

# STANDARDS FOR APPOINTED COUNSEL OF JUVENILES IN LAW VIOLATION AND STATUS OFFENSE CASES IN JUVENILE COURT<sup>1</sup>

## A. OBJECTIVES AND SCOPE OF THE STANDARDS

1. The objective of these standards is to ensure high quality legal representation for all juveniles facing adjudication in the juvenile court for law violations or status offenses.
2. These standards apply from the moment a petition is filed on the juvenile or the juvenile is taken into custody and extend to all stages of every case in which the State of Nebraska has filed a petition on the juvenile for a law violation or status offense and counsel has been appointed.
3. Counsel for the accused shall receive the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings. Counsel shall have the right to have such services provided by persons independent of the prosecution.
4. Counsel shall have the right to protect the confidentiality of communications with the persons providing such services to the same extent as would counsel paying such persons from private funds.

### Comment

*The role of the attorney is to provide independent legal counsel for the child or youth with the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client.*

## B. QUALIFICATIONS OF APPOINTED COUNSEL IN JUVENILE LAW VIOLATION AND STATUS OFFENSE CASES

1. These standards shall be construed and applied in such a way as to further the overriding goal of providing each client with high quality legal representation.
2. The appointing or assigning authority should insure that every appointed attorney representing a juvenile in a law violation or status offense case:
  - a. has obtained a license or permission to practice law in the State of Nebraska; and
  - b. demonstrates a commitment to providing zealous advocacy and high quality legal representation in the defense of juvenile cases; and
  - c. has satisfied the training requirements set forth in these standards; and

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<sup>1</sup> The Subcommittee developed these standards with the goal of consistency with the *Standards for Appointed Counsel in Capital, Other Felony, and Misdemeanor Cases* that were simultaneously being developed by the Minority and Justice Implementation Committee. See the MJIC report for a discussion of the rationale of some of the standards proposed in this document.

- d. demonstrates knowledge and understanding of the relevant state and federal law, both procedural and substantive, governing juvenile law violator and status offense cases; and
- e. demonstrates understanding of the specialized knowledge regarding children and youth in the juvenile justice system, including, but not limited to, dispositional alternatives; and
- f. demonstrates skill in the management and conduct of negotiations and litigation; and
- g. demonstrates skill in legal research, analysis, and the drafting of litigation documents; and
- h. demonstrates skill in oral advocacy; and
- i. if applicable, demonstrates skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence; and
- j. demonstrates skill in the investigation, preparation, and presentation of evidence bearing upon mental status and competence, particularly as it bears to children and adolescents; and
- k. demonstrates skill in the elements of trial advocacy, such as cross-examination of witnesses, and opening and closing statements.

### **Comment**

*These standards do not specify a particular time frame for a new attorney to gain adequate experience for court appointment to represent juveniles. However, Section B of these standards contemplates that an attorney seeking such appointments will attest to the basic knowledge, skills and abilities that are listed above. A goal of these standards is to discourage the defense of indigent juveniles to be used as a “training ground” for new lawyers.*

### **Zealous representation of juveniles in law violations and status offenses includes:**

*1. Meeting with the youth, individually before the first hearing to determine the position they will take at the hearing. Additionally, the attorney may also wish to meet with the youth with his/her parent(s) Note: The potential for conflict of interest between an accused juvenile and his or her parents should be clearly recognized and acknowledged. All parties should be informed by the initial attorney that he or she is counsel for the juvenile, and that in the event of disagreement between a parent or guardian and the juvenile, the attorney is required to serve exclusively the interests of the accused juvenile. Further, meetings that include the parent(s) may not provide the protection of privilege to the youth’s statements to the attorney.*

*2. If appropriate, present an alternative- to- detention plan to the court.*

*3. Prior to the adjudication hearing, counsel should investigate all circumstances of the allegations; seek discovery of any reports or other evidence to be submitted to or*

*considered by the court at the trial; if circumstances warrant, request appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protect the youth's rights; and, inform the youth of the nature of the proceedings, the youth's rights, and the consequences if the youth is adjudicated on the petition.*

*4. Avoiding the use of last minute plea agreements that result from inadequate preparation by the counsel for the youth.*

*5. Counsel for the youth plays an important role in the disposition hearing with the responsibility to ensure that all significant needs relating to the delinquent behavior of the adjudicated delinquent youth have been brought to the attention of the court. If additional evaluations or expert witnesses are needed to aid in the preparation of the disposition hearing, counsel is responsible to request this assistance at the end of the adjudication hearing.*

