BEYOND THE BENCH XXII

INCOMPETENT TO STAND TRIAL: NOW WHAT?

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MONDAY, DECEMBER 2, 2013, 1:45 – 3:15 P.M.

WORKSHOP OUTLINE

- **COMPETENCY: AN OVERVIEW OF THE LAW**
- **ETHICAL DILEMMAS: CASE RESOLUTION VS. COMPETENCY LITIGATION**
- **DETERMINING LEAST RESTRICTIVE SETTING WHILE PROVIDING REMEDIATION SERVICES**
- **PROCEDURAL CHALLENGES: USE OF PROTOCOLS**
- **UNDERSTANDING REMEDIATION OPTIONS**
- **CASE RESOLUTION OPTIONS**

VIGNETTES FOR DISCUSSION ON ETHICAL DILEMMAS: CASE RESOLUTION VS. COMPETENCY LITIGATION

What are the ethical dilemmas presented in each of the factual scenarios below?

- Vignette One: Mary
    - Mary was cited for marijuana on school grounds under H&S 11357(e). For first-time offenders, the Prosecutor's standard offer is completion of a drug-counseling class for dismissal of the petition. The Prosecutor conveyed this offer to Mary's Defense Attorney prior to her court appearance. When Mary appeared in court for arraignment, her mother stated, in open court, that she is a Regional Center consumer. When the court inquired regarding the reason she became a Regional Center consumer, her mother replied that Mary is intellectually disabled with an IQ of 63.
        - What are the ethical dilemmas that arise when deciding whether to allow Mary to informally resolve the case by completing a drug-counseling class?
        - Would the analysis change if the offered disposition was 654.2? 725?

- Vignette Two: Johnny
    - Johnny was detained on allegations of fondling his younger brothers through their pajamas while they slept in the same bed at night. He was charged with several counts of PC 288(a). After completing a Pre-Plea Report, the Probation Officer recommended suitable placement for disposition. Johnny's Defense Attorney had an extremely difficult time communicating with him. She appointed a confidential defense expert who opined that Johnny was incompetent to stand trial due to autism spectrum disorder, a developmental disability. Johnny is solely focused on his release from juvenile hall. The Defense Attorney knows that initiating competency proceedings will prolong the resolution of the case for several months. She is concerned that Johnny will likely remain in juvenile hall during competency proceedings.
        - What are the ethical dilemmas that arise when deciding whether to express a doubt concerning Johnny's competency or to allow him to make an admission in order to secure his release from juvenile hall?
        - Would the analysis change if Johnny was released during competency proceedings?