

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ORDER 15-16**

Standards of Practice for Mental Health Panel Attorneys

WHEREAS, the District of Columbia Family Court Act of 2001, Pub. L. 107-114 Stat. 2100 (2002) provides that the Superior Court shall establish standards of practice for attorneys appointed as counsel in matters under the jurisdiction of the Family Court of the Superior Court; and

WHEREAS, Attorney Practice Standards for Mental Health Panel Attorneys have been developed by the Family Court Implementation Committee; and

WHEREAS, the Attorney Practice Standards for Mental Health Panel Attorneys are intended to define the role and responsibilities of counsel in mental health proceedings pending in the District of Columbia Superior Court, and to improve the quality of representation of individuals with matters under the jurisdiction of the Family Court of the Superior Court;

NOW, THEREFORE, it is by the Court,

ORDERED, that the Superior Court Attorney Practice Standards for Mental Health Panel Attorneys shall take effect on the date of this order, and shall govern practice in mental health proceedings in the District of Columbia Superior Court.

SO ORDERED.

BY THE COURT

DATE: September 11, 2015

/s/
Lee F. Satterfield
Chief Judge

Copies to:

Judges
Senior Judges
Magistrate Judges
Executive Officer
Clerk of the Court
Division Directors
Judge-in-Chambers
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Superior Court of the District of Columbia
Family Court

**Attorney Practice Standards
For Mental Health Panel Attorneys**

**Submitted to Lee F. Satterfield, Chief Judge
Superior Court of the District of Columbia**

By

**The Family Court Implementation Committee
Hiram Puig-Lugo, Presiding Judge, Family Court
Carol Dalton, Deputy Presiding Judge, Family Court**

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ACKNOWLEDGEMENTS

The Family Court Implementation Committee (hereafter "Implementation Committee"), presently chaired by Judge Hiram Puig-Lugo, Presiding Judge of the Family Court, was established to oversee the organization and management of the Family Court of the District of Columbia (hereafter "Family Court"). Consistent with the goals of the Family Court, the Court adopted practice standards for the Counsel for Child Abuse and Neglect (CCAN) panel attorneys in February 2003 (Administrative Order 03-07) and the following year for juvenile panel attorneys (Administrative Order 04-13) and Special Education Panel Attorneys in 2009 (Administrative Order 09-03).

This document, *Superior Court of the District of Columbia Attorney Practice Standards for Mental Health Panel Attorneys*, continues the goal of setting standards for all Family Court practitioners and sets the standards for the Mental Health Attorney Panel.

A debt of gratitude is owed to Judge Hiram Puig-Lugo whose leadership on the Implementation Committee was instrumental in ensuring that Family Court standards and training were developed and implemented to maintain the highest level of representation in all Family Court matters. The standards were drafted and approved by members of the Superior Court, the District of Columbia Office of the Attorney General-Mental Health Division, and the Mental Health Attorney Panel, and reviewed and approved by Chief Judge Lee F. Satterfield.

The Court gratefully acknowledges all of the individuals whose expertise and knowledge were invaluable to the completion of this document, particularly the following individuals and organizations:

The Honorable Hiram Puig-Lugo Presiding Judge Family Court	Rosamund Holder, Chief Tracey B. Richardson, Assistant Chief Mental Health Section Office of the Attorney General for the District of Columbia
The Honorable Carol Ann Dalton Deputy Presiding Judge Family Court	Kimberly Clark, Section Chief Silvana Naguib, Staff Attorney Sherry Trafford, Staff Attorney Mental Health Section Public Defender Service
The Honorable Mary Grace Rook Magistrate Judge Family Court	John Connelly Private Practitioner and Member of the Mental Health Panel

Superior Court of the District of Columbia Mental Health Civil Commitment Proceedings Practice Standards

Executive Summary

The quality of legal representation is essential to the court's effective administration of justice. To render high quality representation, attorneys practicing in the mental health and civil commitment field must be well-trained and educated in the procedural and substantive law as well as cognizant of psycho-social issues affecting their clients. These practice standards are intended to define the role of counsel in the Superior Court of the District of Columbia's civil commitment system and improve the level of representation for respondents in this system. In evaluating the performance or conduct of counsel, the Family Court Panels Committee will apply these standards and the District of Columbia Rules of Professional Responsibility.

Overview

The practice standards address the general authority and duties of mental health attorneys appointed by the Court to represent a respondent in a civil detention or commitment case arising out of the District of Columbia Hospitalization of the Mentally Ill Act, D.C. Code § 21-501 through D.C. Code § 21-592, commonly known as the Ervin Act.¹ Under these standards, attorneys shall only accept an appointment or otherwise appear in civil commitment proceedings if they are knowledgeable in substantive and procedural mental health law. Counsel assigned pursuant to the District of Columbia Family Court Act of 2001, Pub. L. 107-114 representing individuals in civil commitment cases must comply with these standards and the District of Columbia Rules of Professional Responsibility.

Responsibilities to the Client

Establishing and maintaining a trusting relationship with a client is the foundation of quality representation. These standards identify an attorney's responsibilities to his or her client, including:

- open, candid and on-going communication;
- thorough investigation of all necessary and relevant information;
- attempts to settle the case or relevant issues in order to achieve the client's stated goal;
- adequate pre-hearing and pre-trial preparation;
- attendance and participation in court conferences and hearings;
- post-hearing follow-up and review of any orders, including assisting clients with accessing services or navigating the system;
- effective disposition and post-disposition advocacy;

¹ These standards also apply to lawyers who are serving *pro bono* in community cases, where family members or friends may be seeking to commit the respondent. These attorneys may be appointed as counsel for the petitioner because the petitioner may not understand the various attendant court matters. Despite these *pro bono* attorneys representing the petitioner, the same standards and rules apply.

- discussion with the client about his or her right to appeal and whether the appeal has merit; and
- consideration of representing clients on appeal.

Superior Court of the District of Columbia
Mental Health Civil Commitment Proceedings Practice Standards

Statement of Intent

D.C. Code § 21-521 provides that individuals involved in civil commitment proceedings in the Superior Court of the District of Columbia are entitled to representation when the person is facing detention and/or civil commitment. *See also* Super. Ct. R. of Proc. for Mental Health R. 2(a) (Right to counsel. – “A person detained pursuant to *D.C. Code § 21-521* (2004 Supp.) shall be informed of his or her right to counsel upon admission to a hospital, a facility certified by the Department of Behavioral Health (Department) for emergency detention, or the Department.”). The District of Columbia Family Court Act of 2001, Pub. L. 107-114, provides that the Superior Court shall establish standards of practice for attorneys appointed as counsel in matters under the jurisdiction of the Family Court. The Court recognizes the legal and psychosocial complexity of mental health matters and its oversight role with respect to attorneys appointed to represent respondents in civil commitment proceedings. To comply with the District of Columbia Family Court Act of 2001 and to promote high quality representation for all parties in mental health proceedings, the Chief Judge issued Administrative Order No. 02-15, which requires the Family Court Panels Committee to establish a panel of qualified attorneys to represent individuals in mental health matters. Panel attorneys must adhere to these practice standards.

A. General Authorities and Duties

A-1 Prerequisites for Appointment and Training – Counsel shall only accept appointment or otherwise appear in detention and/or commitment proceedings if they are knowledgeable of substantive and procedural mental health laws and have participated in the required training programs. Counsel must certify, in writing, that he or she has read and understands these standards, the District of Columbia Rules of Professional Conduct and the Superior Court Rules and Statutes governing mental health proceedings. Counsel must be experienced in litigation and have knowledge on how to conduct a jury trial.