*Prior to the disposition hearing, counsel for the youth should fully explain the possible disposition options to the youth and the youth's parents or legal custodian, and gain their views on these options. It is important to note, however, that counsel for the youth is not obligated to present the view of the parent, if this view is in opposition to the view of the youth.*

*6. Prior to post-disposition reviews, for youth remaining in their homes, counsel must not only rely on the information provided by the probation officer, but should also independently speak with the youth, the youth's parent or legal custodian, and potentially, the service provider(s).*

*7. Prior to post-disposition review, for youth placed out of home under the continuing jurisdiction of the court, counsel must not only rely on the information provided by the case manager or probation officer, but also should independently speak with the youth, the youth's parent, placement staff and others who have knowledge of the youth's progress and needs.*

**Specialized knowledge needed to zealously represent juvenile law violators and status offenders includes:**

*1. Knowledge of adolescent development and how it can aid decision-making in court,*

*2. Strategies for interviewing adolescent defendants, witnesses, and victims,*

*3. How to get high-quality mental health and chemical dependency assessments and what to do with them in court,*

*4. How child maltreatment and other risk factors lead children to chronically aggressive behavior,*

*5. How to recognize and treat young children and youth with disabilities that compromise their ability to comprehend, learn and behave,*

*6. Evaluating youth competence in the justice system,*

*7. Legal strategies to reduce the unnecessary detention of children.*

*8. Community treatment/rehabilitation resources.*

### **C. QUALIFICATIONS FOR COUNSEL REPRESENTING JUVENILES IN ADULT CRIMINAL COURT**

See the *Standards for Appointed Counsel in Capital, Other Felony, and Misdemeanor Cases*

*NOTE: THE SUPREME COURT COMMISSION ON CHILDREN IN THE COURTS JOINS WITH THE MINORITY AND JUSTICE IMPLEMENTATION COMMITTEE TO RECOMMEND STATE FUNDING FOR THE LEGAL REPRESENTATION OF CHILDREN AND JUVENILES IN ABUSE/NEGLECT, LAW VIOLATION, AND STATUS OFFENSE CASES. THE FOLLOWING SECTION (D) IS CONTINGENT UPON THE AVAILABILITY OF SUCH STATE FUNDING.*

### **D. COMPENSATION FOR ASSIGNED COUNSEL IN LAW VIOLATION AND STATUS OFFENSE CASES**

1. The Supreme Court shall set a statewide uniform minimum hourly rate of compensation for appointed counsel for juveniles charged with law violations or status offenses and that rate shall be the hourly rate that is provided for Guardians ad Litem in juvenile court.
2. There shall be no distinction between rates for services performed in and outside court, and the rate shall be paid for any time the attorney spends traveling in fulfilling his/her obligations as the appointed counsel.
3. Appointed counsel for juveniles charged with law violations or status offenses shall be compensated for all hours reasonably necessary to provide quality legal representation as documented in fee applications as submitted by the appointed counsel.

### **E. REIMBURSEMENT FOR EXPENSES AND AUTHORIZED EXPENDITURES FOR PERSONS REPRESENTED BY RETAINED COUNSEL**

1. In all cases involving appointed counsel, counsel shall be reimbursed for reasonable expenses necessary to provide quality legal representation as documented in fee applications submitted by the attorney. These expenses include, but are not limited to: mileage, lodging, meals, long distance telephone calls, photocopying, postage, faxes, depositions, service of process fees, collect telephone calls from the client, interpreters for foreign languages and for the visually or hearing impaired, and non-expert witness fees and expenses.
2. In all cases involving appointed counsel, costs of medical and psychiatric evaluations, expert witness fees, and investigative services shall be paid only if ordered and approved by the court. When seeking such an order the hearing shall be *ex parte*, exempt from the prohibition of

Rule 3.5 Nebraska Rules of Professional Conduct, without the aid or participation of a prosecuting attorney, and the order shall be sealed until the conclusion of the case.

3. Expenditures for investigative, expert, or other services for a person who has retained private counsel for trial or appeal when the person is unable to pay for the services and such services are necessary to prepare and present an adequate defense are eligible for reimbursement from the county if the defendant is determined to be indigent.

