirements and act in accordance with the rules of the court.
- b. Counsel may not substitute his or her own view of the client’s best interests for those expressed by the client;
- c. Counsel may not substitute a parent’s interests or view of the client’s best interests for those expressed by the client;
- d. Where counsel believes that the client’s directions will not achieve the best long-term outcome for the client, counsel must provide the client with additional information to help the client understand the potential outcomes and offer an opportunity to reconsider;
- e. If the client is not persuaded, counsel must continue to act in accordance with the client’s expressed interests throughout the course of the case;
- f. Counsel should avoid delays in proceedings, especially when the client is held in detention;
- g. Counsel should litigate the client’s case vigorously and challenge the state’s ability to prove its case beyond a reasonable doubt;
- h. Counsel must always advocate for protection of the client’s due process rights and ensure that any court-ordered services are provided in the least restrictive setting; and
- i. Counsel should obtain information in each case as appropriate to the representation of the individual client about the operations of, and laws regarding, child-serving institutions, including schools, social service agencies, and mental health agencies, as well as any immigration issues.

1.2 Obligation Regarding Adequate Resources for Effective Assistance

- a. In addition to the basic investigative and administrative support resources which all defense attorneys require, effective representation in a juvenile case often requires access to professional support with training in social work, educational advocacy, and other disciplines which are not utilized to the same extent in adult cases. These individuals require specialized training to communicate effectively with juvenile clients, and also require training about the educational and social services protections and resources that are available to youth that are

not available to adults.

- b. Counsel must be aware of and should advocate for all resources necessary to provide effective, high-quality representation, including legal, investigative, social work, expert witness, and educational resources.
- c. Counsel should not accept new cases and should consider moving to withdraw from existing cases when lack of resources prevents him or her from providing representation that meets effective assistance of counsel.
- d. Counsel must make a record if counsel is not able to provide effective representation to the client. This could 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 Obligation to Avoid Conflicts of Interest with Parents or Guardian

In addition to the duties outlined in *2011 Guideline* 1.3(b) counsel shall not:

1. serve as both defense counsel and *guardian ad litem* for the same child;
2. forego a duty to a client in favor of a perceived responsibility to a parent or other guardian.

Counsel is encouraged to explain the procedural posture and potential consequences of the case with parent or guardian where it does not violate confidentiality and with the client's consent.

When the opinions of the client and the parent diverge, counsel is required to honor the obligation to the client. Counsel should not permit the parent to direct the representation. Counsel should not share confidential information with the parent unless disclosure of such information has been approved by the client.

1.4 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.

1.5 Obligation of Counsel Regarding Disparate Treatment of Clients

Every client is constitutionally entitled to equal treatment. Counsel should be fully informed about racial disproportionality in the juvenile justice system and affirmatively represent his/her client to prevent adverse consequences of institutional bias. Counsel should also 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.

The attorney should also be aware of his her own personal and implicit biases and the potential impact these may have on the conduct of his/her representation and the discharge of ethical duties to his or her client.

1.6 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.

1.7 Scope of Representation

- a. In addition to the duties outlined in the *2011 Guidelines*, counsel must consult with the client and provide representation at the earliest stage possible.
- b. Counsel should maintain continuous and active representation in all phases of the offender process, including, arraignment, pre-trial detention hearings, discovery, trial, pleas, and disposition. To provide continuity of representation, counsel should represent the client in restitution and modification and probation violation hearings. If local custom 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.
- c. If possible, when the client is facing an ancillary proceeding that coincides with the offender charge, such as dependency and 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.
- d. Counsel must identify whether the client is a US citizen. When the client is a non-citizen, counsel must identify the client's immigration status and history and consult with available resources such as the Washington Defender Association's Immigration Project. In this consultation the lawyer should address the adverse immigration consequences that may flow from the possible resolutions to the charges and discuss available strategies to avoid them. 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 must advise the client about possible adverse immigration consequences and, unless otherwise advised by the client, must advocate for a resolution to the charges that avoids adverse immigration consequences and preserves avenues to obtain lawful status.
- e. In all cases, counsel must advise the client of his or her appellate rights and assist the client in identifying and obtaining appellate counsel;
- f. Counsel should be clear with the client what the scope of post-disposition representation will be, if any; and
- g. When possible, counsel should represent a client at post-disposition hearings, institutional

disciplinary hearings, and extension of incarceration determinations.

Guideline 2– Special Education, Training, and Experience Requirements

2.1 Specialized Training Requirements for Juvenile Defense

- a. Counsel must be knowledgeable about, and utilize, current statutes, case law, rules of procedure, rules of evidence, and rules of appellate procedure that affect juvenile practice; 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. ___, 183 L.Ed.2d 407 (2012), that informs specific legal questions regarding capacities in legal proceedings, amenability to treatment, and culpability;
- b. Counsel must 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;
- 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.