Prior to an initial appointment, all counsel must receive certification of training, including classroom instruction as well as courtroom observation. Further, to be eligible to receive an appointment, counsel must obtain a Certificate of Discipline from the District of Columbia Bar Counsel. This certificate shall be presented to the Counsel for Child Abuse and Neglect (CCAN) Director.²

Each year, all counsel who are eligible to participate in mental health proceedings must attend 16 hours of continuing formal legal training on mental health-related topics to continue representing the respondents in these proceedings.

² When possible, an attorney shall attend Public Defender Service (“PDS”) trainings. If the attorney cannot attend PDS trainings, the attorney must seek approval for the training he/she wishes to attend through the CCAN office.

Any training program must be approved by the CCAN Director in order for the attorney to receive credit. CCAN counsel must present a Certificate of Completion to the CCAN Director at or near the end of the calendar year.

Attorneys appearing pro bono in mental health matters must ensure that they receive the necessary training on mental health issues to provide competent representation in these matters.

Appropriate training topics can include but not be limited to relevant legal topics as well as specific mental health topics such as:

- District of Columbia mental health law, including the Ervin Act and the Mental Health Consumers' Rights Act;
- professional ethics;
- evidence and trial procedure;
- developmental psychology;
- medical issues and medical evidence in mental health cases;
- understanding mental illnesses and mental retardation;
- communicating with clients who have mental illnesses or intellectual disabilities;
- negotiation strategies and techniques;
- appeals procedures
- issues arising from substance abuse
- cultural, ethnic, and socioeconomic issues; and
- available services and resources for the mentally ill.

Trainings may also include topics based on feedback from judicial officers about judicially-perceived weaknesses or topics judicial officers believe all panel attorney may need to improve. Mental Health Panel attorneys may also provide feedback about what types of training they would like to attend so as to encourage and ensure attorneys are satisfying this training requirement. Based on the length of time as a Mental Health Panel attorney and experience, an attorney may be excused from this training requirement.

Commentary –

D.C. Rules of Prof'l Conduct R. 1.1 (Competence), Comment 6 (Maintaining Competence)

In re Pennington, 921 A.2d 135, 144 (D.C. 2007) (finding attorney knowingly assisted or induced another attorney to violate ethical rules by dishonestly offering legal advice when he “concedes that he knew – that the proposed deception of the clients [by the other attorney] was fraudulent.”

The practice of mental health law is complex and multi-faceted. It involves knowledge of traditional legal sources such as case law, statutes, evidence and trial practices but also includes the need to understand information generally not part of legal practice. In

addition, the stakes for individuals involved in detention and/or commitment proceedings are very high. Therefore, attorneys practicing in the field must be well-trained and educated to deliver high quality representation for the respondent.

Counsel seeking inclusion on the CCAN eligibility list shall receive training certification from the CCAN office. Counsel appearing pro bono shall receive certification from the legal services organization with which they are affiliated, or from their employer, that they are eligible to receive appointment in mental health matters. This certification shall be subject to review by the CCAN office.

As part of the training process, new attorneys are strongly encouraged to seek the advice and input of more experienced lawyers who have represented parties in mental health proceedings. Correspondingly, experienced attorneys are encouraged to provide mentoring to new attorneys by assisting new attorneys in case preparation, debriefing with new attorneys after court hearings, and answering questions as they arise. Experienced attorneys designated by the CCAN Director as “trainer attorneys” will receive credit toward their 16 hours of continuing training for the time they spend instructing new attorneys.

All counsel will be assisted in obtaining meaningful training opportunities by the CCAN office, the Public Defender Service, or by the legal services organization with which they are affiliated. Training seminars will be offered on issues impacting the mental health practice and other resource materials will be provided.

A-2 Basic Obligations – All counsel appearing before the Superior Court in a mental health detention and/or civil commitment case shall:

- know and adhere to all applicable D.C Rules of Professional Conduct and comply with all relevant court rules;
- have a working knowledge of the Ervin Act and Supreme Court and District of Columbia Court of Appeals cases regarding the application of the Ervin Act’s procedural and substantive requirements;
- be familiar with the D.C. Bar Practice Manual chapter “Mental Health Proceedings,” the PDS Criminal Practice Institute Practice Manual chapter “Representing Individuals in Civil Commitment Proceedings,” as well as Title VII of the District of Columbia Code, which contains the “Mental Health Consumers’ Rights Act”;
- stay abreast of legal and subject-matter developments relevant to the field, and participate in continuing legal education;
- prepare and file all pleadings and motions in a timely fashion;
- serve all filings and communications with the court on all parties;
- obtain copies of all pleadings and relevant notices filed by other parties;
- thoroughly prepare for all hearings;
- counsel clients concerning matters related to their case;
- assess client’s desire for services and assist in obtaining those services;

- cooperate and communicate civilly with other professionals and parties in a case.

If, in the course of the representation, the attorney is unclear about how to resolve an ethical issue, he or she should seek guidance from other experienced panel attorneys or attorneys in the Mental Health Division at the Public Defender Service (PDS), or from the D.C. Office of Bar Counsel.

Commentary –

In re Samad, 51 A.3d 486, 500 (D.C. 2012) (suspended attorney from the practice of law for three years because the attorney “exhibited a consistent pattern of neglect” in client representation—resulting in 40 violations of 14 Rules of Professional conduct—that “in some instances prejudiced [the attorney’s] clients, and in nearly every instance prejudiced the administration of justice”).

In re Zdravkovich, 671 A.2d 937, 938, 939-40 (D.C. 1996) (upholding the Board of Professional Responsibility’s findings to suspend an attorney from the practice of law for negligently failing to pursue cases of three mental health clients who were involuntarily committed to a hospital and for engaging in conduct prejudicial to the administration of justice when the attorney failed to meet or speak with one client to explain the client’s legal rights and determine whether the client wanted to exercise them; when the attorney failed to return or answer calls from another client after she was hospitalized; and when the attorney failed to attend hearings, including the client’s Mental Health Commission hearing, on behalf of another client and could not be reached by said client).

Waldman v. Levine, 544 A.2d 683, 690-91 (1988) (finding the standards set by the code of professional responsibility “provides a gauge” to determine the standard of care governing an attorney’s conduct).

D.C. Rules of Prof’l Conduct R. 1.1 (Competence)

D.C. Rules of Prof’l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof’l Conduct R. 1 (Competence), Comment 1 (Legal Knowledge and Skill), and 6 (Maintaining Competence)

These basic obligations are based on the DC Rules of Professional Conduct and the Superior Court Rules. They are elements that define “competent representation” but are not exhaustive. Additionally, counsel should make an independent determination of what services are necessary to meet the client’s needs and to advance the client’s interest in litigation. Counsel should consider any barriers to the client’s use of available services including disabilities, language, or cultural and seek to overcome such barriers.

A-3 Case Management – Counsel should not carry a workload that-by reason of its excessive size-interferes with the rendering of quality legal service, endangers the client’s interest in the case’s prompt resolution, or may lead to the breach of professional

obligations. An attorney who is considering whether to act as counsel or to accept court appointments must have sufficient time, resources, knowledge, and experience to offer quality legal services in the particular matter and to abide by all of these standards of practice, including compliance with all statutory and court-imposed deadlines. If, after accepting an appointment, the attorney is later unable to offer effective representation, the attorney should consider case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

Commentary –

D.C. Code § 21-523

D.C. Code § 21-526

D.C. Code § 21-548

In re Zdravkovich, 671 A.2d 937, 938, 939-40 (D.C. 1996) (upholding the Board of Professional Responsibility’s findings to suspend an attorney from the practice of law for negligently failing to pursue cases of three mental health clients who were involuntarily committed to a hospital and for engaging in conduct prejudicial to the administration of justice when the attorney failed to meet or speak with one client to explain the client’s legal rights and determine whether the client wanted to exercise them; when the attorney failed to return or answer calls from another client after she was hospitalized; and when the attorney failed to attend hearings, including the client’s Mental Health Commission hearing, on behalf of another client and could not be reached by said client).

