

THE CHILD CLIENT



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Child clients can be parties in state-initiated dependency and neglect cases, in private separation cases and custody battles, as well as in emancipation proceedings. They may also need representation when engaged in a disability determination or special-needs litigation, in a juvenile criminal case, or in a contract negotiation (e.g., for a child prodigy). Representing a child client is similar to representing an adult client in some ways, but at times it must be approached in a different manner by the attorney.

INITIAL CONTACT AND BUILDING TRUST

When meeting either adult or child clients for the first time, call them by their proper name and look them in the eye when you shake their hand. Be cognizant of how you communicate with them: Do not talk down to a child client. Ask open-ended questions and always answer their questions as best as possible. Treat clients with respect and in a professional manner from the onset of the case. Always follow through with what you tell them you will do, and get it done in a timely fashion. These simple steps will help build trust between you and the child (or adult) client.

Another way of building trust with child clients is by making sure they know that you represent them and not a third party. Explain what this means in a thorough manner and reiterate that you will keep what they tell you in the strictest confidence. This concept will help build trust, but it is typically easier for an adult to understand than it is for a child. With a child client, an attorney may have to explain what is being said in several different ways and modify the way the issue is approached.

COMMUNICATING WITH THE CHILD CLIENT

No matter the age of the child or the nature of the case, meet with the child, and/or the child's care provider, as soon as possible after being retained or appointed as attorney. If the child is age appropriate, continue meeting or communicating with the child before every hearing. During the conversation, explain the nature of the proceeding in a developmentally appropriate fashion and learn the child's wishes. Maintain contact with the child and the child's care provider, keep them informed about the status of the case, and promptly comply with your client's reasonable requests.

Attorneys may have to alter their approach with a younger child, especially when explaining the specific language of a contract, a rule, or a statute and how it is applied, as well as the standard of proof required for a given issue and the maximum penalties that could be imposed. An attorney would need to explain in simple terms the different court hearings clients can expect to attend and their constitutional rights with regard to the legal matter. These are just a few examples that may arise depending on the case being litigated, so the attorney should always be looking for different ways to explain issues to the child.

The younger the client, the harder it will be to get the child to fully understand these issues and make an informed decision. If the client's age prevents him or her from having the mental capacity to understand the items being discussed, the attorney should communicate with the child's care provider. This communication deviation, speaking about the case with the child's care provider, will occur more often when representing younger children.

By Travis Cushman and Kari Petrsek

REPRESENTING CHILDREN AS A GUARDIAN AD LITEM

In state-initiated child protection cases, children with capacity as well as those who lack capacity are typically appointed a guardian ad litem (GAL). The GAL could be a practicing attorney, a retired attorney, a representative from a guardian ad litem organization, or a caring community member. GALs might receive compensation for their work, but often the position is undertaken pro bono or filled by a volunteer.

No matter what type of GALs are appointed or whether they are paid for their services, GALs represent to the court what they believe is in the child's best interests. The GAL advocates this best interests perspective even when the child has the capacity to convey his or her wishes to the court. At times, depending on the child's age, GALs' opinion as to what they believe is in the child's best interests will differ from the child's expressed wishes. Advocating for the child's best interests, especially when it differs from the child's expressed wishes, can be challenging for the GAL.

Before forming an opinion about what is in the child's best interests, the GAL should meet with the child and the child's caregiver regularly throughout the case, particularly before every hearing. Some GALs will meet with the children in different locations to get a comprehensive perspective on the overall living arrangement. The GAL should review all available documents and interview the parties involved in the case, including as many family members as possible. By doing so, a GAL will be able to form an opinion based on the facts of the case and first-hand knowledge of the family dynamics.

The GAL's opinion should not only advocate for what is in the child's best interests as it pertains to placement and reunification, but also on how the local Department of Children and Family Services (DCFS) is handling the case. A thorough report will inform the court as to how the parents are accepting the assistance being offered and how the case is likely to be resolved; a thorough report will also make recommendations and suggestions to the court when warranted.

Recommendations that may help the court make its decisions include what should be accomplished before the child can be reunified with his or her parents and whether the child's current placement

should remain the same or be changed. Other important suggestions are what modifications should be made to the parents' treatment plan or what should be done to eliminate the threats of danger that initiated the case, if they still exist.

For a court to accept the opinion, recommendations, and suggestions of a GAL, the GAL must remain neutral and independent with respect to any other party or agency working on the case. To be effective, the GAL's opinion must be made free of influence from DCFS, the state's prosecutor, the different parents' attorneys, the child's care providers, and other GALs. (For more, see tinyurl.com/z3qop6h.) This is important to every case because many judges rely heavily on the opinion of the GAL.