2.2 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 must 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.

- d. Counsel should seek evaluative feedback from more experienced counsel if it is not provided in counsel's own office.

2.3 Capacity of Youth

Counsel must be versed in the rules, statutes, and case law governing juvenile capacity to commit a crime, including in particular age-related presumptions of incapacity.

2.4 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 must 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 must be versed in the rules, statutes, and case law governing juvenile competence to stand trial in the jurisdiction. Counsel must become familiar with experts qualified to assess competence to stand trial and learn the mechanisms for requesting an evaluation. Counsel must 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 must 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 must gather additional information and consider filing a pre-trial motion requesting a hearing for competence determination; and
- d. If counsel decides to proceed with a competency hearing, counsel must secure a qualified, independent expert to evaluate the client's competence. Counsel must then advise the youth 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 must advise the client about the content of the hearing and assist the client in navigating the complexities of the proceedings.
- e. Counsel should be present for any evaluation performed by an expert for the State.

2.5 Alternative Resolutions

In appropriate cases, and when consistent with the client's expressed interest, counsel should advocate for diversion, informal resolution, or referrals outside of the traditional court process.

- a. Counsel should be informed about of the existence, operation, and effectiveness of non-adjudicatory programs in the jurisdiction.
- b. Counsel must be informed about juvenile records which may be created by the client's participation in any non-adjudicatory solution, and seek information about how these

records may affect the client's housing, educational, employment opportunities and, as well as the immigration status of the client.

- c. Counsel must be knowledgeable about entry requirements for non-adjudicatory programs, particularly any which may require a statement from the client, and the potential admissibility of such statements in court; and
- d. Counsel must advise the client about alternatives in developmentally appropriate language and the consequences of any admission or agreement.

2.6 Prosecution of Client as an Adult

- a. Counsel must 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 must be aware of the timing and process of decline hearings and required findings for decline of jurisdiction to adult court. Counsel must 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 must be aware of adult criminal court rules, and rules of evidence;
- c. Counsel must also 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 to which they are entitled.
- d. Counsel must 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 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.
- f. Counsel should be familiar with current resources regarding representation of a child client facing a possible life sentence.

Guideline 3 – Relationship with Client

3.1 Effective Communication with Juvenile Clients

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

- a. recognize and protect against barriers to effective communication with a juvenile client, and 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.

3.2 Initial Client Contact

- a. In addition to the duties in *2011 Guidelines* 1.4 and 2.2, counsel must explain and discuss, in developmentally appropriate language, the role of both the client and counsel.
- b. Early Contact. The attorney shall make contact with the client at the earliest possible time, even prior to formal appointment when possible. 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. The lawyer should send a representative to see the in-custody client within 24 hours if the lawyer is not able to see the client within 24 hours.
- c. The initial interview should be in person in a private, legally privileged setting, e.g., away from the client's parents or others. The lawyer should work to explain and to maintain the attorney-client privilege and assure that the client knows the communication is confidential. Counsel for a detained juvenile client must visit the client in detention and ensure that the meeting occurs in a setting that allows for a confidential conversation.
- d. During the meetings with the client, counsel should discuss, in developmentally appropriate language:
 1. How the client can contact counsel;
 2. The attorney-client relationship, including confidentiality;
 3. The role of counsel as attorney for the client, representing the client's expressed interests, not the parent's or parents' objectives;
 4. The role of parents in the proceedings and how counsel will interact with them;
 5. The roles of each juvenile court stakeholder;
 6. The objectives of the representation;
 7. The elements of each charged offense and the potential dispositions for such offenses;
 8. Counsel shall advise the client that a finding of guilt will have an adverse impact and will enhance future sentencing for subsequent juvenile and adult offenses.
- 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:
 1. The client's ties to the community, family relationships, employment record and history, school record and history;
 2. The client's age;
 3. The client's residence, physical and mental health, child welfare status, and school status;
 4. Information regarding the client's needs for immediate medical or mental health care;

5. The client's citizenship status;
 6. The need for signed releases for information from the client's school, medical, and psychological service providers and if possible obtain them;
 7. Contact information for the client's closest family or caretaker; and
 8. 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:
1. The conduct alleged in the police report and charging documents, including potential evidence or witnesses;
 2. The legal criteria, options, and conditions the court may set for pre-trial release;
 3. Diversion, detention, and placement options; and
 4. The next procedural steps.

