

The Right to Counsel: Ethics and the Scope of Your Representation

Eric J. Zogry
Juvenile Defender
Office of the Juvenile Defender

I. The Importance of Expressed Interest Advocacy

- Instills confidence and trust with the juvenile
- Instills confidence and trust with the parent/guardian
- Develops respect with the court: track record of purpose and preparedness

I. The Importance of Expressed Interest Advocacy

§ 7B-2000. Juvenile's right to counsel; presumption of indigence.

- (a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings.

§ 7B-1501. Definitions.

- (17) **Juvenile.** . . .Wherever the term "juvenile" is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

II. Collection and Review of Court Documents Prior to Meeting with Juvenile/Initial Hearing

- A. Juvenile Record, AKA "Court File/Clerk's File"
- Petition
 - Service and summons
 - Prior delinquency history documents
 - Prior history documents and materials
 - Prior abuse/neglect/dependency history

II. Collection and Review of Court Documents Prior to Meeting with Juvenile/Initial Hearing

§ 7B-3000. Juvenile court records.

- (a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record. . .
- (b) All juvenile records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. . . [T]he following persons may examine the juvenile's record and obtain copies of written parts of the record without an order of the court:
- (1) The juvenile[.]

II. Collection and Review of Court Documents Prior to Meeting with Juvenile/Initial Hearing

- B. Court Counselor's File
- Entire court counselor's file, including NC-JOIN printout, which should include information from other jurisdictions
 - Law enforcement records and files

II. Collection and Review of Court Documents Prior to Meeting with Juvenile/Initial Hearing

§ 7B-3001. Other records relating to juveniles.

(a) The chief court counselor shall maintain a record of all cases of juveniles under supervision of juvenile court counselors, to be known as the juvenile court counselor's record. The juvenile court counselor's record shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; probation reports; interviews with the juvenile's family; or other information the court finds should be protected from public inspection in the best interests of the juvenile.

II. Collection and Review of Court Documents Prior to Meeting with Juvenile/Initial Hearing

§ 7B-3001. Other records relating to juveniles.

* * *

(c) All records and files maintained by the Department pursuant to this Chapter shall be withheld from public inspection. The following persons may examine and obtain copies of the Department records and files concerning a juvenile without an order of the court:

- (1) The juvenile and the juvenile's attorney[.]

III. Contacting the Juvenile Prior to the Initial Hearing

- Ensure appointment at the filing of the petition
- Ensure clerk has your contact information to place on the summons
- Send letter to parents immediately
- If charged with a felony, call and send letter (only 10 days between filing of petition and court date)
- Follow-up letter and phone call
- Visit at home??!!

III. Contacting the Juvenile Prior to the Initial Hearing

- Why so important to contact before first court hearing?
 - establish relationship with the juvenile/parent/guardian early
 - show preparedness to court
 - have options for the court before court counselor or prosecutor do
- Enforce 5-day notice (G.S.7B-1807), but see waiver (*In re D.S.B.*,634 S.E.2d 633 (2006))
- Continuance should be last resort unless for strategic purposes:
 - annoys judge
 - preparedness breeds respect in court and client
 - lengthening process is against the purpose of the Code; may backfire later in the case

IV. Secure Custody Representation

§ 7B-1906. Secure or nonsecure custody hearings. * * *

- (b) As long as the juvenile remains in secure or nonsecure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days. . . . In the case of a juvenile alleged to be delinquent, further hearings may be waived only with the consent of the juvenile, through counsel for the juvenile.
- (c) The court shall determine whether a juvenile who is alleged to be delinquent has retained counsel or has been assigned counsel; if the juvenile is not represented by counsel, counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

IV. Secure Custody Representation

§ 7B-1906. Secure or nonsecure custody hearings. * * *

- (d) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the juvenile and the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice.

V. Review Hearing Representation

§ 7B-2510. Conditions of probation; violation of probation.

(c) An order of probation shall remain in force for a period not to exceed one year from the date entered. Prior to expiration of an order of probation, the court may extend it for an additional period of one year after a hearing, if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile.

(d) On motion of the juvenile court counselor or the juvenile, or on the court's own motion, the court may review the progress of any juvenile on probation at any time during the period of probation or at the end of probation. The conditions or duration of probation may be modified only as provided in this Subchapter and only after notice and a hearing.

VI. Extra-Judicial Representation

- School hearings (suspension, IEP)
- Treatment team/wrap around service meetings
- DSS meetings

VII. Other Representation Issues

- Length of representation
- Expunction
- Future school/treatment team meetings
