

On September 27, 2017, the Nebraska Supreme Court adopted the following new rules, Neb. Ct. R. §§ 6-1470 and 6-1706, regarding practice guidelines for attorneys in juvenile court:

Article 14. Uniform County Court Rules of Practice and Procedure.

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§ 6-1470. Practice guidelines for attorneys in juvenile court.

(A) General Purpose, Objectives, and Scope.

(1) The purpose of these guidelines is to ensure high quality legal representation by all attorneys appearing before the juvenile court. These practice guidelines do not replace ethical obligations under the Nebraska Rules of Professional Conduct, Neb. Ct. R. of Prof. Cond. § 3-501.0 et seq., and are meant to provide additional guidance for attorneys appearing before the juvenile court. All attorneys shall discharge their duties in accordance with the Nebraska Rules of Professional Conduct.

(2) These guidelines acknowledge that the goal of juvenile court is to ensure the rights of juveniles; to promote the best interests, safety, permanency, and rehabilitation of children and families; and to provide fair hearings where parties' rights are recognized and enforced, consistent with Neb. Rev. Stat. § 43-246.

(3) These guidelines are meant to be read in conjunction with Neb. Ct. R. §§ 6-1468 and 6-1705, practice standards for guardians ad litem for juveniles in juvenile court proceedings, and are not intended to replace or supersede those rules.

(4) Nothing in these guidelines shall interfere with a person's right to retain counsel of his or her choosing.

(5) All attorneys practicing in juvenile court should work to advance the goals set forth in Neb. Rev. Stat. § 43-246.

(B) Responsibilities of Attorneys.

(1) Defense counsel for juveniles.

(a) Counsel should elicit the juvenile's point of view and encourage full participation.

(b) Counsel should use developmentally appropriate language to advise the juvenile in all matters.

(c) Counsel should consult with the juvenile prior to all hearings, including detention hearings.

(d) When appropriate, counsel should seek records concerning the juvenile's mental health; educational background and/or abilities; documents detailing school achievement and discipline; positive community or extracurricular activities; employment; involvement in the child welfare system; and prior police and court involvement.

(e) Counsel should communicate every plea offer extended to the juvenile and should obtain the juvenile's permission prior to discussing the plea offer with the juvenile's parent, guardian, or custodian.

(f) Counsel should explain to the juvenile how and when to communicate with counsel during the hearing and appropriate behavior expected in a courtroom.

(g) Counsel should present evidence of material defenses, which may include capacity based on age, and concepts of adolescent development.

(h) Counsel should be informed of potential out-of-home placement options for the juvenile.

(i) Counsel should explain the dispositional process and disposition alternatives with the juvenile. Counsel should obtain the juvenile's permission to discuss with the client's parent, guardian, or custodian the dispositional process and inquire about the willingness of the parent, guardian, or custodian to support the juvenile's proposed disposition alternatives.

(j) Counsel should not recommend a disposition to the court without the juvenile's consent.

(k) Counsel should review the predisposition investigation report with the juvenile prior to disposition.

(l) Counsel should advise the juvenile concerning the disclosure of the juvenile's record and the legal mechanisms available to seal the record.

(m) Counsel should assist in postadjudication legal needs of the juvenile by providing zealous representation in hearings and matters which include, but are not limited to, further disposition hearings; revocation hearings; modification of terms of probation hearings; hearings for the purpose of committing the client to the Youth Rehabilitation and Treatment Center; investigating safety and well-being complaints in institutions; and problems that may require a new placement option.

(2) Prosecuting attorneys.

(a) The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the State. While the safety and welfare of the community, the victim(s), and juvenile(s) under Neb. Rev. Stat. § 43-247(3)(a) are the primary concerns, prosecuting attorneys should consider the special circumstances and rehabilitative potential of the juvenile in delinquency, status offense, or Neb. Rev. Stat. § 43-247(3)(c) cases, or of a parent, guardian, or custodian in a Neb. Rev. Stat. 43-247(3)(a) case to the extent they can do so without unduly compromising their primary concern.

(b) In determining whether to file formally or to offer pretrial diversion or mediation in cases under Neb. Rev. Stat. § 43-247(1), (2), (3)(b), or (4), the prosecutor should follow Neb. Rev. Stat. §§ 43-274 and 43-276.

(c) Prosecutors should make transfer motion decisions on a case-by-case basis and take into account the individual factors set forth in Neb. Rev. Stat. § 43-276.