3.3. Obtaining Further Information from the Client

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

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

3.4 Explain Client Confidences and Confidential Information

- a. Counsel must clarify 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 must 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 must 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 must 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 must 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 must 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;

- e. Counsel must exercise discretion in revealing the contents of psychiatric, psychological, medical, social, and educational reports that bear on the client's history or condition. In general, counsel should not disclose data or conclusions contained in such reports unless the client provides informed consent, 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 must obtain informed consent from the client.

3.5 Maintain Regular Contact with the Client

Counsel must 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 must visit on a regular basis. If a client is out of custody, counsel must arrange phone contacts and face-to-face meetings as appropriate before future court hearings. Regardless of the client's custodial status, counsel must provide the client with a phone number at which counsel can be reached.

Counsel must 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 must work to provide the client with complete information concerning all aspects of the case.

3.6 Parents and Other Interested Third Parties

Counsel must 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.

- a. Counsel must know state case law, statutes, and codes of professional conduct regarding all disclosures to third parties;
- b. Counsel should 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 must obtain permission from the client prior to communicating certain information to third parties. Counsel may not permit a third party, including a parent, to interfere with counsel's assessment of the case;
- c. Counsel shall not substitute a third party's wishes for those of the client; and
- d. 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.

Guideline 4 – Early Stages of Representation

4.1 Pre-Charge Representation of the Client

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

- a. 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;
- b. Advocating for the client's release under conditions most favorable and acceptable to the client.

4.2 Protect the Client's Interests During Police Identification and Investigative Procedures

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.

- a. Counsel must be familiar with all laws and local rules regarding availability of counsel during police identification and investigative procedures;
- b. Counsel should press for notification of and attendance at police identification and investigative procedures, including when the police explain identification or other investigative procedures to the client.
- c. 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; and
- d. 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.
- e. Counsel should press for recording of any police interviews with the client.

4.3 Prosecution Requests for Non-Testimonial Evidence

The attorney should 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 address issues of probable cause where applicable prior to the prosecution's obtaining of non-testimonial evidence.

4.4 Role of Counsel in Advising on Diversion

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

4.5 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, should preserve the client's options until appropriate investigation, diversion, consultation and research can be completed.

- a. Counsel must 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 request that all hearings be recorded as required by JuCR 10.2
- c. As required by JuCR 7.3, at the probable cause hearing, counsel must 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 must seek immediate release of a detained client if doing so is consistent with the client's expressed interests. Counsel must advocate for the removal of all physical restraints. Counsel should present the court with alternatives to detention and a pre-trial release plan.
- f. Counsel should 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;
- g. Counsel has an obligation to raise any factors, such as medical, psychological, or educational needs that may be adversely affected by detention, as long as the client permits their disclosure

4.6 Prepare Client and Parent for Probation Interviews

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

4.7 Review of Detention Decisions

Counsel must consider seeking review as the case progresses of court decisions to detain the client. Review can 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 must 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.

Guideline 5 – Investigation, Pre-trial Motions, and Pleas

5.1 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, must discuss with the client a prompt, thorough and independent investigation.

5.2 Develop a Theory of the Case

Counsel should 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.

5.3 Interview Defense and State Witnesses

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

- a. Counsel should be familiar with state statutes, case law, and the code of professional conduct regarding the conducting and recording of interviews. Counsel should also be familiar with reciprocal discovery rules.
- b. Counsel must attempt to confirm the availability of every known witness.
- c. When speaking with witnesses, counsel must clearly identify himself or herself as representing the client. It is improper for counsel to state or suggest that a witness not speak to the prosecution. Counsel should investigate factors that may affect witnesses' capacity for observation. Counsel must document and place in the client's file a record of all efforts to locate and speak with witnesses, as well as information gathered from such interviews.
- d. Counsel should not do interviews without an investigator present so that lawyers avoid possibly needing to withdraw from the case should impeachment testimony about the interview be needed.

5.4 Obtain the Client's Social History

- a. Counsel should investigate the client's social history, particularly in cases that are not proceeding to diversion or alternative disposition. 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.
- b. Counsel must be familiar with rules and procedures for obtaining and using information about the client, including the use of release forms and subpoenas; and
- c. 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.

5.5 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.

5.6 Plea Negotiations

Counsel must communicate with the client to identify the consequences, both direct and indirect that are most important to the client. In addition to the duties in *2011 Guideline 6*, counsel must 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 should seek in any plea negotiations to address the consequences that matter to the client. Counsel should work to help the client make an informed decision about whether to accept a plea offer.