In re Strickland, 597 A.2d 869, 870 (D.C. 1991) (“Construing section 21-523 [of the Ervin Act], we hold that the word ‘time’ refers to the time of day, and that seven days ‘from the time the order was entered’ means exactly seven days from the hour and minute when the order of temporary commitment was entered”).

D.C. Rules of Prof’l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof’l Conduct R. 1.16 (Declining or Terminating Representation)

D. C. Rules of Prof’l Conduct R. 6.2 (Accepting Appointments)

An attorney must be aware of several time-sensitive events set forth in the Ervin Act, D.C. Code §§ 21-501-592. The Department of Behavioral Health or hospital has 48 hours from admittance to file a petition with the court. The court then has 24 hours from the petition’s filing to enter an order either granting or denying the petition.

The attorney shall inform the client of his or her right to a probable cause hearing upon request under D.C. Code § 21-525 and must ensure that the hearing be held within 24 hours of its request or by noon of the next business day following a weekend or holiday. The Department of Behavioral Health or hospital has seven days from the date that the Order Authorizing Continued Detention/Hospitalization was entered to file a Petition for Commitment.

If the Department of Behavioral Health or hospital is seeking to re-hospitalize the respondent or revoke outpatient treatment, the Department of Behavioral Health or hospital has 24 hours from the respondent's transfer from outpatient to inpatient treatment to file a Notice of Return. The court then has 24 hours from the petition's filing to enter an order either granting or denying the re-hospitalization, and to appoint-counsel. The Department of Behavioral Health or hospital has 5 days from the date that the order is entered to file a Petition to Revoke outpatient treatment. If a Petition to Revoke is filed, the Mental Health clerk's office schedules a revocation hearing within 21 days of the date that the respondent was detained or hospitalized. If the deadline for filing a Notice of Return, entering an order, or filing a Petition to Revoke expires on a weekend or holiday, the deadline is extended until noon on the first business day following the weekend or holiday.

The attorney must be responsible for ensuring that these deadlines are met and that the client is able to exercise his or her rights to release when appropriate. This includes assisting a voluntary patient with requesting discharge, and ensuring that the discharge is effectuated within 48 hours of the client's request. The attorney shall also be responsible for monitoring whether a petition for commitment has been filed before the expiration of the seven-day period of detention, and ensuring discharge or voluntary admission if no petition is filed. The attorney must, therefore, know the case-specific timeline prescribed in the Ervin Act to manage the process for reaching the client's goals. The attorney must understand the implications of the timeline and understand whether any exceptions apply.

A-4 Responsibilities of Individual Counsel

Respondent's Attorney – The role of the respondent's attorney in a mental health detention and/or civil commitment case is to act as an advocate for the respondent, and ensure that the respondent is afforded all of his or her due process and other rights. The attorney's obligation is to represent the expressed interests of the respondent, which may stand- in contrast to an attorney's obligation in other contexts, such as acting in the "best interest" of the client. Attorneys representing respondents in cases under the Ervin Act are bound to act on the client's stated objectives regarding the outcome of the case. At a minimum, counsel must ensure that the petitioner is made to meet its burden of proving that the respondent meets the criteria for detention and/or commitment.

Counsel must advise the respondent of his or right to a probable cause hearing, a contested Commission on Mental Health hearing, and, if appropriate, a trial by judge or jury. Counsel must be meticulous in calculating timelines and filing motions to dismiss if the government or the court misses the statutory deadlines. Furthermore, counsel must be aware of the law affecting conversion of a patient from voluntary to involuntary status.

Commentary –

In re Samad, 51 A.3d 486, 497 (D.C. 2012) (suspended an attorney from the practice of law in part because, while an attorney may limit the scope of services provided to a client

by a retainer agreement, the client did not understand the division of responsibilities set forth in said agreement).

Ginsberg v. Granados, 963 A.2d 1134, 1137 (D.C. 2009) quoting *Cathedral Ave. Coop., v. Carter*, 947 A.2d 1143, 1160 (D.C. 2008) (“a finding of bad faith is based on ‘whether the claim is entirely without merit and has been asserted wantonly, for purposes of harassment or delay, or for other improper reasons’”).

In re Brown, 912 A.2d 568, 570 (D.C. 2006) (adopted the Board of Professional Responsibility’s findings that an attorney did not represent his clients “zealously nor with reasonably promptness” when he was retained to file a deed to real estate and prepare and file tax forms but did not do any work on behalf of his clients and failed to inform his clients of said inaction).

District of Columbia v. Fraternal Order of Police, Metro. Police-Labor Comm., 691 A.2d 115, 119 (D.C. 1997) (“In deciding whether a claim is warranted under existing law, among the factors for consideration are the plausibility of the position taken and the complexity of the issue.”).

In re Zdravkovich, 671 A.2d 937, 938, 939-40 (D.C. 1996) (upholding the Board of Professional Responsibility’s findings to suspend an attorney from the practice of law for negligently failing to pursue cases of three mental health clients who were involuntarily committed to a hospital and for engaging in conduct prejudicial to the administration of justice when the attorney failed to meet or speak with one client to explain the client’s legal rights and determine whether the client wanted to exercise them; when the attorney failed to return or answer calls from another client after she was hospitalized; and when the attorney failed to attend hearings, including the client’s Mental Health Commission hearing, on behalf of another client and could not be reached by said client).

In re Lyles, 680 A.2d 408, 415 (D.C. 1996) (held an attorney did not represent her client with the “requisite level of diligence and zeal” when she filed a proposed plan with numerous deficiencies for a bankruptcy proceeding, did not follow up with her client for approximately two months, and failed to appear at a creditor’s meeting).

D.C. Rules of Prof’l Conduct R. 1.1 (Competence)

D.C. Rules of Prof’l Conduct R. 1.2 (Scope of Representation)

D.C. Rules of Prof’l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof’l Conduct R. 1.14 (Client with Diminished Capacity)

D.C. Rules of Prof’l Conduct R. 3.1 (Meritorious Claims and Contentions)

D.C. Bar Legal Ethics Committee, Ethics Opinion 353, February 2010,

<https://www.dcbart.org/bar-resources/legal-ethics/opinions/opinion353.cfm>

Washington Lawyer. "Representing Clients With Diminished Capacity," May 2010, Hope C. Todd,

<http://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/may-2010-speaking-of-ethics.cfm>:

"In a typical lawyer–client relationship, a lawyer may occasionally wish to substitute his or her own opinion for that of a client's. To the extent this desire compels a lawyer to articulately and persuasively communicate to a client the reasons for pursuing a particular course of conduct or for reaching a particular decision in a matter, such a desire is wholly consistent with ethical mandates. Nonetheless, because most decisions ultimately belong to the client, a lawyer must yield to the client's wishes, notwithstanding the lawyer's professional opinion to the contrary."