(d) The decision to enter into a plea agreement should be governed by the interests of justice and Neb. Rev. Stat. § 43-246. The prosecutor should also consider the juvenile's, parent's, guardian's, or custodian's potential for rehabilitation.

(e) For dispositions, the prosecutor should make a recommendation consistent with community safety after reviewing reports prepared by prosecutorial staff, the Department of Health and Human Services, the probation department, and others. In making a recommendation, the prosecutor should seek the input of

the victim(s), or juvenile(s) in a Neb. Rev. Stat. § 43-247(3)(a) case, and consider the rehabilitative needs of the juvenile in delinquency, status offense, or Neb. Rev. Stat. § 43-247(3)(c) cases, or parent, guardian, or custodian in Neb. Rev. Stat. § 43-247(3)(a) cases, provided that they are consistent with community safety and welfare.

(f) The prosecutor should consider the victim's input at all phases of the case. At the dispositional hearing, the prosecutor should make the court aware of the impact of the juvenile's conduct on the victim and the community.

(3) Attorneys appointed to represent a parent, guardian, or custodian in juvenile court.

(a) The attorney should explain the rights of the parent, guardian, or custodian to information and decisionmaking regarding the child(ren) while the child(ren) is under the jurisdiction of the juvenile court.

(b) The attorney should provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child(ren) except when expressly prohibited by law, rule, or court order.

(c) The attorney should be aware of the unique issues of an incarcerated parent, guardian, or custodian.

(d) The attorney should be aware of the client's mental health status and be prepared to assess whether the parent, guardian, or custodian can assist with the case.

(e) The attorney should advocate for appropriate social services for the parent, guardian, or custodian.

(f) The attorney should consider and discuss the possibility of appeal with the parent, guardian, or custodian.

(4) Counsel representing agencies; tribal attorneys.

(a) Agency or tribal attendance at hearings is not required for all juvenile cases in which the agency or tribe is an interested party.

(b) Once counsel for the agency or tribe has entered an appearance, the agency's or tribe's counsel is entitled to recognition as an attorney of record in the case.

(c) The agency's or tribe's attorney role is to represent the agency or tribe and advocate for the agency's or tribe's position.

(d) The agency's or tribe's attorney should have an understanding of and perform the agency's or tribe's role in the particular case and in directing and implementing juvenile court orders.

(e) Depending on the case, offer evidence, file motions, and request hearings as necessary.

(C) Duties of Attorneys.

(1) Consultation with client.

(a) The phrase “consultation with client” generally means meeting in person unless prohibited or made impracticable by exceptional circumstances as set forth in this rule.

(b) Attorneys should consult with their client as soon as possible after being retained or appointed and as necessary thereafter when reasonably possible and at all those times and intervals as required by the Nebraska Juvenile Code.

(c) Where an unreasonable geographical distance is involved between the location of the client and the appointed attorney, the appointed attorney should explore the possibility of obtaining from the court an advance determination that the court will arrange for payment or reimbursement of the attorney’s reasonable expenses in connection with the travel to meet with the client.

(2) Participation in court hearings.

(a) Prosecutors, attorneys for juveniles, parents, guardians, and custodians should attend all court hearings unless excused by the court. All other attorneys should attend as requested by their client.

(b) When feasible, the duties of appointed counsel should be personal to the appointed attorney and should not normally be delegated to another person or lawyer. Where an attorney is unable or unavailable to attend a hearing due to reasons such as personal illness, emergency, involvement in another court hearing, or absence from the jurisdiction, such attorney should make proper arrangements for another attorney to attend the hearing. It is the responsibility of the attorney making such arrangements to ensure that the attorney who assumes his or her duties is qualified as provided by these guidelines.

(c) Attorneys representing juveniles, parents, guardians, or custodians should advocate for their clients to be present at all court hearings as appropriate and should take steps where necessary to ensure such attendance on the part of the client.

(3) Duty to provide quality representation.

(a) Any attorney appearing in juvenile court is expected to acquire sufficient working knowledge of the Nebraska Juvenile Code and all relevant federal laws, state laws, regulations, policies, and rules.

(b) Attorneys should not accept caseloads that are likely to, in the professional judgment of the attorney, lead to representation that is ineffective to protect the interests of their client or likely to, in their professional judgment, breach the professional obligations of the attorney.

