

JTIP Handout: Lesson 2 – Role of Juvenile Defense Counsel

Summary of Key ABA & Washington State Rules of Professional Conduct¹

CLIENT-LAWYER RELATIONSHIP

Rule 1.1: Competence

- A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
 - Legal Knowledge and Skill
 - a. Factors include the complexity of the matter, the lawyer’s general experience, the lawyer’s training/experience in the particular field. Comment 1.
 - b. Competent representation can be provided without specialized knowledge in the matter, so long as the lawyer does the necessary study. Comment 2.
 - Thoroughness and Preparation
 - a. Competent representation involves researching and studying the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. Comment 5.
 - Maintaining Competence
 - a. Keeping abreast with changes in the law and its practice and complying with all continuing legal education requirements. Comment 6.

Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

- The lawyer shall abide by a client’s decisions concerning the objectives and representation (e.g., plea to be entered, waiver of jury trial, testifying at trial) and shall consult with the client about the means to pursue those objectives.
 - **Exceptions:** The lawyer may limit the scope of representation if the client gives informed consent; the lawyer cannot engage or assist a client in criminal or fraudulent conduct.
 - **WA Case Law:** failure to inform and advise a client regarding plea offers inappropriately removes the authority of the client to accept or reject those offers (*State v. Longacre*, 155 Wash.2d 723 (2005)).

¹ MODEL RULES OF PROF’L CONDUCT R. 1.1-.4, 1.6, 1.8(f), 1.14, 2.1, 3.3, 4.1 (2010), available at http://www.americanbar.org/groups/professional_responsibility/publications.html; Washington State Court Rules: Rules of Professional Conduct available at http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=rpc.

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Rule 1.3: Diligence

- A lawyer shall act with reasonable diligence and promptness in representing a client.
 - Lawyer shall zealously pursue a matter on behalf of the client despite any barriers. Comment 1.
- *Under Washington’s revision, the lawyer may exercise professional discretion in determining the means by which zealous advocacy is advanced).*
 - Lawyer must control their caseload to be able to competently handle each matter. Comment 2.
 - No procrastination on case matters. Comment 3.
 - Provide representation on the matter until its conclusion. Comment 4.

Rule 1.4: Communications

- A lawyer shall:
 - Get client’s informed consent on decisions; keep him or her informed on matters in his or her case; consult with the client on the means by which to carry out objectives; promptly comply with the client’s requests for information; and inform the client of the lawyer’s limits of assistance on all matters regarding the case.
 - a. This means that the lawyer must communicate with the client so that the client may meaningfully participate in his or her representation. Comment 1.
- **WA Rule 1.4(b)** a lawyer shall explain a matter the extent reasonably necessary to permit the client to make informed decisions regarding representation.
 - **WA Case Law:** Failure to effectively communicate plea offers, sentencing implications, keep a client reasonably informed as to the status of a case, an explain a matter sufficiently to allow a client to make informed decisions may result in disciplinary action (*See State v. Longacre, 155 Wash.2d 723 (2005)*).

Rule 1.6: Confidentiality of Information

- A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted.
 - Permitted disclosure: The lawyer may reveal information relating to representation of a client to the extent the lawyer reasonably believes necessary to:
 1. prevent death or substantial bodily harm;

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2. prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has been using the lawyer's services;
 3. to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of crime or fraud and in furtherance of which the client has been using the lawyer's services;
 4. obtain legal advice about lawyer's compliance with the Rules;
 5. to establish a claim or a defense should the lawyer face a criminal or civil charge in which the client was involved; or respond to allegations involving the lawyer's representation of the client;
 6. comply with other law or a court order.
- The duty of confidentiality continues after the client-lawyer relationship has terminated. Comment 18.
 - **WA Rule 1.6(b):** Washington's version of Rule 1.6(b)(1) and 1.6(b)(2) are significantly more restrictive than the MRPC.
 - WA Rule 1.6(b)(1), requires that a lawyer "shall" reveal information, as opposed to the MRPC, which only states that a lawyer "may" reveal information.
 - WA Rule 1.6(b)(2) allows a lawyer to reveal information to prevent a client from committing any crime (not just financial or property).
 - See Washington State Court Rules: Rules of Professional Conduct, Rule 1.6 Confidentiality of Information *available at* http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=rpc&ruleid=garpc1.06

Rule 1.8(f) Conflict of Interest: Current Clients: Specific Rules

- A lawyer shall not accept compensation for representing a client from one other than the client unless:
 - the client gives informed consent;
 - there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - information relating to representation of a client is protected as required by Rule 1.6.

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Rule 1.14: Client with Diminished Capacity

- When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a *guardian ad litem*, conservator or guardian.

COUNSELOR

Rule 2.1: Advisor

- In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.
 - The client is entitled to straightforward and honest advice from the lawyer.
Comment 1.

ADVOCATE

Rule 3.3: Candor Toward the Tribunal

- A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
 - **WA Rule 3.3(d)** – if a lawyer comes to know of the falsity of information previously offered as material evidence and disclosure of this information is prohibited by Rule 1.6, the lawyer shall promptly make reasonable efforts to convince the client to consent to disclosure to the tribunal, if the client refuses the lawyer may seek to withdraw in accordance with Rule 1.16.

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TRANSACTION WITH PERSONS OTHER THAN CLIENTS

Rule 4.1: Truthfulness in Statements to Others

- In the course of representing a client, a lawyer shall not knowingly:
 - make a false statement of material fact or law to a third person; or
 - fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.