Guardian ad litem for the Respondent – A guardian ad litem is an attorney appointed by the court to represent the respondent's decisions when there is a question if the respondent can do so on his or her own. The need for a guardian ad litem arises almost exclusively at the final stage of the commitment process, after the Mental Health Commission ("Commission") has recommended commitment, and the respondent is unable to communicate a decision regarding his or her trial rights. However, a guardian ad litem appointment may occur at any time during a case, including at the Commission stage. Such an appointment during the Commission proceedings is within the exclusive province of the Magistrate Judge and may be made upon request by the respondent's counsel or *sua sponte*.

The guardian ad litem does not necessarily always decide what is in the respondent's best interest, but what decision the respondent would make for himself or herself were he or she able to communicate a decision. A guardian ad litem should only be requested when it is clear that the client cannot communicate with counsel, not when communication is merely difficult. A lawyer must yield to the clients' wishes despite the lawyer's opinion to the contrary.

Commentary –

In re Bradley, 70 A. 3d 1189, 1192, 1195 (D.C. 2013) (suspended an attorney for two years because the attorney "knowingly and repeatedly caused serious damage" to her clients through her neglect of one client for ten years and the other client for five years; she was appointed as the guardian for a client with developmental disabilities but failed to respond to phone calls or letters from the family asking about his whereabouts, ignored requests by family to transfer him to another facility, and intentionally lied under oath during her disciplinary proceedings).

In re A.C., 573 A.2d 1235, 1249 (D.C. 1990) ("...the substituted judgment inquiry is primarily a subjective one: as nearly as possible, the court [or guardian ad litem] must ascertain what the patient would do if competent").

In re Boyd, 403 A.2d 744, 750 (D.C. 1979) (defining the “substituted judgment” approach as what choice that individual, if competent, would have made with respect to medical procedures).

D.C. Bar Legal Ethics Committee, Ethics Opinion 336, May 2006

<https://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion336.cfm>

The role of the guardian ad litem in mental health proceedings is limited. In serving this role, the guardian ad litem will usually be tasked with answering three questions: (1) Whether the respondent is currently competent to make a decision to either accept the Commission’s recommendation for inpatient commitment and waive his or her right to a trial to contest the commitment; (2) Whether, if not competent to make such a choice, applying the substituted judgment test of *In re Boyd*, 403 A.2d 744 (D.C. 1979), the respondent would, were he or she competent to make the decision, choose to accept the inpatient commitment or to contest the commitment recommendation; and (3) If there is insufficient data for the guardian ad litem to make a substituted judgment, then which alternative would be in the respondent’s best interests.

To provide competent representation, the guardian ad litem should meet with the respondent and determine whether the respondent will be able to make decisions on his or her own. The guardian ad litem should observe the respondent and discover all relevant facts in making a determination about the respondent’s abilities to make decisions. When presenting the findings to the court, the guardian ad litem should ensure that all relevant facts are before the court.

A-5 Withdrawal of Representation – If, at any time during the course of representation, the client requests that a court-appointed attorney withdraw from representation, the attorney shall take appropriate steps to ask the court for permission to withdraw. In so doing, the attorney shall protect the client’s confidential information and refrain from making statements or representations that could be detrimental to the client. The attorney shall ensure that all rights to challenge detention are protected. Further, the attorney shall attempt to withdraw from representation in a manner that does not unduly delay or prolong detention or commitment proceedings. The attorney shall take timely steps to provide copies of all case files to successor counsel.

Commentary –

In re Askew, 96 A.3d 52, 59 n. 14 (D.C. 2014) (even if a court-appointed attorney had not received a successor counsel’s request, or a court order to turn over documentation to successor counsel, the attorney had an independent obligation to do so upon termination of the attorney’s representation of the client).

In re Brown, 912 A.2d 568, 570 (D.C. 2006) (upholding the Board of Professional Responsibility’s determination that an attorney violated D.C. Rules of Professional

Conduct when he failed to take timely steps to the extent practicable to protect his clients' interests, such as surrendering papers and property, once he was terminated from representation).

See In re Midlen, 885 A.2d 1280, 1290 (D.C. 2005), writ of certiorari denied by 549 U.S. 825 (2006) (upholding D.C. Board of Professional Responsibility's finding that an attorney violated DC Rules of Professional Conduct when he failed to deliver a client's files to successor counsel for seven months after termination).

In re Douglass, 859 A.2d 1069, 1085 (D.C. 2004) (upon attorney's termination of representation, he violated D.C. Rules of Prof'l Conduct R. 1.16(d) when he refused to surrender the clients' papers and property to which they were entitled unless they agreed to sign a malpractice liability release).

See Atlantic Petro. Corp. v. Jackson Oil Co., 572 A.2d 469, 472 (1990) (counsel could not withdraw on the second trial date where the inevitable result was dismissal of plaintiff's lawsuit, particularly in view of the longstanding relationship between counsel and client, the counsel's conceded readiness for trial, the counsel's knowledge that the client had not retained new counsel, and the counsel's failure to demonstrate a fundamental change in the relationship with the client).

D.C. Rules of Prof'l Conduct R. 1.6 (Confidentiality of Information)

D.C. Rules of Prof'l Conduct R. 1.16 (Declining or Terminating Representation)

D.C. Bar Legal Ethics Committee, Ethics Opinion 333, December 2005,

<https://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion333.cfm>

Washington Lawyer, "Withdrawing From a Representation? Mum's the Word," Dolores Dorsainvil, June 2012,

<http://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/june-2012-bar-counsel.cfm>

B. Client Contact

B-1 Initial Client Meeting – Immediately upon receipt of a court appointment, the attorney shall take appropriate steps to locate his or her client and to arrange a meeting with the client as soon as possible. In the ordinary course of business, this meeting should be within the next business day following the assignment and no later than two business days from the court's appointment. The attorney must take all reasonable and necessary steps to meet the client face-to-face. However, if, in the rare instance, the attorney fails to meet the client in 48 hours, this delay must be mitigated by immediately calling the client. An attorney shall not request court appointments unless the attorney can meet with the respondent in person the next business day following an appointment, and the attorney can carry out the respondent's case-related objectives without delay.

The attorney-client relationship begins at the time of the court's appointment. The purpose of this initial interview is to begin to develop a lawyer-client relationship based on mutual understanding and trust. During the initial interview, the attorney shall:

- explain the commitment law and procedures to the client;
- inform the client about the role of the attorney;
- explain the attorney-client privilege and the existence of and limits to privileges covering the client's communications with therapists, social workers, and other relevant individuals;
- determine the client's version of the facts, which led to the petition filing;
- inform the client of the client's right to a probable cause hearing upon request under D.C. Code § 21-525, and that such a hearing will be held within 24 hours of the request, or by noon of the next business day following a weekend or holiday;
- discuss the alternatives available to the client for continued hospitalization;
- inform the client on how the attorney can be reached and the preferred means for contacting the attorney;
- answer, to the extent possible, the client's most urgent case-related questions; and
- determine the client's wishes regarding the representation.

Commentary –

Mental Health Information Act, D.C. Code §§ 7-1202.01 and -1202.05

In re Starnes, 829 A.2d 488, 506 (D.C. 2003) (-attorney violated D.C. Rules of Professional Conduct when he routinely failed to keep his clients informed of developments in their respective cases; his communication with all of these clients ceased when he withdrew from representation without informing the clients; and he did not file the required notices with the courts or opposing counsel).

In re Jones-Terrell, 712 A.2d 496, 500-501 (D.C. 1998) (where the attorney wrote a check for herself from the client's funds after the client was appointed a conservator who had individual control over the client's finances, the attorney "seriously interfered with the administration of guardianship and conservatorship proceedings" when she failed to consult with the conservator and did not ask permission for the client to incur certain costs).

