

**Steps to Follow in Investigating and Drafting a Petition for
Modification Aimed at Getting a Juvenile Court Ward Released from
the California Youth Authority**

(Welf. & Inst. Code Sections 778 and 779)

First District Appellate Project, March 2004

Investigation:

! **Call your FDAP buddy, trial counsel, or the Public Defender's Office in the appropriate county to find out what is happening in that county regarding CYA commitments.** (Is there a moratorium in that county? Is the juvenile court vacating CYA placements? What is the stance of the juvenile court judge who committed your client to CYA?)

! **Write to your client (the CYA ward)**

If you haven't gotten one previously, ask your client to sign a release.

Find out the name of his/her counselor.

Find out how he/she is doing at CYA: What is his/her estimated parole date?

What programs is he/she in? Is your client on the waiting list for any programs?

What services is he/she receiving?

! **Call your client's CYA counselor to find out how the ward is doing at CYA:**

If you don't know the name of your client's counselor, call the institution where your client is housed (e.g. Preston, OH Close) to find out the counselor's name (have client's name, birthdate and YA number).

When you talk to the counselor, ask what services your client is receiving, whether he/she is on the waiting list for any other

programs, and what is the estimated parole date? Get a general idea of how your client is doing at CYA.

Find out if there are documents the counselor can send you regarding your client's status, programs and performance at CYA.

Finally, find out how you can arrange a phone call with your client.

- ! **Call your client to find out how he/she is doing and whether he/she wants to go ahead with a Petition for Modification.** (You may want to wait until after you have talked with trial counsel (see below))

- ! **Call trial counsel** – the attorney who represented your client at the dispositional hearing.

Discuss a potential petition for modification and how you might coordinate efforts. (Usually, the FDAP attorney drafts the Petition and the trial attorney makes an appearance in juvenile court, including the hearing on the Petition. Note: although individual cases may differ, if a 778 Petition is warranted usually you would be compensated for the few hours necessary to draft the Petition, but the actual Superior Court appearances on the Petition would be expected to be done by trial counsel or, if trial counsel or conflict counsel is unavailable, you would need to get appointed by the Superior Court and paid by that Court for the appearance. Check with your FDAP buddy.

Since the Petition for Modification goes back to the judge who sent the ward to CYA, you will want to get trial counsel's opinion on how to approach the issue with that particular judge.

Finally, talk to trial counsel about alternative placements, including those that were considered and rejected at the dispositional hearing. Does the trial counsel have any other ideas on alternative placements? Consider county camps, group homes, out-of-county placements, and out-of state placements.

If further investigation of alternative placements is necessary, see if trial counsel can do this.

- ! **Check in with your FDAP buddy regarding what you have found.** We have materials and may have suggestions.

Drafting

- ! **Draft the Petition for Modification.** Attach any relevant information you have received from your client and from the counselor regarding the services your client is receiving at the youth authority, the services your client is not receiving, and the conditions of his/her confinement.

Also attach any information you have on alternative placements

Finally, you may want to attach some of the reports that have been done, in connection with the CYA lawsuit regarding conditions at CYA.

- ! **If your case is assisted, send a copy of the Petition for Modification to your buddy before you file it.**