#### **F. STANDARDS RELATING TO CONTRACTS FOR INDIGENT DEFENSE SERVICES IN JUVENILE CASES**

1. No court shall appoint an attorney who has contracted with a county to provide juvenile defense services unless the contract has been certified by an entity designated by the Administrative Office of the Nebraska Supreme Court as to the following:
  - a. That the contract specifies the specific category of cases in which the contracting attorney is to provide services (e.g. juvenile delinquency; status offense),
  - b. That the contract is awarded for a minimum of two (2) years and that removal of the contracting attorney may be for good cause only,
  - c. That the contract provide that the contracting attorney be compensated at a minimum rate which reflects the following factors:
    - i. The customary compensation in the community for adult non-capital felony cases; and
    - ii. The time and labor required to be spent by the attorney;
  - d. That the contract specifies a maximum allowable caseload under the contract and provide that the contracting attorney may decline to represent clients, with no reduction in compensation, if the contracting attorney is assigned cases in excess of the specified maximum caseload. When defining the maximum allowable caseload or workload, adequate support staff (secretaries, paralegals, investigators, etc.) is a necessary component that should be considered in reaching a conclusion. The maximum allowable caseload or workload would change at any given time, if there is a decrease in number of attorneys or support staff, for any given reason.
  - e. That the contract provide that the contracting attorney provide legal counsel to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar

Association and the Rules of Professional Conduct For Attorneys as adopted by the Nebraska Supreme Court.

f. That the contract provide that the contracting attorney shall be available to eligible defendants upon their request, or the request of someone acting on their behalf, at any time the Constitution of the United States or the Constitution of Nebraska requires the appointment of counsel.

g. That the contract provide that the contracting attorney meet the qualification standards for attorneys recommended by these standards for all categories of cases specified in the contract.

**G. STANDARDS FOR MAINTAINING LISTS OF ELIGIBLE ATTORNEYS REPRESENTING JUVENILES, THE APPLICATION PROCESS, AND PROCESS FOR APPOINTMENT**

1. An entity designated by the Administrative Office of the Nebraska Supreme Court shall maintain lists of eligible attorneys:

a. Each County or Separate Juvenile Court Judicial District within the State of Nebraska shall adopt, by majority vote of the juvenile or county court judges within the district, a systematic and publicized plan for providing assigned counsel, which shall include a method of distributing assignments of attorneys in law violation and status offense cases. The method used shall include a registration procedure. A copy of the plan required by this standard along with the roster of eligible attorneys shall be sent to the Nebraska Supreme Court.

b. As nearly as possible, assignments shall be made in an orderly way to avoid patronage and its appearance, and to assure fair distribution of assignments among all whose name appear on the roster of eligible attorneys. Ordinarily, assignments should be made in the sequence that the names appear on the roster of eligible attorneys. Where the nature of the charges or other circumstances require, an attorney may be appointed because of his or her special qualifications to serve in the case, without regard to the established sequence. Departures from assignment by the established sequence shall be made when such departure will protect the defendant's constitutional right to the effectiveness of counsel and may be made when efficient administration of assignments so requires.

c. Inclusion in or removal from a roster of qualified attorneys shall be by majority vote of all county or juvenile court judges within the district. The roster of attorneys should be periodically revised and specific criteria for removal should be adopted.

d. The rosters shall be maintained by both the Clerk of the County Court and the Clerk of the Separate Juvenile Court.

e. By a majority vote of all of the county and juvenile court judges within a judicial district, the responsibilities for adopting a plan, creating the method of appointment, creating the rosters of attorneys, or making the assignments may be delegated to the entity designated by the Administrative Office of the Nebraska Supreme Court.

#### **H.. STANDARDS RELATING TO CASELOADS AND WORKLOADS**

1. Neither defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of high quality representation or lead to the breach of professional obligations.

2. No court shall require defender organizations, assigned counsel, nor contractors for services to accept caseloads that will, in the best professional judgment of the appointed organization or attorney, lead to the furnishing of representation lacking in quality or to the breach of professional obligations.

#### **I. TRAINING**

1. All attorneys who accept court appointments to represent juveniles in law violation and status offense cases shall be required to complete a minimum of 16 hours of relevant training every two years. The required training may be in the form of video or online training as well as seminars and conferences.

2. Upon adoption of the training requirement, court appointed attorneys will be required to certify that they either have completed the minimum 16 hours of relevant training in the previous two years or agree to receive the training within the next two years. Attorneys with less than two years of experience must complete the 16 hours of training before accepting a juvenile court appointment.

3. If the judge determines that an attorney with the training required herein is unavailable within the county, he or she may appoint an attorney without such training.