

**IN THE SUPREME COURT
STATE OF GEORGIA**

NO. SO7C1208

IN RE: Sherri Jefferson

**AMICI CURIAE BRIEF OF THE
SOUTHERN JUVENILE DEFENDER CENTER
&
NATIONAL JUVENILE DEFENDER CENTER
IN SUPPORT OF APPELLANT**

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STATEMENT OF INTEREST

The Southern Juvenile Defender Center (SJDC) is a project of the Southern Poverty Law Center dedicated to building the juvenile defense bar's capacity to provide high quality representation to children in the Deep South - Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina. SJDC provides training, litigation support, networking opportunities, and practice materials to defenders in the Southeast. SJDC also works collaboratively with the judiciary and state legislatures to improve understanding of the role of juvenile defenders and to strengthen governmental support for zealous and effective juvenile defense. Given this case's potential to have widespread impact on the defense bar, SJDC is interested in ensuring that this Court recognizes the gravity of the impact of contempt sanctions on the juvenile defenders' advocacy and the juvenile justice system.

The National Juvenile Defender Center (NJDC) was created to ensure excellence in juvenile defense and promote justice for all children. NJDC responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. NJDC gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build

partnerships, exchange information, and participate in the national debate over juvenile justice. NJDC provides support to public defenders, appointed counsel, child advocates, law school clinical programs, and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural, and tribal areas. It also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

INTRODUCTION

Defense attorney Sherri Jefferson appeared before the Glynn County Juvenile Court armed with an ethical and professional obligation to provide zealous advocacy for her young client. When disputes arose during the trial regarding evidentiary issues, Jefferson addressed the court respectfully, but questioned its rulings and stated for the record her view that the court had prejudged the case. Tr. vol. 2, 6, 9 Aug. 9, 2005. The trial judge cited Jefferson with numerous instances of contempt. During a hearing on the contempt charges, most allegations against Jefferson were discarded as lacking evidence, but the conviction that stands poses a serious threat to the fair administration of the juvenile justice system.

Jefferson was convicted of contempt for attempting to zealously advocate for a client in a delinquency court system that historically has discouraged such advocacy. Zealous advocacy is absolutely necessary for the protection of the constitutional rights of young defendants and essential to the truth-seeking function of the judicial system. Allowing Jefferson's conviction to stand will discourage other attorneys from zealously advocating for their clients, prejudicing the rights of the clients and upsetting the delicate balance that exists in an adversarial system. To prevent this chilling effect, Jefferson's convictions must be overturned.

ENUMERATION OF ERROR

The Court of Appeals erred in affirming Jefferson's contempt convictions, thereby chilling future zealous advocacy by juvenile defense attorneys on behalf of their vulnerable clients.

ARGUMENT AND AUTHORITY

- I. **The United States Supreme Court clearly held in *In re Gault* that children facing delinquency proceedings have the right to zealous protection of their due process rights by defense counsel.**

Youth in delinquency cases have firmly established due process rights. Forty years ago, in the landmark case of *In re Gault*, the United States Supreme Court enumerated the constitutional protections to which youth in delinquency court are entitled, including the right to counsel, notice of the charges against them, the right to confront and cross-examine the witnesses, and the privilege against self-incrimination. 387 U.S. 1 (1967). The facts of *Gault* reveal the injustices that can result when a youth stands before the state, accused of crime, without the assistance of a skilled advocate.

Gerald Gault was fifteen years old when he was adjudicated guilty of making a lewd phone call and sent to a state industrial school until his majority. He received a six-year sentence for an offense that carried a maximum of six months if committed by an adult. Gerald was never informed of the charges against him, was not allowed to cross-examine the complaining witness (who never even testified

before the judge), and was never informed that he did not have to answer questions about the case. He was not given a lawyer or advised about his right to one.

Without an advocate to challenge the actions of the court, Gerald was ordered to a juvenile prison on the basis of incompetent evidence and without any of the basic guarantees of due process.

Rejecting the argument that due process rights would undermine the rehabilitative goals of juvenile courts, and acknowledging that "history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure," the Supreme Court proclaimed that children are entitled to constitutional protections in juvenile court. *Gault*, 387 U.S. at 18-19. The Court refused to hide behind semantics and recognized that, although not labeled as criminal court convictions, juvenile court adjudications nonetheless impinge on fundamental liberty interests of the child. Before the state can deprive a child of liberty, the Court held, fundamental due process protections must be afforded.