In re Green, 689 A.2d 560, 561 (D.C. 1997) (attorney was suspended from the practice of law for 30 days for his conduct; such conduct included (1) failure to provide competent representation, (2) failure to represent a client zealously and diligently within the bounds of law, (3) failure to seek the lawful objective of the client, (4) prejudicing or damaging the client during the course of the professional relationship, (5) failure to keep the client reasonably informed, failure to promptly reply to client, and failure to explain matters to the client, and (6) engaging in conduct that seriously interfered with the administration of justice).

In re Zeiger, 692 A.2d 1351, 1352 (D.C. 1997) (suspended an attorney for 60 days because the attorney altered his client's medical records and submitted them to the opposing party's insurer, in violation of Rules 3.4, 4.1, and 8.4, Rules of Professional Conduct).

In re Zdravkovich, 671 A.2d 937, 938, 939-40 (D.C. 1996) (upholding the Board of Professional Responsibility's findings to suspend an attorney from the practice of law for negligently failing to pursue cases of three mental health clients who were involuntarily committed to a hospital and for engaging in conduct prejudicial to the administration of justice when the attorney failed to meet or speak with one client to explain the client's legal rights and determine whether the client wanted to exercise them; when the attorney failed to return or answer calls from another client after she was hospitalized; and when the attorney failed to attend hearings, including the client's Mental Health Commission hearing, on behalf of another client and could not be reached by said client).

D.C. Rules of Prof'l Conduct R. 1.2 (Scope of Representation)

D.C. Rules of Prof'l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof'l Conduct R. 1.4 (Communication)

D.C. Rules of Prof's Conduct R. 2.1 (Advisor)

D.C. Rules of Prof'l Conduct R. 4.1 (Truthfulness in Statements to Others)

D.C. Rules of Prof'l Conduct R. 4.2 (Communication Between Lawyer and Person Represented by Counsel)

Establishing and maintaining a trusting relationship with a client is the foundation of representation. For this reason, it is essential that the attorney be in regular contact with the client. A trusting relationship develops over time and is based on solid, honest communication. During a proceeding, the court may inquire about contact made or attempted between an attorney and his or her client. However, the court may not inquire about the content of the contact.

The lawyer has an obligation to explain the law to the client in a clear and precise way to ensure the client can-to the extent possible-understand the meaning, implications, and consequences of the legal proceedings.

During the initial interview, the attorney should determine the client's wishes regarding a probable cause hearing. If a hearing is requested, the attorney shall contact the court on the client's behalf to request it. The attorney should also seek to obtain written authorization from his or her client to examine the client's medical records.

B-2 General Client Communications during Representation – After developing a thorough knowledge of the law and facts of the case, the attorney shall discuss with his or her client strategy and alternatives to commitment. The ultimate decision regarding challenges or alternatives to commitment must be made by the client; although the attorney may advise the client of options, alternatives, and consequences of the client's decision, the attorney cannot substitute his or her opinion for the client's opinion.

The attorney shall be responsible for ensuring that the client can exercise his or her right to release at any point in the proceeding. This includes assisting a voluntary patient with requesting discharge and ensuring the discharge is effectuated within 48 hours of the client's request. The attorney shall also be responsible for monitoring whether a petition for commitment has been filed before the expiration of the seven day detention period and ensuring discharge if no petition is filed.

The attorney has an ongoing obligation to communicate regularly with the client while the client is being detained and thereafter if there are case-related matters still requiring resolution.

Commentary –

D.C. Code § 21-512

D.C. Code § 21-526

In re Elgin, 918 A.2d 362, 365-66 (D.C. 2007) (attorney was suspended from the practice of law in D.C. for six months and required to pay his client restitution when the attorney violated various rules by failing to inform a client of a settlement offer in an action by a creditor, failing to adequately explain to his client the basis for his legal fees, failing to disclose a conflict of interest, entering into an impermissible business transaction with the client, engaging in dishonest conduct, and interfering with the administration of justice).

In re Outlaw, 917 A.2d 684, 688 (D.C. 2007) (attorney violated D.C. Rules of Professional Conduct when (1) the attorney overlooked the statute of limitations, (2) neglected her client's case for almost two years, and (3) did not promptly inform her client that the statute of limitations barred the client's claim and intentionally avoided providing the client with updates on the client's case).

In re Hager, 812 A.2d 904, 917-18, 924 (D.C. 2002) (suspended an attorney for one year in part because he failed to adequately inform his client of fee provisions set forth in a settlement agreement, agreed not to represent any current or future clients in a class action without consulting his current clients, and signed a settlement agreement in his individual capacity not on behalf of the clients).

D.C. Rules of Prof'l Conduct R. 1.1 (Competence)

D.C. Rules of Prof'l Conduct R. 1.2 (Scope of Representation)

D.C. Rules of Prof'l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof'l Conduct R. 1.4 (Communication)

D.C. Rules of Prof'l Conduct R. 1.14 (Client with Diminished Capacity)

D.C. Rules of Prof'l Conduct R. 2.1 (Advisor)

D.C. Rules of Prof'l Conduct R. 9.1 (Nondiscrimination)

The attorney is expected to have cultural competence when meeting with clients. This competence may require additional effort, including repeat visits to develop a relationship with the client, and to ascertain the client's objectives about the representation. The attorney must treat clients with professionalism and be sensitive to each client's particular

desires, needs, and difficulties. The attorney should be aware that the client's presentation, condition, and position may change over time, and the attorney should continue to communicate with the client on a regular basis. The attorney shall strive to assist the client in identifying and securing, on an ongoing basis, the least restrictive alternatives to obtain the client's objectives.

B-3 Confidential Client Communications – During all phases of the proceeding, the attorney shall exercise the utmost care to safeguard the client's confidential information, including client communications and the client's legally protected mental and physical health information. As in any other representation, the attorney may be privy to sensitive client information, including (1) information the client requests be kept confidential, and (2) information gained during the course of the professional relationship that, if disclosed, would be embarrassing and detrimental to the client. This information is protected by the attorney-client privilege and shall not be disclosed without the client's consent and shall only be disclosed to the extent necessary to pursue the client's objectives.

Commentary –

Mental Health Information Act, D.C. Code § 7-1201, *et seq.*

Herbin v. Hoeffel, 806 A.2d 186, 197 (D.C. 2002) (allegations that an attorney breached client confidences, and that she did so to assist in her client's prosecution, if true, was "extremely serious misconduct" on the attorney's part).

In re Gonzalez, 773 A.2d 1026, 1032 (D.C. 2001) (court instructed bar counsel to informally admonish respondent for revealing a client's confidences when the attorney attached a document to his motion to withdraw which contained embarrassing information about his client).

D.C. Rules of Prof'l Conduct R. 1.6 (Confidentiality of Information)

D.C. Rules of Prof'l Conduct R. 1.14 (Client with Diminished Capacity)

B-4 Investigations – If a probable cause hearing is requested and/or a petition for commitment is filed, the attorney shall thoroughly investigate the facts. Counsel should conduct a thorough, continuing and independent review and investigation of the case, including obtaining information, research, and discovery to prepare the case for trial or post-adjudicatory proceedings. The investigation could include but is not limited to:

- interviewing clients;
- identifying and interviewing potential witnesses, such as hospital staff or the client's family and friends or staff of other facilities familiar with the client;
- talking with the client and a caseworker or doctor about necessary services for the client;
- assisting the client in obtaining the needed services;

- reviewing client’s records, including educational, psychological, psychiatric, medical, substance abuse treatment, law enforcement and court files;
- conferring with other counsel on the case about settlements or interviews with other parties;
- obtaining necessary authorizations for releases of information;
- reviewing court files and other records;
- reviewing all relevant evidence; and
- retaining the service of experts if necessary.