(c) The potential for conflict of interest between an accused juvenile and his or parent, guardian, or custodian should be clearly recognized and acknowledged. All parties should be informed that the attorney is counsel for the juvenile and that in the event of disagreement between a parent, guardian, or custodian, and the juvenile, the attorney represents the interests of the juvenile. Further, meetings that include the parent, guardian, or custodian may not provide the protection of privilege to the juvenile’s statements to his or her attorney.

(d) Counsel should inform the client of the right to appeal a final order and explain the consequences of the decision to waive an appeal.

(D) Termination of Authority.

(1) The authority of the attorney shall commence upon appointment or entry of appearance by retained counsel, and shall continue until such time as the court terminates its jurisdiction, or there are no scheduled review hearings in court, or the court otherwise discharges the attorney.

(2) An attorney may withdraw from representation when the attorney files a motion to withdraw, and the court, in its discretion, enters a corresponding order granting such withdrawal. Termination of representation may only be sought or granted if it is in compliance with Neb. Ct. R. § 3-501.16.

(3) An appointed attorney may be removed from a case for cause, where the court finds that the attorney's performance is inadequate, that the attorney has failed to discharge duties or to protect the interests of the client for whom the attorney was appointed, or that any other factor or circumstance prevents or substantially impairs the attorney's ability to fairly and fully discharge his or her duties.

(E) Compensation for Court-Appointed Attorneys.

(1) An attorney appointed by a court shall be paid at the hourly rate established by the court.

(2) Generally, no distinction should be made between rates for services performed in and outside of court, and the same rate should be paid for any time the attorney spends traveling in fulfilling his or her professional obligations.

(F) Education.

(1) Appointed counsel. To be considered a candidate for appointment in a juvenile case under the Nebraska Juvenile Code for a juvenile, parent, guardian, or custodian, an attorney should have completed sufficient continuing legal education relating to the Nebraska Juvenile Code and practice in the Nebraska juvenile courts.

(2) Retained or other counsel. Attorneys who are not appointed by the court to represent juveniles, parents, guardians, or custodians, and are either privately retained or represent the State, other agencies, or tribes, are encouraged to obtain education regarding the Nebraska Juvenile Code or education related to the attorney's specific practice in the juvenile courts.

Article 17. Uniform Separate Juvenile Court Rules of Practice and Procedure.

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§ 6-1706. Practice guidelines for attorneys in juvenile court.

(A) General Purpose, Objectives, and Scope.

(1) The purpose of these guidelines is to ensure high quality legal representation by all attorneys appearing before the juvenile court. These practice guidelines do not replace ethical obligations under the Nebraska Rules of Professional Conduct, Neb. Ct. R. of Prof. Cond. § 3-501.0 et seq., and are meant to provide additional guidance for attorneys appearing before the juvenile court. All attorneys shall discharge their duties in accordance with the Nebraska Rules of Professional Conduct.

(2) These guidelines acknowledge that the goal of juvenile court is to ensure the rights of juveniles; to promote the best interests, safety, permanency, and rehabilitation of children and families; and to provide fair hearings where parties' rights are recognized and enforced, consistent with Neb. Rev. Stat. § 43-246.

(3) These guidelines are meant to be read in conjunction with Neb. Ct. R. §§ 6-1468 and 6-1705, practice standards for guardians ad litem for juveniles in juvenile court proceedings, and are not intended to replace or supersede those rules.

(4) Nothing in these guidelines shall interfere with a person's right to retain counsel of his or her choosing.

(5) All attorneys practicing in juvenile court should work to advance the goals set forth in Neb. Rev. Stat. § 43-246.

(B) Responsibilities of Attorneys.

(1) Defense counsel for juveniles.

(a) Counsel should elicit the juvenile's point of view and encourage full participation.

(b) Counsel should use developmentally appropriate language to advise the juvenile in all matters.

(c) Counsel should consult with the juvenile prior to all hearings, including detention hearings.

(d) When appropriate, counsel should seek records concerning the juvenile's mental health; educational background and/or abilities; documents detailing school achievement and discipline; positive community or extracurricular activities; employment; involvement in the child welfare system; and prior police and court involvement.

(e) Counsel should communicate every plea offer extended to the juvenile and should obtain the juvenile's permission prior to discussing the plea offer with the juvenile's parent, guardian, or custodian.