Of the protections required by *Gault*, the right to counsel is the most basic and far-reaching. If their due process rights are to have any practical meaning, children must have access to counsel to advocate for their enforcement.

The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and

submit it. The child “requires the guiding hand of counsel at every step in the proceedings against him.”

Id. at 36 (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932)). The Court recognized that, for a child in court, “the assistance of counsel is essential... for the determination of delinquency, carrying with it the awesome prospect of incarceration.” *Id.*

In the years following *Gault*, several other cases affirmed that juvenile delinquency courts must be operated much like criminal courts. With *In re Winship*, 397 U.S. 358 (1970), the Court declared that juveniles cannot be adjudicated delinquent on an evidentiary standard less than beyond a reasonable doubt because “[t]he same considerations that demand extreme caution in factfinding to protect the innocent adult apply as well to the innocent child.” *Id.* at 365. Cementing the Court’s recognition of the seriousness of delinquency proceedings, *Breed v. Jones*, 421 U.S. 519 (1975), established that juvenile adjudications are equivalent to criminal convictions for purposes of double jeopardy determinations.

Today, these due process protections are even more essential as jurisdictions across the country put increasingly punitive measures in place for juveniles. Georgia, for example, allows youth to be transferred from juvenile court for prosecution as adults for a wide range of offenses. *See, e.g.*, O.C.G.A. § 15-11-30.2. Moreover, juveniles in delinquency court now face a host of collateral

consequences that can plague them through adulthood. For example, juvenile adjudications now expose youth to potentially lifelong implications, such as sex offender registration; immigration consequences; limited employment, educational and housing opportunities; and preclusion from military service. *See, e.g.* Michael Pinard, *The Logistical and Ethical Difficulties of Informing Juveniles about the Collateral Consequences of Adjudications*, 6 Nev. L.J. 1111, 1114-15, 1118 (2006); 42 U.S.C. § 16901 et seq. (The Adam Walsh Child Protection and Safety Act of 2006, mandating that youth transferred to criminal court and certain juveniles adjudicated delinquent in juvenile courts be included on both a national sex offender registry list and similar state lists). As the stakes of juvenile court involvement continue to increase, ensuring that youth receive zealous representation by competent counsel becomes all the more crucial.

II. Through zealous advocacy, juvenile defenders play the critical role of ensuring that the due process rights of their young clients are protected.

Jefferson had to ensure that her client's due process rights were protected because, as a juvenile defense attorney, she played the singularly important role of protecting and advancing the rights of her young clients. *See Fare v. Michael C.*, 442 U.S. 707, 719 (1979) ("Whether it is a minor or an adult who stands accused, the lawyer is the one person to whom society as a whole looks as the protector of the legal rights of that person . . ."). Indeed, "no single action holds more

potential for achieving procedural justice for the child in juvenile court than provision of counsel.” *In re Gault*, 387 U.S. at 39 n.65 (internal citation omitted). As due process precedents, ethics rules, and state and national standards have all confirmed, defense attorneys in juvenile court play the same fundamental role as defense attorneys in adult criminal court: to advocate zealously for their clients’ expressed interests.¹

A. Under our adversarial justice system, the juvenile defender’s role as a zealous advocate for her client’s cause is fundamental to the truth-seeking process and the protection of constitutional rights.

The right to counsel is "the essence of justice." *Kent v. United States*, 383 U.S. 541, 561 (1966). In juvenile court, as in adult court, competent, zealous defense attorneys are critical for ensuring that youth can meaningfully invoke their

¹ In addition, due to the unique qualities of youth, public defenders representing indigent juveniles must possess highly specialized knowledge and training specifically relevant to delinquency cases. A well-established body of research demonstrates—and the United States Supreme Court has acknowledged—that youth differ from adults in ways that have implications for juvenile delinquency courts. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 569-72 (2005) (relying in part on social science research on the developmental differences of adolescents to hold that imposing the death penalty for offenses committed before age 18 is unconstitutional); *see also* Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009 (2003). To ensure their due process rights, youth must be afforded highly skilled attorneys with a nuanced understanding of these developmental realities and their legal implications, as well as a range of collateral issues. *See* Performance Standard 2.2 (directing counsel to be knowledgeable about, and seek ongoing training in, areas as diverse as child and adolescent development; mental health issues; cultural diversity; skills for interviewing children; and laws governing immigration and special education.).