- a. Among the consequences to be considered and discussed with the client are those related to immigration, licensing, housing, education, government benefits, sex offender registration, dependency proceedings, and possible enhancement of any future sentencing for subsequent juvenile and adult offenses.
- b. Counsel should advise the client about these consequences and attempt to effect a resolution that minimizes or avoids these consequences.
- c. Counsel must communicate every plea offer to the client.
- d. During plea negotiations, counsel must zealously represent the expressed interests of the client, including advocating for some benefit for the client in exchange for the plea.
- e. Counsel must protect the client's right to be provided adequate time to consider the plea and alternative options.

5.7 Obligations When the Client Accepts a Plea

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.

- a. Counsel must 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 must 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 must explain the consequences of the court's rejection.
- b. If, during the plea colloquy, it becomes clear that the client does not understand the colloquy, counsel must request a recess or a continuance to assist the client. When the client makes a plea or admission, counsel must ensure that the full content and conditions of the plea agreement are placed on the record.
- c. If the client is in custody or may be taken into custody after the plea or admission,

counsel should prepare the client and be ready to seek release or offer an appropriate alternative to the court.

5.8 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.

Guideline 6 – Trial and Disposition

6.1 Prepare Client for Adjudicatory Hearing

In addition to the duties in *2011 Guideline 7*, counsel must, 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.

6.2 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.

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.

During bench trials, counsel should be aware of the points at which the judge is acting or should be acting as either the finder of fact or the arbiter of the law and adjust strategy accordingly.

Counsel must 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.

6.3 Client's Testimony

The decision to testify rests with the client. However, counsel must communicate, in developmentally appropriate language, the advantages and disadvantages of testifying.

- a. Counsel must be familiar with state law regarding examination of the client, including whether it permits the use of prior juvenile adjudications to impeach the client;
- b. Counsel must explain the risk of self-incrimination as well as the possible consequences an admission of guilt may have upon an appeal, subsequent re-trial, or trial on other offenses.

6.4 Request of Specific Findings of Fact and Conclusions of Law

Counsel must 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.

6.5 Role of Counsel at Disposition

In addition to the duties in 2011 Guideline 8, counsel must 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 must be aware of the different assessment tools and other evaluative instruments used to inform dispositions. Counsel must be prepared to challenge the validity and reliability of risk assessment tools, both facially and as applied to the client, where appropriate.

- a. Counsel must understand the mechanics of such instruments and keep abreast of challenges to their application to the client;
- b. Counsel should consider involving expert witnesses to challenge the use of, validity of, and conclusions drawn from risk assessments and/or other evaluative instruments for disposition decisions; and
- c. Counsel should consider arranging to attend court-ordered predisposition interviews.

6.6 Role of Counsel When Preparing Client for the Disposition Process

- a. Counsel must 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.
- b. Counsel must 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;
- c. Counsel must be aware of and be able to explain in developmentally appropriate language the use of evaluation instruments and tests;
- d. Counsel must advise the client about standard disposition conditions the court is likely to impose and be prepared to challenge their imposition if they are unrelated to the offense or the client's needs;
- e. Counsel must 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
- f. Counsel should 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. Counsel must seek to ensure that parents understand their role in this process.

6.7 Role of Counsel in Advocating for a Disposition Plan

- a. Counsel must not recommend a disposition to the court without the client's consent.
- b. In cases when a written disposition memorandum is submitted by the prosecution or probation department, counsel should request an advance copy of the memorandum and verify that the information presented is accurate.
- c. 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.
- d. Counsel should submit evidence in support of the defense's proposed disposition plan, including recommendations from a social worker when appropriate.
- e. Counsel should be prepared to 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, assignment to drug rehabilitation, and credit for time served.

6.8 Counsel's Obligation to Review Court Ordered Disposition Plan and the Direct and Indirect Consequences of Disposition with the Client

- a. Counsel must carefully review the disposition order to make sure that it contains the provisions of the disposition plan and that it accurately reflects the court's verbal order. Counsel must verify that it properly records detention credits, plea agreements, opportunities for restitution hearings, and information that may favorably affect the client.
- b. Counsel must review the written order with the client, in developmentally appropriate language, and advise him or her of the nature, conditions, obligations, duration, and indirect consequences of the disposition. When the client agrees, counsel should seek to inform the client's parent of the disposition conditions, obligations, duration, and indirect consequences of the disposition.
- c. Counsel must notify the client of the right to move for revision 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 or lacks adequate specificity regarding post-disposition

court review.

- d. Counsel must seek information about the requirements of any program or service ordered and explain to the client what the programs require;
- e. Counsel must 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 must advise the client on the timing and procedure for moving to limit disclosures where disclosure is not automatically prohibited; and

6.9. Sealing Juvenile Records

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

6.10 Obligations to a Client Awaiting Placement

- a. Counsel should pursue efforts to keep the client in the least restrictive environment prior to placement.
- b. 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 must seek provision of interim services for the client's educational, physical, mental health, and other needs.