(f) Counsel should explain to the juvenile how and when to communicate with counsel during the hearing and appropriate behavior expected in a courtroom.

(g) Counsel should present evidence of material defenses, which may include capacity based on age, and concepts of adolescent development.

(h) Counsel should be informed of potential out-of-home placement options for the juvenile.

(i) Counsel should explain the dispositional process and disposition alternatives with the juvenile. Counsel should obtain the juvenile's permission to discuss with the client's parent, guardian, or custodian the dispositional process and inquire about the willingness of the parent, guardian, or custodian to support the juvenile's proposed disposition alternatives.

(j) Counsel should not recommend a disposition to the court without the juvenile's consent.

(k) Counsel should review the predisposition investigation report with the juvenile prior to disposition.

(l) Counsel should advise the juvenile concerning the disclosure of the juvenile's record and the legal mechanisms available to seal the record.

(m) Counsel should assist in postadjudication legal needs of the juvenile by providing zealous representation in hearings and matters which include, but are not limited to, further disposition hearings; revocation hearings; modification of terms of probation hearings; hearings for the purpose of committing the client to the Youth Rehabilitation and Treatment Center; investigating safety and well-being complaints in institutions; and problems that may require a new placement option.

(2) Prosecuting attorneys.

(a) The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the State. While the safety and welfare of the community, the victim(s), and juvenile(s) under Neb. Rev. Stat. § 43-247(3)(a) are the primary concerns, prosecuting attorneys should consider the special circumstances and rehabilitative potential of the juvenile in delinquency, status offense, or Neb. Rev. Stat. § 43-247(3)(c) cases, or of a parent, guardian, or custodian in a Neb. Rev. Stat. 43-247(3)(a) case to the extent they can do so without unduly compromising their primary concern.

(b) In determining whether to file formally or to offer pretrial diversion or mediation in cases under Neb. Rev. Stat. § 43-247(1), (2), (3)(b), or (4), the prosecutor should follow Neb. Rev. Stat. §§ 43-274 and 43-276.

(c) Prosecutors should make transfer motion decisions on a case-by-case basis and take into account the individual factors set forth in Neb. Rev. Stat. § 43-276.

(d) The decision to enter into a plea agreement should be governed by the interests of justice and Neb. Rev. Stat. § 43-246. The prosecutor should also consider the juvenile's, parent's, guardian's, or custodian's potential for rehabilitation.

(e) For dispositions, the prosecutor should make a recommendation consistent with community safety after reviewing reports prepared by prosecutorial staff, the Department of Health and Human Services, the probation department, and others. In making a recommendation, the prosecutor should seek the input of the victim(s), or juvenile(s) in a Neb. Rev. Stat. § 43-247(3)(a) case, and consider the rehabilitative needs of the juvenile in delinquency, status offense, or Neb. Rev. Stat. § 43-247(3)(c) cases, or parent, guardian, or custodian in Neb. Rev. Stat. § 43-247(3)(a) cases, provided that they are consistent with community safety and welfare.

(f) The prosecutor should consider the victim's input at all phases of the case. At the dispositional hearing, the prosecutor should make the court aware of the impact of the juvenile's conduct on the victim and the community.

(3) Attorneys appointed to represent a parent, guardian, or custodian in juvenile court.

(a) The attorney should explain the rights of the parent, guardian, or custodian to information and decisionmaking regarding the child(ren) while the child(ren) is under the jurisdiction of the juvenile court.

(b) The attorney should provide the client with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child(ren) except when expressly prohibited by law, rule, or court order.

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(f) The attorney should consider and discuss the possibility of appeal with the parent, guardian, or custodian.

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(c) The agency's or tribe's attorney role is to represent the agency or tribe and advocate for the agency's or tribe's position.

(d) The agency's or tribe's attorney should have an understanding of and perform the agency's or tribe's role in the particular case and in directing and implementing juvenile court orders.

(e) Depending on the case, offer evidence, file motions, and request hearings as necessary.

(C) Duties of Attorneys.

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(3) An appointed attorney may be removed from a case for cause, where the court finds that the attorney's performance is inadequate, that the attorney has failed to discharge duties or to protect the interests of the client for whom the attorney was appointed, or that any other factor or circumstance prevents or substantially impairs the attorney's ability to fairly and fully discharge his or her duties.

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(1) An attorney appointed by a court shall be paid at the hourly rate established by the court.

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