due process rights, including the right to confront their accusers, to cross-examine witnesses, to present evidence, to challenge the state's evidence, to participate in disposition decisions, and to appeal adverse rulings. *See In re Gault*, 387 U.S. at 39 n.65 (citations omitted). Fulfilling this important role requires juvenile defenders to advocate zealously for their clients' expressed interests, not their best interests, despite the pervasive culture in many juvenile courts to the contrary. *See* Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 *Fordham L. Rev.* 1399, 1412, 1424 (1996); ABA Juvenile Justice Ctr., *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 9, 51 (1995).²

The role of counsel stems from the right itself, *see* Guggenheim, 64 *Fordham L. Rev.* at 1420-1421, and implicit in that right is the notion that there can be “no fair trial unless the accused receives the services of an effective and

² For more in-depth discussion of the role of the defense attorney in juvenile court, see also Patricia Puritz and Katayoon Majd, *Ensuring Authentic Youth Participation in Delinquency Cases: Creating a Paradigm for Specialized Juvenile Defense Practice*, 45 *Fam. Ct. Rev.* 466 (July, 2007); Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 *Notre Dame L. Rev.* 245, 256 (2005); Ellen Marrus, *Best Interests Equals Zealous Advocacy: A Not So Radical View of Holistic Representation for Children Accused of Crime*, 62 *Md. L. Rev.* 288, 356 (2003); *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 *Fordham L. Rev.* 1301, 1312 (1996); Marvin R. Ventrell, *Rights & Duties: An Overview of the Attorney-Child Client Relationship*, 26 *Loy. U. Chi. L.J.* 259, 270 (Winter 1995).

independent advocate.” *Polk County v. Dodson*, 454 U.S. 312, 322 (1981). The justice system is built on the notion that “adversarial testing will ultimately advance the public interest in truth and fairness” and that a defense attorney best serves the public “by advancing ‘the undivided interests of his client.’” *Id.* at 318-319 (quoting *Ferri v. Ackerman*, 444 U.S. 193, 204 (1979)). The attorney’s duty, then, is to advocate the client’s cause. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). Once the attorney undertakes representation of a case, he cannot “take any act adverse to his client’s interests or incompatible with applying his best skill, zeal, and diligence in representing that client.” *Rhone v. Bolden*, 270 Ga. App. 712, 717 (2004) (citing *Tunsil v. Jackson*, 248 Ga. App. 496, 499 (2001); *Nelson & Hill, P.A. v. Wood*, 245 Ga. App. 60, 67 (2000)).

B. State and national ethics rules and attorney performance standards explicitly affirm juvenile defenders’ obligation to serve as zealous advocates by protecting the record and challenging questionable rulings.

The State of Georgia has explicitly acknowledged the ethical obligation of juvenile defenders to engage in zealous, client-directed advocacy. The Georgia Rules of Professional Conduct (hereinafter “Rules”) provide that *all* attorneys practicing in the state “should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”³ Ga. Rules of

³ Georgia’s standards are consistent with national standards and guidelines regarding juvenile defense representation. The Institute of Judicial Administration and the American Bar Association (“IJA/ABA”), for example, developed

Prof'l Conduct R. 1.3 cmt. 1 (emphasis added); *see also* Ga. Rules of Prof'l Conduct Preamble ¶ 2 ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."). Moreover, in carrying out the representation, lawyers "shall abide by a client's decisions concerning the objectives of representation." *Id.* at R. 1.2 (a). Although the *Rules* acknowledge that, in some instances, a child-client's ability to make adequately considered judgment might be impaired, the rules nonetheless require that, even in such instances, attorneys "shall, as far as reasonably possible, maintain a normal client-lawyer relationship" with the child. *Id.* at R. 1.14(a). Regardless of the client's age, therefore, the attorney owes the same ethical obligations, which include, *inter alia*, duties of competence (Rule 1.1), diligence (Rule 1.3), communication (Rule 1.4), loyalty (Rule 1.7), and confidentiality (Rule 1.6).

