

# MEETING & COMMUNICATING WITH CHILD CLIENTS ON APPEAL

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Client contact is critical to good representation. How much contact must appellate counsel have with a child client?

Let's start with initial contact. The [CAFL Appellate Performance Standards](#) state that appellate attorneys must meet with new child clients "immediately" – that is, within the first week after they are appointed. See CAFL Appellate Perf. St. 3 & 5. Why so soon? Two reasons (in addition to the overall goal of building a good relationship with open, honest communication): (1) to determine ASAP if child clients have conflicting positions, requiring new counsel for one or more of them; and (2) to determine ASAP if an appellee-child is actually an appellant who wishes to challenge some portion of the underlying judgment, in which case a notice of appeal must be filed immediately. Even if the child is too young to communicate with appellate counsel, a speedy initial meeting is important so that counsel can check out the child's circumstances and caregivers.

What about after that initial meeting? CAFL Appellate Performance Standard 6 – "Ongoing communications with the client" – is intentionally vague, because every case is different:

Appellate counsel shall confer with the client, if appropriate for the client's age, and with trial counsel, if appropriate, about the issues that may be raised in the client's appeal. Appellate counsel shall keep the client informed of all significant developments in the client's case. Appellate counsel shall respond in a timely manner to all communications from the client, provided that such communications are of a reasonable volume and at reasonable intervals. Where the client is a child, appellate counsel shall communicate with the child to the extent necessary to maintain a normal attorney-client relationship with the child. See Trial Standards 1.5 and 1.6.

So what does that mean? *Trial* attorneys for children must see their clients at least quarterly. That makes sense at the trial level, because counsel is monitoring visits, services, and placement, and is regularly appearing at trial court hearings. It also makes sense for trial attorneys because the child is (generally) placed close to counsel's main courthouse or office, making frequent visits easier to manage. But CAFL does not require quarterly child-client contact for appellate lawyers for several reasons: trial counsel is (supposedly) doing it; the child might be placed on the other side of the commonwealth; and nothing might be happening on an appeal for a period lasting more than three months.

We do expect appellate counsel to keep on top of "significant developments" in the child's case, particularly the child's position on termination, adoption, post-termination and post-adoption visits, and other issues that relate to the appeal. The child's position on these issues may well change – and then change back – during the pendency of an appeal. Appellate counsel might have to quickly file a notice of appeal, turn on a dime and file

an appellee brief instead of an appellant brief, withdraw a brief and file a new one, or even tell the Appeals Court post-argument that the child no longer supports the position counsel argued for.

So what do we recommend in terms of contact after the initial meeting or meetings? We recommend that appellate counsel meet – or otherwise communicate – again with the child (a) after any placement changes; (b) before counsel drafts the brief; (c) within a few weeks of oral argument; and (d) at the close of the appeal. Most of these meetings are to ensure that the child’s position hasn’t changed. The meeting before oral argument is also to ensure that counsel has current information about the client’s placement and position in case a panel member inquires. (Many Appeals Court judges ask child’s counsel, “Is the child still in the same placement she was in at trial?” It’s important to know the answer. And a couple of Appeals Court judges regularly ask child’s counsel, “When did you last see your client?” It’s good to be able to answer, “Just last week, in the foster home, and her position is the same as what I briefed.”)\* The last is a “goodbye” meeting, at which counsel can tell the child what happened in the appeal and what is likely to happen down the road. In most circumstances, this last meeting can take place along with trial counsel.



Have questions about child client contact? The CPCS website has some great resources that can be found by clicking here:

<https://www.publiccounsel.net/cafl/newsletter/februarymarch-2016-determining-child-clients-position/>

<https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/2015/10/Determining-Child-Clients-Position-Flow-Chart.pdf>

\* In a future Practice Tip, we’ll address how to answer questions from the panel about information outside the record.