Judges rely on GALs because they usually spend more time with the child than does any other party in the case. Additionally, the GAL is often granted broad powers by the court to investigate the case with little to no interference, so the GAL's opinion should be well substantiated. After investigating the case and forming an opinion, a GAL typically delivers recommendations and suggestions to the court by submitting a written report. The GAL should distribute a copy of it to all the parties of record before each hearing so everyone knows the GAL's position.

GALs who remain neutral and independent while performing their comprehensive investigation will be able to give a proper perspective on what is in the child's best interests. If the GAL is actively involved with the child, the child's parents, and the child's extended family, the GAL will not only protect and help the child but may also be regarded as a mentor. A GAL who is regarded as a mentor will be able to make a difference in a child's life while helping a parent in need succeed at becoming a competent mother or father.

For this reason, being a court-appointed GAL is an extremely important role that more and more courts are seeking attorneys to perform. An attorney who performs as a GAL in this manner will not only have the respect of the court and the parties practicing therein, but may also be regarded by the child as a lifelong friend.

When representing youth who are ten years or older, be aware that these children are usually cognizant of what is going on and typically have a pretty clear understanding of how they would like the case resolved. Obviously, not all teenagers have the same maturity or understanding level. Teenage youth can be like mini-adults, sometimes more mature than the adults, while others look and act like eight-year-olds.

EVALUATING CAPACITY

When representing a non-age-appropriate child, typically under the age of five years old, the attorney should meet the child client in his or her actual living conditions whenever possible and evaluate the child's capacity. When evaluating capacity, an attorney should consider many factors, including age appropriateness. Determine whether the child is capable of differentiating between right and wrong and the difference between the truth and a lie. Determine whether the child client is capable of considered judgment and conveying his or her wishes in an understandable manner. If not, the child may lack capacity.

When the child lacks capacity, the attorney may want to form an opinion regarding what are the child's wishes as well as what will be in the child's best interests in the future. If the child lacks capacity, discuss the nature of the proceedings with the child's care provider and communicate with the child's care provider before every hearing. Still meet with the child occasionally, however, to observe how the child client is doing.

For a child of capacity, the attorney should advocate for the child's expressed wishes. If the child lacks capacity to convey his or her wishes, the attorney should inform the court and in some jurisdictions should advocate for what is in the child's best interests or request that a guardian ad litem be appointed. In other jurisdictions, the judge may want the attorney to advocate for the child using the substituted judgment standard. (According to the Commentary to Section 7(d) of the ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (2011), "determination of a child's best

interests remains solely the province of the court. . . . A lawyer should determine the child's position based on objective facts and information, not personal beliefs.") Judges may interpret procedural statutes differently, so even courts in the same jurisdiction may vary in how they believe the child client should be represented, especially as it pertains to children being present in the courtroom.

Children who want to participate in court proceedings should have the opportunity to attend and be heard, but it should be done in a way that will not produce additional trauma.

THE CHILD'S PARTICIPATION

Inform age-appropriate children whether it is mandatory that they attend court proceedings. When attendance is mandatory, help facilitate age-appropriate participation. When attendance at court proceedings is optional, inform child clients of their right to attend and participate in each proceeding and the advantages and possible disadvantages of being present.

It is important for an age-appropriate child who wants to be part of the process to have the opportunity to attend and be heard. It should be done, however, in a way that will not produce additional trauma to a child victim or frustrate rehabilitation efforts of a criminal child client. Having a voice, especially for a child client, can promote healing from any underlying issue, which in turn may affect a change in behavior patterns.

In cases where the child's attendance is optional, the attorney must understand

there are many times and reasons why a child should not be in the courtroom. For example, some children, especially those who are placed in a new school after removal, can be teased and bullied when they return to school after the hearing. So use professional judgment as an attorney and never pressure a child to attend an optional hearing. Furthermore, always respect the child's right to say no. However, age-appropriate children have the right to decide whether or not they want to attend a hearing. Sometimes children want to attend hearings that affect their lives and the lives of their siblings. If the child wants to attend but is not able to at the time and date set for the hearing, continue the hearing so the child may attend.

If the child attends a court hearing, whether mandatory or discretionary, the attorney should always take the time to meet with the child after the hearing and debrief him or her concerning what occurred in the courtroom. Do not assume the child understood the outcome of the hearing, even on the simplest of issues.

CONCLUSION

Representing the child client can be rewarding in many ways and a refreshing change for attorneys who consistently represent adults. Just remember, when representing the child client, there are often procedural and jurisdictional differences of which the attorney must be aware. Building trust and having good communication are two items that are essential to having a successful relationship with a child client. Attorneys who follow these guidelines should have a successful attorney-client relationship with a child client. ■

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