Throughout the course of representation, juvenile defenders "may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor." Ga. Rules of Prof'l Conduct R. 1.3 cmt. 1. The attorney owes certain

comprehensive juvenile justice standards which highlight the importance of counsel for "the fair and accurate resolution of issues at all stages of the proceedings." Institute of Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* §1.1. Similarly, the nation's leading professional organization of juvenile court judges, the National Council of Juvenile and Family Court Judges released *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, 30-31, 122, 137, 161-162 (2005), which clearly affirm that the attorney owes a primary duty to the client and must represent the expressed interests of the child throughout the proceedings.

obligations to the court and other parties as well, such as the attorney's duty of candor to the tribunal (Rule 3.3); duty not to "engage in conduct intended to disrupt the tribunal" (Rule 3.5(c)); and the duty not to "knowingly advance a claim or defense that is unwarranted under existing law" unless a good faith argument exists to change existing law (Rule 3.1(b)). But the "legal profession is at best an inexact science," *Hughes v. Malone*, 146 Ga. App. 341, 345 (1978), and as the Comments to the Rules themselves acknowledge, "in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change," Ga. Rules of Prof'l Conduct R. 3.1 cmt. 1.

Under the Georgia Rules of Professional Conduct, a lawyer "may stand firm against abuse by a judge," and although the lawyer's actions should avoid reciprocation, "[f]airness and impartiality of the trial process is strengthened by the lawyer's protection of the record for subsequent review." *Id.* at R. 3.5 cmt. 8. While the lawyer has a duty to uphold legal process, it is also a lawyer's duty "when necessary, to challenge the rectitude of official action." *Id.* at Preamble ¶ 4. National standards also emphasize the necessity of challenging erroneous rulings. The *IJA/ABA Standards*, for example, require attorneys to comply with judges' rulings (§7.4(a)) and to maintain decorum and show respect (§7.5), but emphasize that attorneys have "a right to make respectful requests for reconsideration of adverse rulings" and have a "duty to set forth on the record adverse rulings or

judicial conduct which counsel considers prejudicial to the client's legitimate interests" (§7.4(a)).

Further guidance on the specific role of juvenile defenders is provided in Georgia's recently adopted *Performance Standards for Juvenile Defense Representation in Indigent Delinquency and Unruly Cases* (adopted Dec. 10, 2004, ratified by the 2006 General Assembly, signed by the Governor on May 5, 2006), available at http://www.gpdsc.com/cpdsystem-standards-juvenile_cases.pdf (hereinafter "*Performance Standards*"). Acknowledging that juvenile defenders must uphold the ethical standards of the State Bar of Georgia, the *Performance Standards* explain:

The primary and most fundamental obligation of a juvenile defense attorney is to provide zealous and effective representation for his or her client at all stages of the juvenile court proceedings. The defense attorney's duty and responsibility is to promote and protect the child's expressed interest.

Performance Standard 1; *see also* Performance Standard 3.1 ("Counsel's principal duty is to zealously advocate the client's expressed interests rather than for counsel's opinion as to what is in the client's best interests"). In fact, the *Performance Standards* remind juvenile defenders that young clients enjoy the same constitutional rights as adult defendants, except for the right to jury trial. *Performance Standard 12; Performance Standard 7* cmt. As is evident from the

Standards, the advocacy required in juvenile court is no less rigorous than that required in adult criminal court.⁴

III. Despite these clearly established constitutional and ethical mandates, zealous advocacy has failed to flourish in juvenile court systems.

Jefferson attempted to engage in zealous advocacy in a system which has traditionally discouraged such efforts. Despite the pronouncements of *Gault*, juvenile court systems throughout the country continue to display a discomfort with the adversarial system. Zealous advocacy by defenders is not part of the court culture in many jurisdictions, which often emphasize informal cooperation between parties as serving in “the best interest of the child.” Patricia Puritz et al., *A*

