

**PERFORMANCE STANDARDS  
GOVERNING THE REPRESENTATION OF CLIENTS  
IN CIVIL COMMITMENT PROCEEDINGS\***

*[\* Adopted by the Office of the Probate Court Administrator, State of Connecticut, October 1997, and published in Probate Court Practice: Practical Representation of Persons with Psychiatric Disabilities, Office of the Probate Administrator, West Hartford, CT, 1997]*

These standards generally describe the steps that should be taken by attorneys assigned to represent persons in civil commitment cases.

1. The role of the attorney for the respondent in a commitment case is to act as a zealous advocate for the client<sup>1</sup> and to ensure that the respondent is afforded all of his or her due process and other rights. It is not proper for the attorney to act as a guardian ad litem in the best interest of his or her client. See, Rules of Professional Conduct 1.2(a)<sup>2</sup> and 1.14(a)<sup>3</sup>
  
2. Immediately upon receipt of the assignment of the case the attorney shall:
  - a. Communicate with the client to inform the client of the assignment;
  
  - b. Arrange to meet with the client (if the attorney's schedule does not permit him or her to meet with the client and promptly begin to work on the case, the attorney shall decline the assignment).
  
  - c. Shall not agree to a continuance of the case unless he or she has first consulted with the client and obtained the client's consent.

Rules of Professional Conduct 1.3 and 1.4.

3. The attorney shall meet with the client as soon as possible, but in no event later than 72 hours prior to the hearing. The purpose of this initial interview is to begin to develop a lawyer-client relationship based on mutual understanding and trust, to explain the commitment law and procedures to the client, to discuss the alternatives to continued

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<sup>1</sup> Almost invariably, this means opposing the petition.

<sup>2</sup> "A lawyer should abide by a client's decisions concerning the objectives of representation."

<sup>3</sup> When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."

hospitalization available to the client, to determine the client's version of the facts that led to the filing of the petition, and to determine the client's wishes regarding the case. Rules of Professional Conduct 1.3 and 1.4.

4. The attorney shall thoroughly investigate the facts. This investigation shall include reviewing the medical records and interviewing the hospital staff (including doctors, nurses, social workers, and others), and reading the probate file. The attorney should also speak to patients on the ward, friends, and family members of the client, and staff of any other programs who are familiar with the client. Rules of Professional Conduct 1.3.
5. The attorney shall read and become thoroughly familiar with the statutory law, including Conn. Gen. Stat. §§ 17a-495 *et seq.* (The civil commitment provisions) and Conn. Gen. Stat. § 17a-540 *et seq.* (The Patients' Bill of Rights, which governs, *inter alia*, informed consent and the right to refuse medication for the treatment of mental illness and the right to specialized treatment and discharge plans).
6. After reviewing the medical record and the commitment petition, the attorney shall determine if any procedural defenses can be raised, and file appropriate motions with supporting memoranda. (Procedural defenses can be raised, *e.g.*, if the hospital failed to file the petition at the appropriate time, if the hearing has not been commenced within the 10-day time period set forth in Conn. Gen. Stat. § 17a-498(a); if the petition fails to set forth facts in support of the petition; if sufficient notice was provided to permit the respondent to exercise the right pursuant to Conn. Gen. Stat. § 17a-497(b) to have the case heard by a three-judge court; or if sufficient notice was provided to permit the respondent to exercise his or her right pursuant to Conn. Gen. Stat. § 17a-498(c) to have the court-appointed examining physicians appear at the hearing.)
7. After developing a thorough knowledge of the law and the facts of the case, the attorney shall discuss with the client any available alternatives to commitment. These may include the participation in an outpatient psychotherapy and counseling program, a community support program, day treatment services, or placement in a less restrictive environment such as supportive housing, an apartment program, or a group residence. The client should be apprised of his or her right to elect voluntary status. The attorney should make it clear to the client that the ultimate decision regarding the proposal of alternatives to commitment must be made by the client. The attorney should reassure the client that the attorney will stand behind the client's decision and forcefully advocate the client's position. Rules of Professional Conduct 2.1.<sup>4</sup>

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<sup>4</sup> If there is no meaningful participation by the client, the attorney should proceed with the trial using the best information obtainable. As set forth above in paragraph 1 and the accompanying footnote, the attorney should oppose the petition and assure that the client is afforded all of his or her other rights.

8. After this client meeting, and if appropriate, the attorney shall enter into negotiations with relevant persons concerning the case (*e.g.*, discussions with the treating physician(s) regarding alternatives to hospitalization or conversion to voluntary status; discussions with social workers, Department of Mental Health and Addiction Services officials, or other providers regarding the availability of alternative placements).
9. If the attorney and the hospital can agree to a negotiated settlement, the attorney shall meet with his or her client to explain the terms of the agreement and obtain the client's consent to the settlement. Should the client decline the settlement offer, the attorney shall be prepared to try the civil commitment case.
10. Prior to the hearing the attorney shall identify potential witnesses who may testify in support of the client. Where necessary, witnesses should be subpoenaed.<sup>5</sup> The attorney should meet or speak with the witnesses prior to the trial in order to prepare them for direct and cross-examination. The attorney shall review the medical record and identify those parts of the record that should not be admitted into evidence. The attorney should determine the identity of the hospital's witnesses and of the physician's appointed by the court pursuant to Conn. Gen. Stat. § 17a-498(c) in advance of the hearing, review the reports of the latter physicians, and make an effort, if tactically indicated, to interview them and prepare appropriate cross-examination.<sup>6</sup> Prior to the hearing the attorney shall prepare consistent direct and cross-examination questions and prepare arguments to the judge. of case preparation, including the witnesses expected to be called and any other evidence the attorney intends to present. The attorney should also discuss with the client the desirability of the client testifying. If the client wishes to testify, the attorney should thoroughly prepare the client for direct and cross-examination.
11. During the hearing the attorney should act as a zealous advocate for the client, vigorously supporting that course of action chosen by the client, insuring that proper procedures are followed, and that the client's interests are well represented.
12. After the hearing the attorney shall meet with the client to explain the court's decision. If the client is committed, the attorney shall explain the client's right to appeal. The attorney shall review the evidence that was presented at the hearing in order to advise the client about any steps the client can take during the commitment period in order to be discharged

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<sup>5</sup> The cost of subpoenaing witnesses for indigent clients cannot be reimbursed by the Probate Administration fund. However, subpoenas can be served by any indifferent person, so costs should be minimal.

<sup>6</sup> The statute requires attendance of the court-appointed physicians only if requested by the respondent or respondent's counsel. It is usually advisable to have these physicians available at the hearing. Thus, a request should be made promptly (see, Conn Gen. Stat. § 17a-498(c): the court is to be given three days notice). Requests to have the physicians available may be withdrawn later.

from the hospital.<sup>7</sup> Should the client wish to appeal the Probate Court's decision, the attorney shall file an appeal in a timely manner. See Conn. Gen. Stat. § 45a-186.

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<sup>7</sup> Note that a writ of *habeas corpus*, rather than an appeal, may be the better vehicle to deal with procedural defects in a commitment proceeding, as habeas petitions are addressed promptly by the Superior Court.