Guideline 7 – Post Disposition Matters

7.1 Trial Counsel's Obligations Regarding Appeals

- a. In addition to the duties in 2011 Guideline 9.2, counsel must advise the client, in developmentally appropriate language, of the right to appeal and the process of the appeal. Trial counsel must explain to the client the consequences of any decision to waive the right to appeal. Counsel must perfect the appeal if the client chooses to seek review. 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. When the client chooses to appeal, trial counsel must file a notice of appeal and preserve the client's right to appeal. Trial counsel must assist the client in obtaining appellate representation.

- c. Trial counsel must be familiar with and follow rules for obtaining a stay of the disposition order pending appellate review should the client desire to do that.
- d. When the client at the time of disposition is unable to decide whether to appeal, trial counsel should 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.
- e. 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.

7.2 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.

7.3 Role of Counsel to Clarify Scope of Any Post Disposition Representation

Counsel should 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.

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.

7.4 Role of Counsel at Post-Disposition Trial Court Hearings

If possible, the counsel who represented the client at disposition should represent the client at modification, and probation revocation hearings.

7.5 Representation at Restitution, Review and Modification Hearings

- a. Counsel must be knowledgeable about current applicable cases and statutes regarding restitution, modification, and probation;
- b. Counsel must provide the same level of zealous representation at restitution, review and modification hearings as counsel would provide for any other proceeding.
- c. Counsel must 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;

- d. Counsel should be prepared to challenge the alleged failure to abide by the court's order in an evidentiary hearing;
- e. 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;
- f. Counsel must explore and offer any available mitigation to explain the client's failure to abide by the order.

Guideline 8 – Role of Juvenile Defense Counsel When Client Faces Risk of Adult Prosecution

8.1 Specialized Training and Experience Necessary

- a. Counsel must 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 must 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 must be aware of adult criminal court rules, sentencing guidelines, and rules of evidence;
- b. Counsel must 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.
- d. Counsel should be familiar with current resources regarding representation of a youth facing a possible life sentence.

8.2 Obligation of Counsel to Inform the Client of the Possibility of Adult Prosecution and Potential Consequences

- a. Counsel must advise a client, using developmentally appropriate language, about the procedures that may lead to adult prosecution;
- b. Counsel must 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 the extent of possible sentences,

likelihood of deportation if the client is not a citizen, and direct and indirect consequences.

8.3 Obligation to Investigate Factors Relating to Possible Adult Prosecution

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

8.4 Duty to Advocate for Client's Expressed Interest Regarding Decline

- a. After consultation with the client, counsel must develop cogent arguments that support the client's expressed interests.
- b. Counsel must 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 must specify with particularity the grounds for opposing adult prosecution, including, but not limited to:
 1. the nature of the offense;
 2. the prosecutor's failure to establish probable cause;
 3. the client's amenability to rehabilitation in the juvenile system;
 4. information concerning adolescent development as it relates to the client;
 5. the client's incompetence to proceed in adult court; and
 6. 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 must obtain and review any report developed by the probation officer prior to the

hearing.

- f. Counsel must 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 must:
 - 1. Challenge any defect in the charges that would deprive the adult court of jurisdiction;
 - 2. Raise any credible facial or "as applied" state or federal constitutional challenges to adult prosecution;
 - 3. 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.

8.5 Preserve the Client's Opportunity to Appeal a Judicial Decision to Prosecute in Adult Court

- a. Counsel must insist that all hearings are recorded. Counsel must adequately preserve the record for appeal.
- b. Counsel must 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 should comply with Guideline 7.1 above concerning advising the client and perfecting appellate rights. Counsel must 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.
- d. 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.

8.6 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, must zealously oppose placement of the client in

adult jail or detention. Counsel must 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.
- c. When a client is tried in adult court, in addition to the 2011 Performance Guidelines Counsel should use child development 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 9 – Systemic Issues

9.1 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.
- b. In addition to representation of individual clients, attorneys who have a significant juvenile court practice should consider their role as representatives of the class of juveniles appearing in court, and should consider challenging practices or orders that adversely affect juveniles appearing in the courts in which they practice, as recognized by the Washington Supreme Court in *Vovos v. Grant*, 87 Wn.2d 697, 700-01, 555 P.2d 1343, 1345-46 (1976).

9.2 Protecting Right to Counsel

Counsel should work to ensure youth are not denied counsel.

9.2 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 and community groups to correct those conditions.