⁴One factor that underscores the importance of vigorous advocacy by public defenders in delinquency cases relates to the challenges those attorneys face in earning the trust of their young clients. “Nothing is more fundamental to the lawyer-client relationship than the establishment of trust and confidence.” Norman Lefstein, *Client Perjury in Criminal Cases: Still in Search of an Answer*, 1 Geo. J. Legal Ethics 521, 527 n.36 (1988) (quoting ABA *Standards for Criminal Justice Relating to the Defense Function* § 4-3.1(a) (2d ed. 1980)). Yet research has demonstrated that juvenile defendants, particularly African-American youth and youth with public defenders or court-appointed attorneys, tend to mistrust and misunderstand their attorneys’ role. Melinda G. Schmidt, et al., *Effectiveness of Participation as a Defendant: The Attorney-Juvenile Client Relationship*, 21 Behav. Sci. & L. 175, 181, 190-192 (2003); Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child’s Counsel in Delinquency Cases*, 81 Notre Dame L. Rev. 245, 272-273 (2005) (explaining that a young client’s ability to make decisions within the context of the attorney-client relationship can be inhibited if the attorney fails to earn the client’s trust, and citing to studies regarding the difficulty children face in trusting their lawyers). To effectively represent their young clients, then, juvenile public defenders might have to advocate more strenuously than a private attorney would to demonstrate her undivided loyalty to the client, gain the client’s trust, and ultimately develop an effective attorney-client relationship.

Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings 9, 51 (1995), available at

<http://www.njdc.info/pdf/cfjfull.pdf>. As a result, even though she was fulfilling her professional responsibility to zealously advocate for her client, Jefferson's actions might have stood out to the trial judge as aberrational.

In a national assessment of access to and quality of counsel in delinquency courts, the American Bar Association ("ABA") Juvenile Justice Center noted the widespread absence of zealous advocacy for youth in delinquency cases. *Id.* Advocacy opportunities were being missed at every stage of the adjudication process from pretrial discovery to post-adjudication stages. *Id.* Particularly troubling was the lack of in-court advocacy. Only thirty percent of juvenile defenders reported regularly filing pretrial motions. *Id.* at 50. Aggressively trying cases was also rare, and most attorneys made few evidentiary objections, called only a few witnesses, and made minimal closing arguments. *Id.* at 51. The assessment noted that courthouse culture played a role in limiting the defense attorney's advocacy. *Id.*

Similar results have been found across the country in state-specific assessments of indigent defense systems conducted by the ABA and the National Juvenile Defender Center. For example, in Pennsylvania, only one percent of court-appointed counsel reported regularly filing pretrial motions. Laval Miller-

Wilson et al., *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 5 (2003), available at <http://www.njdc.info/pdf/pareport.pdf>. More than half rarely or never prepared witnesses for disposition hearings. *Id.* At trial, defense counsel failed to insist on the rules of evidence or the burden of proof, with the brief hearings often too focused on treatment services rather than constitutional rights. *Id.* at 7. In North Carolina, investigators found a lack of advocacy at adjudication; in some counties approximately ninety percent of cases were resolved with plea bargains. Lynn Grindall et al., *North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 3, 32 (2003), available at <http://www.njdc.info/pdf/ncreport.pdf>. North Carolina attorneys also failed to file pretrial motions, citing the informality of the process as justification. *Id.* at 30. Thirty-six percent of Washington State defenders felt that they rarely were able to raise issues such as mental capacity, competency, low comprehension, or literacy as often as appropriate. Elizabeth Calvin et al., *Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* 30 (2003) available at <http://www.njdc.info/pdf/wareport.pdf>. Defenders in some locations reported not going to trial because they felt they could not win or that their clients would suffer worse ramifications if they did so. *Id.* at 31. Others

reported pressure to be a team player and stated they did not go to trial because they didn't want to "rock the boat." *Id.* at 31-32.

It is no surprise then that zealous advocacy by defense attorneys has historically been missing from Georgia delinquency courts. In fact, the ABA's assessment of Georgia's system showed that children routinely appeared without counsel, either because they were poorly informed of their right to counsel or because they were actively discouraged from exercising their right to counsel. Patricia Puritz & Tammy Sun, *Georgia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 19 (2001), available at <http://www.njdc.info/pdf/georgia.pdf>. As for advocacy outside of the courtroom, with few exceptions, defense attorneys rarely conducted investigations, interviewed witnesses, visited crime scenes, or retained experts. *Id.* at 23. The courtroom performance was similar to that in other states. Defense motions practice – even making oral motions for a directed verdict – was virtually non-existent. *Id.* at 23-24. Both defense attorneys and prosecutors expressed the view that motions practice rarely occurred because ineffective assistance of counsel was not an issue in juvenile cases and therefore, they did not feel compelled to raise legal issues. *Id.* at 24. Just as importantly, defense attorneys reported that motions practice was not necessary or even helpful to their clients because most judges did not like to deal with motions and frowned upon lawyers who filed them. *Id.*