Commentary –

In re Stanton, 860 A.2d 369, 372-73 (D.C. 2004) (noted one instance where the attorney knew that the case against his client was weak but made no effort to locate witnesses who may have been helpful to bolster his client’s case, did not conduct informal discovery from the prosecutor, did not initiate plea negotiations, did not undertake any investigation, and did not speak to his client; as such, his failure to investigate was quite specific, and the court used this failure, in part, to deny the petition for reinstatement).

D.C. Rules of Prof’l Conduct R.1.1 (Competence)

Conducting a thorough investigation is an essential aspect of competent representation. Through this investigation, the attorney may learn necessary and relevant information about the case and may be able to preserve the client’s rights.

B-5 Negotiations – if appropriate, the attorney shall enter into negotiations to achieve the client’s stated goal(s). For example, an attorney may discuss with the treating physician(s) alternatives to the client’s hospitalization or may confer with social workers, Department of Behavioral Health officials, or other providers about alternative placements for the client. Regardless of the client’s decision about pursuing challenges with or alternatives to commitment, the attorney retains an ongoing obligation to remain in communication with the client and to advocate for the client’s stated goal.

Commentary –

D.C. Rules of Prof’l Conduct R. 1.2 (Scope of Representation)

D.C. Rules of Prof’l Conduct R.1.4 (Communication)

C. Mental Health Proceedings

C-1 Petition for Continued Hospitalization or Detention – Pursuant to D.C. Code § 21-521, an accredited officer or agent of the Department of Behavioral Health of the District of Columbia, a person authorized to make arrests in the District of Columbia, or a physician or qualified psychologist of the person in question—who has reason to believe that a person is mentally ill and likely to injure self or others as a result of this illness—

may take the person into custody without a warrant, take him/her to a hospital or to the Department of Behavioral Health, and make an application for his/her admission for emergency observation and diagnosis. A public hospital shall admit and detain for purposes of emergency observation and diagnosis a person if the application is accompanied by a certificate of a psychiatrist on duty at the hospital stating that he has examined the person, believes the person has a mental illness, and, as a result of the mental illness, is likely to injure self or others unless immediately hospitalized. D.C. Code § 21-522. A patient may be detained for two days based solely upon the application for emergency hospitalization and certificate of the admitting psychiatrist, and for seven additional days if continued hospitalization is allowed by the court. D.C. Code § 21-523.

Respondent's lawyer shall arrange to meet with the client as soon as possible, develop a lawyer-client relationship, and explain the commitment process to the client. The attorney should also seek to obtain written authorization from his or her client to examine the client's medical records.

After reviewing the medical record and the detention or commitment petition, the attorney shall determine if any procedural defenses can be raised and, if appropriate, file appropriate motions with supporting memoranda. (Procedural defenses can be raised to challenge initial detention or commitment; for example, if the hospital failed to file the petition at the appropriate time or if the hearing has not been commenced within the time period required by the statute, or if the petition fails to set forth facts in support of the petition.)

At this meeting about the petition, the attorney must inform the client of the client's right to a probable cause hearing upon request under D.C. Code § 21-525. This hearing must be held within 24 hours of its request or by noon on the next business day following a weekend or holiday.

Commentary –

In re Peterson, 984 A.2d 192, 195 (D.C. 2009) (patient's rights were not violated when the patient, who had admitted himself as a voluntary patient, was transferred to a second hospital as an involuntary patient because the patient's case was an urgent situation as the patient had called bomb threats to the police, damaged unit doors and locks, removed pictures from the wall, and attempted to assault staff).

In re Johnson, 691 A.2d 628, 633 (D.C. 1997) (“When someone voluntarily checks into a hospital to receive inpatient psychiatric treatment, that person becomes immune to the judicial commitment procedures of the Ervin Act not only because the Act encourages voluntary admissions, but also because that individual no longer meets the statutory (and constitutional) definition of a committable person.”).

In re Reed, 571 A.2d 801, 801 (D.C. 1990) (government could not rely on the late-filed petition to authorize involuntary confinement of a mentally ill patient during the

pendency of the petition proceedings, where it filed its judicial hospitalization petition beyond the seven-day period of patient's initial confinement).

In re Rosell, 547 A.2d 180, 181-82 (D.C. 1988) (detention of mental hospital patient was not unlawful because, despite the on-call resident not being a physician "of the person in question," the continued detention was justified after an independent judicial determination of probable cause remedied the imperfection of the initial application).

Williams v. Meredith, 407 A.2d 569, 574 (D.C. 1979) ("The fact of an independent judicial determination of the need for further involuntary hospitalization thus remedied the legal imperfection of the original detention by the rulings that the facts warranted the extended detentions.").

In re Barnard, 455 F.2d 1370, 1373 (D.C. Cir. 1971) (affirming district court's ruling that the application for respondent's admission to a mental health hospital as an emergency involuntary patient was valid because it contained an application for emergency hospitalization filed by the physician, and the admitting psychiatrist's certificate indicating that the patient had a knife, poison, and planned to buy a gun thereby justifying further detention of the involuntary mental patient).

D.C. Rules of Professional Conduct R.1.1 (Competence)

D.C. Rules of Professional Conduct R.1.3 (Diligence and Zeal)

D.C. Rules of Professional Conduct R.3.1 (Meritorious Claims and Contentions)

C-2 Probable Cause Hearing – Once a client requests a probable cause hearing, the attorney shall contact the court on the client's behalf. The attorney shall zealously represent the client at such a hearing, raising all legal and factual arguments for release. If the client does not immediately request a probable cause hearing, the attorney retains an ongoing obligation to communicate and provide counsel to the client, including but not limited to: assisting the client in communication with treatment providers, advocating for conversion to a voluntary status, and helping the client request a discharge in accordance with D.C. Code § 21-512. Beyond the probable cause determination, the attorney has an ongoing obligation to communicate regularly with the client throughout the client's detention throughout the client's detention and pendency of the mental health case.

Commentary –

In re Herman, 619 A.2d 958, 959 (D.C. 1993) (when the trial court becomes involved in the emergency hospitalization process pursuant to D.C. Code §§ 21-524 or 21-525, the court's focus should be on the present mental condition of the person involved, and whether or not probable cause exists to believe that person is likely to injure himself or herself or others if not immediately detained; at this stage, any defect in the application itself should be taken into account insofar as it may bear upon reliability and integrity of the application, but should not be treated as per se cause for immediate termination).

In re DeLoatch, 532 A.2d 1343, 1344, 1345 (D.C. 1987) (respondent was entitled to immediate release when the court did not hold a probable cause hearing within 24 hours of the respondent's request because the 24-hour timing requirement is mandatory and not directory; "The [Ervin] Act evinces the intention of Congress to permit emergency confinement for only short and precisely circumscribed durations. Interpretation of § 21-525 to allow rather than require a hearing within 24 hours would do serious damage to the statutory scheme.").

D.C. Rules of Prof'l Conduct R. 1.2 (Scope of Representation)

D.C. Rules of Prof'l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof'l Conduct R. 1.4 (Communication)

D.C. Rules of Prof'l Conduct R. 2.1 (Advisor)

If a probable cause hearing is requested, the attorney shall thoroughly investigate the facts. *See* B-4 of Mental Health Standards for a discussion on a proper investigation.

