Dear CAFL attorneys,

We are sending this letter to provide guidance and answer your questions about contact with clients during the Covid-19 pandemic. Before doing so, however, we want to stress that your health and safety are of paramount concern, so we urge you to follow current public health guidelines (such as those issued by the WHO, the CDC, or DPH) for any in-person contact you have with your clients and others.

We also want to thank all of you again for your dedication and commitment to your parent, young adult, and child clients. No words can adequately convey our appreciation for all that you are doing to protect their legal rights and interests during this time. In addition, we want to remind you that mentors, Resource Attorneys, and Trial Panel Support Unit staff are available to provide support and respond to questions you may have.

CAFL private attorneys and staff are involved in legal matters that are intensely personal and that regularly call for intimate, in-person communication and interaction with parent and child clients. The current pandemic, however, requires all of us to minimize in-person interactions to protect our own health and the health of our clients, our family members and friends, and the public generally.

In view of all of this, we want to provide guidance to CAFL private attorneys and CAFL staff regarding in-person client contact.

**Representation of Parents at the Outset of a Case**

The Performance Standards require attorneys to meet with their clients “as soon as practicable” upon accepting an assignment, in order to enable the attorney to establish an attorney-client relationship. Perf. St. 1.5. What is “practicable,” however, is different under the current circumstances than in ordinary times. **If, upon being assigned, an attorney for a parent is able to communicate effectively and confidentially with the client about the case through a phone call or some type of video communication,[[1]](#footnote-1) the attorney may do so and postpone the initial in-person meeting.[[2]](#footnote-2)**

Keep in mind, of course, that in-person communication is almost always best for sensitive discussions and relationship-building. Parent clients may realize this – but still recognize that the current situation is temporary and that you will speak together in person soon. In some cases, however, the client may insist on immediate in-person communication, even when alternative ways to communicate may seem more appropriate under the circumstances. In other cases, you may determine that effective and confidential communication is impossible without it taking place in person. In either event, if you are unable to meet with the client because of valid concerns you have about your health or the health of others (or for any other reason), you may decide not accept the assignment[[3]](#footnote-3) or move to withdraw. (If you are withdrawing from the case, please make sure that successor counsel is aware of the need for in-person contact with that client.) If you determine that in-person contact is needed but you cannot meet with the client for a coronavirus related reason options, other than withdrawal, include:  1) hiring an associate; or 2) ask that we assign co-counsel. Under the circumstances we will waive the restriction in 211d, s. 6B that prohibits, as a general matter, the assignment of two attorneys to one CAFL case.   We will waive it in *every* case in which the request is based on a need to have co-counsel assigned for the purpose of meeting with the client when the currently assigned attorney won’t/can’t do it for reasons relating to the pandemic.

**Representation of Children at the Outset of a Case**

The Performance Standards also require that attorneys for children meet with the client promptly at the child’s placement at the outset of a case. Perf. St. 1.5. **When representing children who are able to express their preferences verbally**, you may be able to arrange to meet them in-person in a safe fashion, consistent with current public health guidance.[[4]](#footnote-4) For example, you can suggest to the child and the child’s caretaker that you can sit or walk (six feet away from each other) outside with the child and communicate in that way. Although this may be awkward, it will often be the best option, given the importance of in-person contact.

But for some such clients, in-person contact at the outset of a case may not be possible without significant health-related risks for the child or the child’s caretaker – for example, when a child is medically compromised or placed with an elderly relative. In such a case, telephone or video communication may be the best option. In that case, ask if the child is familiar with video communication apps such as those set forth in footnote 1. (Most teenagers and many pre-teens are very familiar with them.) As a reminder, when using those apps, you will need to instruct the child to communicate with you in private and explain that confidentiality is very important. You may also need to explain to the child’s caretaker that you will be having such communication with the child periodically and that you hope to meet with the child and caretaker at the placement (i.e., in person) in the near future. Although telephone or video contact with child clients is not ideal, it is still extremely important. Without such communication, it is very difficult for the child and you to share information about the case and for you to elicit the child’s preferences.

**When representing younger children** (including preverbal children), counsel should also explore options for a safe, in-person visit with the client. If a safe, in-person viewing of a younger child client is not possible, counsel should arrange, before the temporary custody hearing, for an alternate way of ensuring that the child’s placement is safe and appropriate and that their medical, mental health, and other needs will be met. This may include communicating with the caretaker and viewing the child and the placement through electronic means.[[5]](#footnote-5)

We trust that decisions that you make about whether to see a client in person at the outset of a case will be based primarily on the client’s wishes and needs. We understand, however, that in some cases you may be unable to abide by the client’s wishes or meet their needs regarding contact because of valid health concerns you have about yourself or others. In such event, we ask that you not accept the assignment.

**Ongoing Contact with Child Clients**

Although the Performance Standards ordinarily require quarterly contact with child clients, the current circumstances are extraordinary. Under these circumstances, **if an attorney ultimately believes that she or he cannot meet with a child client on a quarterly basis because of the Covid-19 pandemic,[[6]](#footnote-6) the attorney is not required to do so.**

If the attorney does not meet with a verbal client during a particular quarter and the client has access to a phone or computer, the attorney should communicate with the client through electronic means as a temporary substitute for in-person meetings. This may include phone, text, email, or some type of video conferencing. As noted above, please be mindful of confidentiality when communicating with clients in this fashion (for example, by asking your client to be in a private place when talking to you on the phone). In addition, for all children, the attorney should find means for regularly ensuring the child’s placement is safe and appropriate and that their medical, mental health, and other needs are being met. This may include communicating with the caretaker and (for younger children) viewing the child and placement through electronic means.[[7]](#footnote-7)

We recognize the challenges that the Covid-19 pandemic presents, not only with respect to representation of clients in CAFL cases, but also in your personal life. We hope that you and those around you are able to stay safe and healthy. We will do our best to support you in your work as this situation continues to unfold.

Once again, please feel free to contact your mentor, your Resource Attorney, or the CAFL Trial Panel Support Unit if you have any questions. Thank you again for doing this work during these incredibly trying times.

Sincerely,

Mike Dsida

Deputy Chief Counsel

1. Video conferencing is available through Facetime, Skype, WhatsApp, Google Hangout, and Zoom, among others. Information about these platforms will be sent out shortly. [↑](#footnote-ref-1)
2. The attorney should document the reasons for that decision in the client’s case file. [↑](#footnote-ref-2)
3. We recognize that judges and other court personnel sometimes make it difficult for a trial panel attorney to say “no” when asked to accept an assignment, even when the attorney cannot or should not accept it. If you find yourself in that position, feel free to say that you should first talk to your supervisor or AIC. Please also contact your supervisor or AIC if your efforts to withdraw from a case are unsuccessful. [↑](#footnote-ref-3)
4. The latest prevention guidance from the Department of Public Health (as of March 19, 2020) is available at <https://www.mass.gov/info-details/covid-19-prevention-and-treatment#prevention->. [↑](#footnote-ref-4)
5. As with the representation of parents, if an attorney representing a child decides not to meet with the client promptly after being assigned, the attorney should document the reasons for that decision in the client’s case file. [↑](#footnote-ref-5)
6. Attorneys are encouraged to consult with their mentor (if they have one), with their local Resource Attorney, or the Trial Panel Support Unit in the course of making this decision. Again, the reasons for the decisions should be included in the client’s case file. [↑](#footnote-ref-6)
7. If the attorney ultimately decides to visit the client less frequently than quarterly, the attorney should document the reasons for that decision in the client’s case file. [↑](#footnote-ref-7)