Overall, defense attorneys experienced a sense of futility about preparing juvenile cases for adjudication because courts were less interested in inquiring into guilt or innocence of a child, and more intent on dispensing treatment or punishment to the child. *Id.* In many of the counties observed, the adjudication stage of proceedings was perfunctory and non-adversarial. *Id.*⁵

The assessments demonstrate that, despite case law and ethical canons to the contrary, the prevailing atmosphere in many juvenile courts has been non-adversarial. In fact, adversarial conduct is actively discouraged in some jurisdictions through increased penalties for defendants. *See Calvin et al., Washington* at 31. In such a culture, Jefferson's zealous advocacy certainly might have stood out and made her an easy—but unwarranted—target for sanctions.

IV. Allowing Jefferson's conviction for criminal contempt to stand would have a chilling effect on the zealous advocacy of juvenile defenders in Georgia.

The arguments for which Sherri Jefferson was held in contempt are the type of attorney statements which must be protected to promote zealous advocacy by defense lawyers. A defender's ethical obligations and the adversarial system itself demand that a juvenile defender vigorously challenge the allegations against his

⁵ After the assessment was released, the Georgia legislature passed the "Georgia Indigent Defense Act of 2003," which created the Georgia Public Defender Standards Council as an independent agency within the judicial branch of state government. The Standards Council is charged with ensuring that adequate and effective legal representation is provided, independent of political considerations or private interests, to indigent defendants in criminal cases.

client. Adequate client representation may require that an attorney challenge the court. However, when faced with the threat of criminal contempt sanctions, attorneys may fail to zealously advocate, to the detriment of their clients' rights and the legal system.

Contempt is a drastic sanction which the courts have recognized should be exercised with caution, particularly when applied to attorneys. Contempt sanctions are limited to statements that present a "clear and present danger to the orderly administration of justice." *Garland v. State*, 253 Ga. 789, 790 (1985). Courts are mindful that sanctions should be sparingly used. *In Re Spruell*, 227 Ga. App. 324, 325 (1997). Particular caution is necessary when exercising contempt powers against an attorney given that client rights might also be at stake. When contempt charges are brought against a defense attorney for advocacy statements, his client's due process and Sixth Amendment rights are also in jeopardy. See *Raveson, Advocacy and Contempt: Constitutional Limitations on the Judicial Contempt Power -- Part One: The Conflict between Advocacy and Contempt*, 65 Wash. L. Rev. 477, 512 (July 1990). Therefore, lawyers must be given wide latitude when engaging in vigorous advocacy, *In re Dellinger*, 461 F.2d 389, 398 (7th Cir. 1972), and a lawyer's strenuous arguments for his clients do not amount to contempt unless they "block[] the judge in performance of his judicial duties," *Calhoun v.*

Findley, 168 Ga. App. 634, 638 (1983) (quoting *In re McConnell*, 370 U.S. 230, 236 (1962)).

The arguments for which Jefferson was held in contempt were advocacy statements made on her client's behalf regarding issues in dispute. Arguing that there was "a gross interference with the way that [she] can represent [her] client," Jefferson persisted in disputing an evidentiary ruling which affected the order in which she could question the witnesses. Tr. vol. 2, 6 Aug. 9, 2005. This persistence did not block the judge in the performance of his judicial duties. Attorneys must be able to challenge court rulings in order to effectively represent their clients. This is necessary both to try to persuade the trial judge to alter what the lawyer believes to be an erroneous ruling and to preserve the record for appeal. *See Raveson, Advocacy and Contempt, supra*, at 544-545. At times, attorneys are faced with competing obligations of obeying the court and representing one's client. *See In re McConnell*, 370 U.S. 230 (1962); *Crudup v. State*, 106 Ga. App. 833, 835 (1962), *aff'd* 218 Ga. 819 (1963) ("The reconciliation between an attorney's duty to maintain respect due the courts and his duty to protect and advance the interests of his client may prove to be at times difficult.").