C-3 Evidentiary Hearing –The attorney must meet and discuss with the client the client's rights in an evidentiary hearing before the Commission on Mental Health ("the Commission"). The attorney should proceed upon the presumption that the client wishes to contest such a hearing and should take timely steps to prepare. While meeting with the client, the attorney shall explain that the burden would be on the government to prove the client is mentally ill, and likely to injure himself/herself or others as a result of the mental illness.

If there are procedural or substantive challenges the attorney would be able to raise at the hearing, the attorney shall explain those arguments to the client in the course of advising the client on the hearing.

The attorney shall explain that at the hearing, the client would have the right to have the attorney cross examine the petitioner's witnesses, the right to put on witnesses in support of the client, and the right to testify. If the client does *not* wish to contest such a hearing, the attorney shall explain to the client the rights that the client gives up by waiving his or her right to a contested evidentiary hearing before the Commission. The attorney shall also inform the client that the client's decision to waive his or her right to a contested hearing before the Commission does not affect the client's right to a trial by judge or by jury.

The attorney shall not continue the Commission hearing or agree to the government's request for a continuance of the hearing without first consulting with the client, particularly when the client is detained and continuance of a hearing might result in prolonged detention.

If there is doubt or uncertainty as to whether the client wishes to waive his or her right to a contested hearing before the Commission, the attorney shall not waive the client's rights and shall continue to prepare for a contested hearing.

Prior to a hearing before the Commission, the attorney shall identify potential witnesses who will testify in support of the client and, when necessary, subpoena the witnesses. In advance of the hearing, the attorney shall prepare witnesses for direct examination. This preparation includes thoroughly investigating and preparing the witness for the petitioner's cross-examination. The attorney shall review the medical record and prepare to cross examine the petitioner's witnesses, if tactically appropriate, using documents from the medical record. The attorney should attempt to determine the identity of the hospital's witnesses in advance of the hearing and make an effort, if tactically appropriate, to interview them and prepare appropriate cross-examination. The attorney shall discuss with the client his/her desire to testify. If the client wishes to testify, the attorney shall thoroughly prepare the client for direct and cross-examination. The attorney shall not waive the client's right to testify without the consent of the client.

During the hearing before the Commission, the attorney shall act as a zealous advocate for the client, ensuring that the proper procedures are followed and that the client's interests are well represented.

After the hearing before the Commission, the attorney shall explain the Commission's decision. If the Commission recommends commitment, the attorney shall explain the client's right to trial by judge or jury pursuant to D.C. Code § 21-545 and shall demand a trial on the client's behalf. If the client is undecided as to whether to request a trial, the attorney shall demand a jury trial within five days of the issuance of the Commission's report to preserve client's trial rights. The attorney shall review the evidence presented at the hearing and advise the client about any steps the client can take during the commitment period in order to be discharged from the hospital.

If the Commission dismisses the petition, the attorney shall ensure that the client is swiftly discharged from the hospital; or if the client wishes to remain at the hospital as a voluntary patient, the attorney shall ensure the client's legal status is converted from involuntary to voluntary.

If the client articulates that he or she does not wish to continue to contest the commitment by going to trial, the attorney shall thoroughly explain to the client all the rights that he or she would be giving up by waiving his or her right to a trial. The attorney shall explain that, at a trial, the burden would be on the government to prove by clear and convincing evidence that the client is mentally ill and likely to injure self or others as a result of that mental illness. The attorney shall also explain that, at a trial, the attorney would have the opportunity to cross examine witnesses, to collaborate with the client on whether the client wished to put on any witnesses in his or her own defense, and to discuss with the client whether the client wished to testify.

The attorney shall further explain that, if the client waives his or her right to a trial, the court will enter a final order of commitment, and the client shall be bound by the court order for a period of one year, at the close of which the petitioner could file a petition for recommitment. The attorney shall explain that, if the petitioner moves for recommitment at the close of the one-year period, the client will then have a right to have a hearing

before the Commission as to whether he should be recommitted, but he or she would *not* have the right to a trial by judge or jury.

If, given all of the information, the client still wishes to waive his or her right to a trial, the attorney shall assist the client in formally waiving his or her trial rights before the Court. If the client wishes to have a trial, the attorney shall so request and shall begin preparing for trial.

Commentary –

D.C. Code § 21-511

D.C. Code § 21-544

In re Johnson, 699 A.2d 362, 370 (D.C. 1997) (it is clear from the language of the Ervin Act that the Commission on Mental Health’s ability to examine a person alleged to be mentally ill is essential in the court’s consideration of a request for judicial hospitalization, and the person alleged to be mentally ill may be compelled to appear for examination).

In re Clark, 700 A.2d 781, 786 (D.C. 1997) (involuntary patient status did not violate statutory and constitutional requirements where the patient was afforded both procedural and evidentiary protection in the form of two examinations after a petition for judicial hospitalization was filed, where it was found by clear and convincing evidence that he was mentally ill and likely to injure himself or others as a result of the mental illness, and subsequently, he was afforded an evidentiary dispositional hearing).

D.C. Rules of Prof’l Conduct R.1.1 (Competence)

D.C. Rules of Prof’l Conduct R.1.14 (Client with Diminished Capacity)

D.C. Rules of Prof’l Conduct R.1.2 (Scope of Representation)

D.C. Rules of Prof’l Conduct R.1.3 (Diligence and Zeal)

D.C. Rules of Prof’l Conduct R.1.4 (Communication)

D.C. Rules of Prof’l Conduct R. 2.1 (Advisor)

D.C. Rules of Prof’l Conduct R.3.1 (Meritorious Claims and Contentions)

D.C. Rules of Prof’l Conduct R.3.2 (Expediting Litigation)

C-4 Trial- While the client awaits trial, the attorney shall continue to keep in contact with the client and the client’s treatment providers. The attorney shall, if authorized by the client, engage in informal advocacy to seek dismissal of the case and/or seek the client’s conversion to voluntary status.

If there is doubt or uncertainty as to whether the client wishes to waive his or her right to a trial, the attorney shall not waive the client’s rights and shall continue to prepare for a contested hearing.

The attorney shall not continue a trial or agree to the government’s request for a continuance of the hearing without consulting with the client, particularly when the client is detained and continuance of a hearing might result in prolonged detention.

In preparing for a trial, the attorney shall identify potential witnesses who will testify in support of the client and, when necessary, subpoena the witnesses. In advance of the trial, the attorney shall prepare witnesses for direct examination. This preparation includes thoroughly investigating and preparing the witness for the petitioner's cross-examination. The attorney shall review the medical record and prepare to cross-examine the petitioner's witnesses, if tactically appropriate, using documents from the medical record. The attorney should attempt to determine the identity of the hospital's witnesses in advance of the hearing and make an effort, if tactically appropriate, to interview them and prepare appropriate cross-examination.

The attorney shall discuss with the client his/her desire to testify. If the client wishes to testify, the attorney shall thoroughly prepare the client for direct and cross-examination. The attorney shall not waive the client's right to testify without the consent of the client.

Commentary –

In re Artis, 615 A.2d 1148, 1151 (D.C. 1992) (a civil commitment proceeding under this section “spotlights the mental condition of the person at the time of the hearing. At the proceeding, the factfinder's role is to determine whether clear and convincing evidence shows that the person before it is currently mentally ill and likely to injure herself or others” if not detained).

