

Responsibilities of Counsel

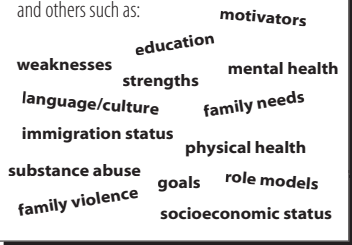
An attorney representing children in delinquency court has a dual role. First and foremost, the child's counsel defends the child against the charged allegations, evaluating the allegations and possible defenses and vigorously presenting a defense. Second, counsel is a child advocate, working to have the child receive care, treatment, and guidance consistent with his or her best interest. Children are entitled to effective representation. There are a number of responsibilities that constitute effective representation. It is critical that counsel, while performing each of these, remain mindful that the client is a child and communicate in a manner that is appropriate for the child's age and maturity level.

Listen and Advise

Counsel should interview the client before all court appearances, preferably in a private place to emphasize the importance of confidentiality to the client. Communication with the client needs to be consistent with the child's age and ability to understand. Good client communication includes:

- Introducing him- or herself to the client, explaining the attorney's role and how it differs from that of other individuals in the court system, and emphasizing the confidentiality of the conversation consistent with the attorney-client privilege
- Providing contact information to the client and encouraging ongoing communication
- Explaining to the client why he or she is in court, describing the current stage of the case and what may happen at that stage, and advising the client of his or her legal rights
- Finding out what legal result the client wants and enabling the client to make an informed decision
- Speaking with the client about the allegations and seeking information to help defend the client against them

Counsel should be aware of the client's issues and needs as well as any family dynamics that have affected the client. Identifying a client's issues and needs may change the way in which a case is handled or influence the disposition. Counsel should address issues with the client and others such as:



The word cloud contains the following terms: motivators, education, mental health, weaknesses, strengths, family needs, language/culture, immigration status, physical health, substance abuse, goals, role models, family violence, and socioeconomic status.

- Reviewing with the client any reports, photographs, tapes, or other relevant discovery
- Discussing possible defenses with the client
- Thoroughly explaining possible consequences of contesting the matter or entering an admission
- Preparing the client to be interviewed by report writers, if counsel concludes that making a statement is appropriate
- Reviewing with the client any recommendations or case plans, including the disposition report
- Advising the client on what to do if he or she is contacted by law enforcement or rearrested

Investigate and Assess

Thorough investigation is critical to assessing the strength of any allegations in the petition and to revealing information that may help in fashioning dispositional alternatives. Counsel needs to be mindful of maintaining attorney-client confidentiality when conducting an investigation. Thorough investigation and assessment may include:

- Getting necessary releases signed
- Interviewing any parties or witnesses who may be relevant to any of the hearings
- Learning about any other experiences the client has had with the court system and speaking with attorneys, social workers, or other appropriate personnel associated with past proceedings
- Reviewing relevant records, which may include social services, psychological, medical, educational, or other records of service providers
- Speaking with the client's parents and/or caretakers

The child's counsel has a critical role to play in investigating and assessing whether the client is appropriately in the delinquency system. A child cannot simultaneously be a ward and a dependent of the juvenile court. When a child appears to come within the jurisdiction of both the dependency and delinquency courts, Welfare and Institutions Code section 241.1 mandates that probation and child protective services recommend to the court the status that will serve the best interest of the child and the protection of society. Counsel should assess independently whether the dependency system is a better fit for the client.

Advocate

A juvenile defense attorney is the child's voice in court. Zealous representation includes:

- Appearing in court for all court dates, including post-dispositional hearings and reviews
- Reviewing all reports and setting hearings when court action is needed
- Preparing motions and trial briefs as appropriate
- Presenting arguments to advance the client's position
- Requesting contested hearings and trials when appropriate
- Contacting probation about options to ensure proper rehabilitation
- Arranging for competent experts to assist in preparing the defense, to conduct psychological evaluations or needs assessments, or to make dispositional recommendations
- Advocating for representation of the client in collateral proceedings if appropriate
- Assessing the need to file a writ or appeal and advising the client of his or her rights and the attorney's recommendation

The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing. All three must be present if we are to treat the child as an individual human being and not to revert, in spite of good intentions, to the more primitive days when he was treated as a chattel." (*In re Gault* (1967) 387 U.S. 1, 19.)

