

ETHICAL COMMUNICATIONS

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ROAD MAP

- * **ETHICAL RESPONSIBILITIES AND DUTIES**
- * **COMMUNICATION**
 - * **Communication for in court proceedings**
 - * **Communication outside the court**
 - * **Communication and Confidentiality**
 - * **Communication with Detained Clients**
- * **Hypos**

ETHICAL RESPONSIBILITIES



vs.



ETHICAL DUTY OWED TO JUVENILE CLIENT



The child's attorney shall owe the same duties of undivided loyalty, confidentiality and competent representation to the child or minor as is due an adult client pursuant to the Mississippi Rules of Professional Conduct. §43-21-201(4)

THY WILL BE DONE (OR AT LEAST TRY)



A lawyer shall abide by a client's decisions concerning the objectives of representation.
(Expressed Interest)

Cont'd

- * A lawyer shall consult with the client as to the means by which they are to be pursued.
- * At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. (comments)
- * In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. (comments)

Cont'd

- * The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (comment)
- * In a criminal case, a lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, and whether the client will testify. MRPC 1.2(a)

MRPC 1.4 - COMMUNICATION



A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. A lawyer shall explain a matter, using age-appropriate language, to the extent reasonably necessary to permit the client to make informed decisions regarding the representation at all stages of the proceedings.

A photograph of a rocky shoreline with the text "Break It Down" overlaid in a white, cursive font. The text is positioned in the center of the image, with "Break It" on the top line and "Down" on the bottom line. The background shows a calm body of water in the foreground, a rocky breakwater in the middle ground, and a cloudy sky in the background.

Break It
Down

Break it Down

- * **Keep a client reasonably informed about the status of a matter.**
- * **Promptly comply with reasonable requests for information.**
- * **Shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation at all stages of the proceedings.**
- * **Explanations shall be made using age-appropriate language.**

Communication for In-Court Proceedings

- * **Need to preview each hearing before it happens.**
- * **Need to review what happened in each hearing after it happens.**
 - * **Provide an opinion as to how that hearing has affected the course of the overall case.**
 - * **Allow client opportunity to ask questions and raise concerns.**

Communication outside the court

- * **Keep client informed about the case's progression outside the courtroom by:**
 - * **Soliciting and following up on the client's investigatory leads.**
 - * **Sharing copies of and discussing motions filed.**
 - * **Monitoring the client's compliance with release conditions, or if client is detained, making sure that the client is receiving adequate services.**
 - * **Being available to address the client's concerns as the case proceeds.**

Communication & Confidentiality

- * Counsel creates a safe, comfortable, and to the extent possible private environment.
- * Allocates adequate time for counseling.
- * Engages the youth with age-appropriate language.
- * Earns the child's trust over time.
- * Offers balanced and objective advice when appropriate.

Communication with Detained Clients

- * Counsel visits the client at the detention facility.
- * Informs the client's family how and when they can visit the client.
- * If detention facility is too remote, counsel keeps in regular phone contact with the client.

Hypo #1

You represent Ollie who has been charged with Poss'n CS w/i to distribute. At your first and only meeting with Ollie he tells you that he didn't have any drugs on him and that he was riding in the car with two older adult males and his little sister, Olivia, who is 8 yrs. old. Ollie says the drugs belonged to the two adults, but he is not going to tell on them because he is afraid of them. They have threatened to hurt him and his family if he says anything. Getting ready for trial you talk to the little sister and she tells you their names. You issue a subpoena for Olivia. The day of the trial, Ollie arrives at the courthouse very angry and tells you that you **WILL NOT** call his sister to the stand to testify.

Hypo #2

It is Monday morning at 9:00 a.m. You have just received an appointment order to represent Joey on a simple assault charge. Joey is in detention. He will have a detention hearing today at 1:00 p.m. Joey has had no previous contact with the court. You arrive at the courthouse at 12:55 p.m. and are immediately called into the courtroom for Joey's hearing. The judge holds the hearing and Joey is released from custody on in-house detention and subject to random drug screens. As Joey is being removed from the courtroom the Judge announces that Joey's next hearing will be in 10 days at 10:00 a.m. The bailiff calls the next hearing on the docket which also happens to be your case. The next three are as well. You remain at counsel table for your next hearing. Meanwhile, Joey is taken back to the detention facility and released to his parents.

Hypo #3

It is still Monday and you are now on your third case of the day. Your next client is Bubba, who is charged with three auto burglaries and is set for trial. You go out to the lobby to find Bubba. You see Bubba sitting on the second row of seats in the lobby with his Mom. Every seat in the lobby is full today. You call Bubba's name, he stands up with his mother. You walk over to him and tell him that all of the prosecution witnesses have been subpoenaed and served and that the state is ready to proceed to full evidentiary hearing on each count charged. You ask him if he was able to recover the stolen items from the persons that he gave them too? He hesitates and says "I guess". You tell him to admit to all the charges and ask him if he is prepared for a urinalysis. He responds "I don't know". You now notice that the Bailiff is standing slightly behind you and is now telling you that the Judge is waiting on you. You lead your client and his mother into the courtroom.

Hypo Cont'd

Would it change anything if you had an office or witness room at the courthouse?

Is your client admitting or going to trial?

SOURCES:

- * **Role of Juvenile Defense Counsel In Delinquency Court.**
Published by NJDC, Spring 2009
<http://njdc.info/our-work/publications/>
- * **Mississippi Rules of Professional Conduct**
- * **Mississippi Youth Court Act**

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UPDATE

* In re J.T., decided April 21, 2016, 2016 WL 1593295

In the youth court, both the State and the judge adopted the view that the Rules of Evidence are “relaxed.” Because that view—although incorrect—does have some support in our precedent, we find it necessary to clarify that the Rules of Evidence do apply in youth-court adjudications with full force and effect. ¶44. Mississippi Rule of Evidence 1101(a) states that “these rules apply to all actions and proceedings in the courts of the State of Mississippi.” Rule 1101(b) excepts certain proceedings from the Rules’ broad applicability: Proceedings for extradition or rendition; probable cause hearings in criminal cases and youth court cases; sentencing; disposition hearings; granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.¹⁹ Because Rule 1101(a) applies the Rules to all proceedings unless otherwise provided, and Rule 1101(b) does not except youth-court adjudication hearings, the Rules apply.

* HB 1413

- * 43-21-105(c) added” "Designee" means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement or who is an employee of the Mississippi Department of Human Services to be his designee.
- * 43-21-105 (m) added: "Abused child" also means a child who is or has been trafficked within the meaning of the Mississippi Human Trafficking Act by any person, without regard to the relationship of the person to the child.
- * Effective upon passage.

*** SB 2179 Department of Child Protection Services; establish.**

*** Due from Governor 5-13-16**

*** SB 2493 Supporting and Strengthening Families Act; create.**

*** Due from Governor 5-13-16**

- * **HB 772 Youth court; authorize counsel to represent indigent parent.**
- * **If the court determines that a parent or guardian who is a party in an abuse, neglect or termination of parental rights proceeding is indigent, the youth court judge may appoint counsel to represent the indigent parent or guardian in the proceeding.**
- * **Attorney's appointed to represent parents in youth court are required to have yearly training same as juvenile defenders.**
- * **Due from governor 5-14-16.**