Given these competing obligations, the Georgia appellate court recognized the need for leeway in *Calhoun v. Findley*, 168 Ga. App. 634 (1983). After his client was deemed competent by a court-appointed physician, a defense attorney

persisted in asking questions regarding his client's competence. *Id.* at 634-35. The attorney was held in contempt when he continued to request the opportunity to make showing after being admonished by the court for his line of questioning. *Id.* at 636-37. The appellate court overturned his conviction on other grounds but also expressed doubt that the conduct was contemptuous absent disruption or discourteousness. *Id.* at 638. The court noted that it is "essential to a fair administration of justice that lawyers be able to make honest good-faith efforts to present their clients' case." *Id.* (quoting *McConnell*, 370 U.S. at 236).

Jefferson's second statement, in which she challenged what she perceived as bias in the court's rulings against her client, was also a client advocacy statement. Tr. vol. 2, 19 Aug. 9, 2005. Accusations of judicial prejudice or bias can be good faith efforts to represent one's client. Given that a fair tribunal is essential to a defendant's due process right, *In re Murchison*, 349 U.S. 133, 136 (1955), an attorney would be derelict in his duties if he failed to challenge a court as biased when there was a basis to do so. Thus, the United States Supreme Court has reversed contempt convictions where the convictions rested on allegations that the court was biased or prejudiced. *See In re Little*, 404 U.S. 553 (1972) (reversing the contempt conviction of *pro se* defendant who argued in summation that the court was biased and he was a political prisoner); *Holt v. Virginia*, 381 U.S. 131 (1965) (reversing the contempt conviction of two attorneys, one who filed a motion for

disqualification and change of venue alleging judge bias and the other who read the motion to the judge as part of his argument on the motion). Although Jefferson failed to offer a contemporaneous written motion given that she was mid-trial when the allegedly biased behavior occurred, by making her position known to the court, Jefferson gave the court an opportunity for immediate correction. Jefferson's good-faith advocacy efforts should be similarly protected by this Court to ensure that attorneys are not constrained from challenging courts' rulings or biases due to fear of contempt charges.

Jefferson's statements were not made to insult the court, but rather in advocacy of her client's cause. Indeed, Jefferson used respectful language at all times and refrained from using highly offensive or inappropriate language. A full reading of the statements for which Jefferson was held in contempt shows that these challenges were couched in respectful language. The first statement reads, "Okay. Well then that's a gross interference with the way I can represent my client, *Your honor. With much respect*, I have not interfered with the way the State chose their--" Tr. vol. 2, 6 Aug. 9, 2005 (emphasis added). In the second, Jefferson begins her request with "No. I just want the record to reflect with *much respect, Your Honor.*" Tr. vol. 2, 19 Aug. 9, 2005 (emphasis added).

In contrast, contempt convictions have been upheld where the language employed has been unnecessarily insulting or snide. *Johnson v. State*, 258 Ga.

App. 33 (2002) (upholding contempt conviction of attorney who made snide remarks directed at the court and called the prosecutor an “absolute liar” in front of the jury); *In re McLarty*, 150 Ga. App. 395 (1979) (upholding contempt conviction where attorney’s language was “intemperate, unnecessary, and scornful” including such statements as the whole case was a “bunch of garbage” and “put me in jail, you have already done it to the poor people, you might as well do it to me”).

Jefferson’s temperate challenges to the court’s rulings should be protected for what they were -- vigorous advocacy.


Jefferson’s advocacy statements resulted in the particularly harsh sanction of thirty days in jail. Such a harsh penalty for advocacy statements is certain to serve as a warning to other attorneys. Defense attorneys will have an even greater fear of sanctions than other lawyers, given that that they are already subject to a grossly disproportionate number of contempt citations when compared to prosecutors. *Raveson, Advocacy and Contempt, supra*, at 582-83. Faced with the threat of the contempt sanctions, many attorneys will temper their advocacy, prejudicing the rights of their clients.

CONCLUSION

To practice law to the highest standards of the profession, attorneys must advocate to the very limits of what is permissible. *See e.g.*, Model Code of Prof’l Responsibility EC 7-1 (1983). Attorneys’ advocacy must be given a buffer zone in

which to flourish without the fear of criminal sanctions. Allowing Jefferson's conviction to stand will eliminate the buffer zone and have a chilling and detrimental effect on the advocacy of other juvenile defense attorneys. We respectfully ask that the court reverse Jefferson's convictions.

Respectfully submitted, this the 3rd day of October, 2007.


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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2007, I caused the foregoing document to be served by postage prepaid, U.S. Mail to the following parties:

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