Stay Involved

A child client is entitled to have his or her interests represented by counsel at every stage of the proceedings. If a client is adjudicated a ward, representation continues into the postdispositional hearings unless the attorney is relieved by the court. This representation extends to matters such as review hearings or violation of probation hearings. Representation in the postdisposition phase should include:

- Maintaining the attorney-client relationship and visiting the client if necessary
- Following implementation of the client's treatment plan
- Reviewing the treatment plan with the client
- Actively representing the client at all delinquency hearings
- Conducting contested hearings if needed
- Requesting that clients in placement who are 16 years or older receive independent living services

- Examining the interests of the client beyond the scope of the juvenile proceedings and informing the court if the client has any other interests that may need to be protected by the institution of other administrative or judicial proceedings

It is critical that the attorney remain a zealous advocate after the case's disposition. For example, the attorney has a critical role to play when wardship is terminated. Records held by the court and other agencies, such as law enforcement and probation, can be ordered sealed. Counsel should bring a motion to seal the client's record as soon as statutorily allowed to do so.

In order to meet these obligations, attorneys are encouraged to:

- Ensure that court orders and treatment plans imposed to assist the client are properly implemented
- Advocate for the continued development of a permanent plan
- Evaluate the reunification plan provided to the families of clients placed out of the home
- Interview treatment providers
- Communicate with the client's probation officer
- Consider, when possible and appropriate, representing the client in related collateral matters, such as dependency cases and placement, educational, or other administrative hearings

Be Educated and Informed

Effective representation during any stage of juvenile delinquency proceedings requires a practitioner to possess the skills necessary to defend the client as well as knowledge of the rules and procedures specific to juvenile court. In addition, the juvenile court advocate should be familiar with topics such as effective advocacy, child and adolescent development, educational and mental health issues, immigration consequences, and capacity.

If an attorney is unaware of the client's educational or mental health issues, then the needs of the client may not be met. The attorney thus should ask for specialists to perform evaluations and make appropriate referrals. In cases where the client would benefit from administrative or judicial proceedings outside the scope of the delinquency court, such as a request for special education status and an individualized education program, the attorney should bring the issue to the court's attention so that the court can take the action necessary to protect the interests of the client.

Counsel also needs to become familiar with resources available to children in the delinquency system, including community resources, programs, and treatment facilities.

Conclusion

An attorney representing children in delinquency proceedings has a dual role. First, the child's counsel needs to possess the skills of a defense attorney in order to provide vigorous representation of the child against allegations of unlawful behavior. Second, the attorney must be a child advocate working to ensure that the child receives the appropriate services. While this dual role brings tremendous responsibility, it also provides an exceptional opportunity to help shape the future of a child.

The Administrative Office of the Courts and the State Bar of California produced this pamphlet in summer 2004. Staff was ably assisted by a working group composed of delinquency experts from across the state who provided guidance and assistance. We thank all those who contributed their time, energy, enthusiasm, and commitment to an improved justice system.



For additional copies or more information, please contact the AOC Center for Families, Children & the Courts.

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Effective Representation of Children in Juvenile Delinquency Court



This pamphlet provides juvenile court defense attorneys with both guidance on fulfilling the requirements of rule 1479 of the California Rules of Court and suggestions for effective advocacy beyond what is mandated by law. It does not establish minimum practice standards, nor does it supply an exhaustive list of responsibilities. The purpose of this pamphlet is to provide information and guidance on what an attorney can and should do to assist the child client in order to serve the needs of this population and achieve the goal of the juvenile justice system: rehabilitation.



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