D.C. Rules of Prof'l Conduct R. 1.1 (Competence)

D.C. Rules of Prof'l Conduct R. 1.14 (Client with Diminished Capacity)

D.C. Rules of Prof'l Conduct R. 1.2 (Scope of Representation)

D.C. Rules of Prof'l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof'l Conduct R. 1.4 (Communication)

D.C. Rules of Prof'l Conduct R. 3.1 (Meritorious Claims and Contentions)

D.C. Rules of Prof'l Conduct R. 3.2 (Expediting Litigation)

C-5 Appeal – Counsel shall consider and discuss with the client the client's right to appeal and whether the appeal has merit. When discussing the possibility of an appeal, counsel should explain both positive and negative effects. Counsel should also discuss whether he or she will represent the client in the appeal and whether another attorney will be appointed.

If the client decides to appeal, counsel must file any necessary post-hearing motions and the notice to appeal, and he or she must order a transcript. If counsel does not serve as appellate counsel, he or she must transmit all documents relevant to the case to the appellate counsel.

Counsel must protect his or her client's interests by responding in a thorough and timely manner to any post trial motions, notice of appeal and order for transcript filed by any adverse party. This obligation remains in effect until appellate counsel has been appointed for his or her client.

Counsel, if appointed to do the appeal, must carefully review his or her obligations as defined by the Rules of the District of Columbia Court of Appeals.

Counsel must communicate the result of an appeal and its implications to the client in a developmentally appropriate manner. If, as a result of the appeal, the client must take action in the case, counsel should instruct to client to do so. Counsel must file any necessary motions with the trial court resulting from the appeal. If trial counsel did not handle the appeal, he or she must keep apprised of the matter and monitor whether necessary motions are filed with the trial court.

Commentary –

In re Schlemmer, 870 A.2d 76, 76, 82 (D.C. 2005) (upheld the Board of Professional Responsibility’s recommendation to reprimand an attorney for violating D.C. Rules of Professional Conduct when he failed to file an appeal, as requested by his client, after an immigration court denied the client’s requests to withhold deportation and grant the client asylum then failed to inform his client that the appeal had not been filed).

In re Smith, 880 A.2d 269, 275-76 (D.C. 2005) (“We hold that once a new order determining the status of a committed mental health patient is in effect, it supersedes any prior order on the same matter and renders moot an appeal from the prior order, unless there are collateral effects from the prior order resulting in prejudice to the patient.”).

In re Baron, 808 A.2d 497, 498-99 (D.C. 2002) (attorney was suspended for 30 days and was placed on a one-year probation when she failed to communicate with her client during the entire pendency of the client’s appeal, did not respond to her client’s attempt to communicate with her, and ignored the appellate court’s requests that she contact her client).

In re Gordon, 747 A.2d 1188, 1189 (D.C. 2000) (publicly censured an attorney when he was appointed to represent an indigent criminal defendant seeking post-conviction relief but failed to initiate any contact with his client, failed to file a motion to reduce sentence as requested by the client, and, as a result, the client lost his opportunity to seek a reduction in sentence).

In re Drew, 693 A.2d 1127, 1133 (D.C. 1997) (suspended an attorney for deliberately failing to follow the instructions of his clients regarding the appeal of their convictions and by failing to file a motion to alter one of his client’s sentences).

D.C. Rules of Prof’l Conduct R. 1.1 (Competence)

D.C. Rules of Prof’l Conduct R. 1.14 (Client with Diminished Capacity)

D.C. Rules of Prof’l Conduct R. 1.16 (Declining or Terminating Representation)

D.C. Rules of Prof’l Conduct R. 1.2 (Scope of Representation)

D.C. Rules of Prof’l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof’l Conduct R. 1.4 (Communication)

D.C. Rules of Prof’l Conduct 3.1 (Meritorious Claims and Contentions)

C-6 Revocation and/or Re-hospitalization – If the government or petitioner intends to file a petition to revoke outpatient status, or a petition for re-hospitalization pursuant to D.C. Code § 21-548, the attorney shall diligently and zealously represent the client’s interests. The attorney must meet with the client, explain the revocation or re-hospitalization proceeding, and ensure that the client understands his or her rights with respect to such proceedings.

Commentary –

D.C. Code § 21-546

D.C. Code § 21-547

D.C. Code § 21-548

In re Feenster, 561 A.2d 997, 998 (D.C. 1989) (patient’s outpatient commitment improperly revoked where the hospital held the patient involuntarily for ten days without a judicial hearing to determine whether probable cause existed for that hospitalization).

In re Stokes, 546 A.2d 356, 360, 362 (D.C. 1988) (trial court must satisfy itself that revocation of an outpatient commitment is the least restrictive alternative available; a revocation of outpatient commitment status based solely on a patient’s failure to comply with the prescribed course of outpatient treatment, without factual underpinnings or reliable evidence in the record that the patient is likely to be dangerous as a result of a mental illness, violated the Ervin Act).

In re Richardson, 481 A.2d 473, 483-84 (D.C. 1984) (a trial court may authorize an outpatient’s summary re-hospitalization in certain situations, provided that, in accordance with due process, the patient was detained only temporarily and the hospital complies with the affidavit and notice requirements set forth in the Ervin Act).

D.C. Rules of Prof’l Conduct R. 1.1 (Competence)

D.C. Rules of Prof’l Conduct R. 1.2 (Scope of Representation)

D.C. Rules of Prof’l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof’l Conduct R. 1.4 (Communication)

C-7 Obligations during and after Commitment – If the client is committed, the attorney shall continue to represent the client during the period of commitment to ensure that the client’s rights are protected. These rights include, but are not limited to, the client’s right to challenge the client’s return to inpatient status and the right to periodic review. If the attorney is unable to continue representing the client, the attorney shall ensure that the client has successor representation.

An attorney must continue zealous advocacy on behalf of his or her client, even at the post-disposition phase. Such advocacy may include, but is not limited to, periodic review attendance, 180-day independent examinations, monitoring community placements, and ongoing involvement with community providers. An attorney may be compensated for

such work when appropriate. Increased post-disposition advocacy may help to sustain outplacements and reduce recidivism, all while minimizing the number of, and obviating some, expensive court proceedings.

If the one-year period of commitment expires and the government has not filed a petition for re-commitment, the attorney shall: (1) file a motion to terminate the commitment, (2) notify the client that the commitment is terminated, and (3) notify the client's treatment providers and/or the Department of Behavioral Health that any mental health services the client continues to receive are on a voluntary basis.

The client's file belongs to the client and must be provided to the client upon request or after the case is closed. The client is entitled to request the file even if representation is terminated. The attorney is obligated to retain and protect the confidentiality of client files for at least five years following the termination of representation, except for documents previously provided to the client by the attorney or documents that are otherwise publicly available to the client. After five years have passed and the attorney has made reasonable efforts to ascertain the client's wishes about retaining or destroying the files, the attorney may destroy any files not reasonably necessary to protect the client's interests.

Commentary –

In re Karr, 722 A.2d 16, 20 (D.C. 1998) (failure to return the client's files promptly to the client, pursuant to the client's request, was improper).

D.C. Rules of Prof'l Conduct R. 1.16 (Declining or Terminating Representation)

D.C. Rules of Prof'l Conduct R. 1.2 (Scope of Representation)

D.C. Rules of Prof'l Conduct R. 1.3 (Diligence and Zeal)

D.C. Rules of Prof'l Conduct R. 1.4 (Communication)

D.C. Rules of Prof'l Conduct R. 1.6 (Confidentiality of Information)

D.C. Bar Legal Ethics Committee, Ethics Opinion 283, July 1998,

<http://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion283.cfm>