

Representing Children

Supplemental Reading

*CAFL Appellate
Certification Training*

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Counseling Children and Youth in Times of Crisis: Tips to Achieve Success and Avoid Pitfalls

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Produced by the Children's Rights Litigation Committee of the ABA Section of Litigation.

Counseling is a critically important component of representing and advocating for any court-involved child.¹ Working with child clients within the various court systems presents many complex challenges, including understanding the role of trauma on child and adolescent functioning and understanding how a child's stage of development may impact the counseling role. This guide incorporates principles of child development and trauma into effective legal advocacy to provide a multidisciplinary, multimodal (i.e., using more than one mode of communication) approach to counseling the child client.²

Two foundational prerequisites to counseling the child client are: 1) understanding your client's development level; and 2) building rapport and establishing trust with your client. These factors are important throughout the representation. This article focuses in particular on the importance of these factors as they relate to counseling specifically. Section I guides you with respect to assessing and understanding developmental level, and provides concrete steps to take to gain the requisite understanding. Section II emphasizes the importance of building rapport and establishing trust with your client and offers tips and strategies for fulfilling this goal. Section III outlines multidisciplinary strategies and tools to assist you in counseling the child client. Section IV addresses common challenges to counseling the child client, including time constraints, environmental challenges, and counseling the client to make safe choices. This last section provides tools and strategies to minimize the impact of such challenges on counseling the child client.

Section I. Assessing and Understanding Developmental Level

Understanding your client's development level is key to the overall success of your representation, as well as to your ability to effectively counsel your client. It is important to bear in mind that chronological age is a poor predictor of a child's abilities. Instead, the client's developmental level--a dynamic composite including the client's level of physical, cognitive, social, emotional, and academic growth--is more insightful. Once you understand your client's limits and capabilities based on developmental level, you can devise appropriate, informed strategies for effective communication and counseling. A good grasp of a client's developmental level also facilitates a collaborative working relationship and can keep clients from becoming frustrated, discouraged, oppositional, and/or uncooperative.

To gauge a client's developmental level, you can begin by gathering information about where an individual client stands with regard to the following factors that contribute to developmental level. Together, these factors provide a more complete picture of the client's abilities.

¹ Unless otherwise indicated, the authors use the term "child" to describe anyone under the age of 18.

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A. Cognitive Functioning

Start by reviewing any existing psychological (or psycho-educational) evaluations for a thorough assessment of cognitive functioning. For example, does your client have an Individualized Education Plan (IEP) to receive specialized instruction for a learning disability, emotional disability, or combination of the two? It is useful to review both the testing and IEP documents because they will include specific, concrete recommendations for conveying and communicating information to your client based on his learning style, communication style, and information processing abilities.

B. Academic Achievement

School records such as report cards, teacher comments, honors, disciplinary problems, or transfers are all helpful. Look closely at the client's performance in different classes. This will help you to build on the client's strengths and avoid overextending in areas of limitation. For example, if mathematics is an area of strength, it might be useful to communicate and exchange information about the client's personal data, evidence, or options using quantitative terms. This is particularly important as you are developing rapport and establishing trust with your client.

C. Pediatric Records

Pediatric chart notes include assessments of whether children achieve their physical and developmental milestones on time and other information about developmental level. A pediatrician's general clinical impressions also can be informative.

D. Home Environment

A stable, enriching home environment -- which includes at least one consistent, caring, adult caretaker -- promotes physical, cognitive, social, emotional, and academic growth. A client with consistent care and an invested caretaker is at a distinct advantage and likely to have a higher developmental level. It is important to consider, however, that many clients come from chaotic home environments, which can diminish one's developmental level.

E. Gender

In general, the developmental level of girls is more advanced than the developmental level of boys (Nikolaenko, 2005; Sax, L. 2006). This may be because generally females are better able to express themselves verbally than their male peers, which in turn promotes social, emotional, and academic growth. Alternative forms of communication, such as note-taking, diagrams, symbols, outlines, and time lines can be used to bolster communication with male clients in particular, and females as needed.

F. Trauma History

A history of multiple, repeated traumatic events is common among court-involved children. Conservative estimates show that fifty per cent of court-involved children experience traumatic stress symptoms or full-blown Posttraumatic Stress Disorder. (PTSD) (Abram, Teplin, Charles, Longworth, et al, 2004; Arroyo, 2001; Garland, Hough,

McCabe, Yeh, et al., 2001, Igelman, et al., 2008). PTSD is an anxiety disorder characterized by increased arousal and hypervigilance (i.e., an enhanced state of sensory sensitivity accompanied by an exaggerated intensity of behaviors whose purpose is to detect threats). Children who have experienced trauma and/or are experiencing PTSD are more likely to perceive people and situations as threatening. They also are more likely to exhibit behaviors such as (AACAP, 1999):

- worrying about dying at an early age
- losing interest in activities
- having physical symptoms such as headaches and stomachaches
- showing more sudden and extreme emotional reactions
- having problems falling or staying asleep
- showing irritability or angry outbursts
- having problems concentrating
- acting younger than their age (for example, clingy or whiny behavior or thumb sucking)
- showing increased alertness to the environment (hypervigilance)

Often, children who are experiencing these symptoms come from home environments characterized by inconsistent care, unhealthy relationships, violence, ambivalence, and/ or disorganization. These factors lead to a lowering of the child's self-esteem and place the child at higher risk for aggression (Cicchetti & Toth, 2005). Moreover, children who carry these feelings forward into their social relationships (with peers, teachers, caregivers, attorneys, social workers and others) are likely to misinterpret social cues, readily perceive threats from peers, and respond with anger and aggression (Cicchetti & Curtis, 2005).

All these factors combine to create formidable challenges for the attorney-client relationship. However, as the lawyer, you can provide your client with safe, clear, and reliable, experiences by modeling appropriate, functional, collaborative interactions. By developing a trauma-informed approach (one that takes into account knowledge about trauma — its impact, interpersonal dynamic, and paths to recovery — and incorporates this knowledge into all aspects of legal counsel) you can reduce client anxiety and its potential impact on the child client. You are also in a better position to develop a productive relationship with the child client, thus increasing the likelihood of a more positive outcome for the child. Additionally, building rapport and establishing trust--covered below--are key to a productive, collaborative attorney-client relationship, and the ultimate success of the case.

G. Assessing competency in child clients

The factors related to developmental level also provide an overview of your client's competence. Competence involves a basic comprehension of the purpose and nature of the legal process (Bonnie, 1992). It includes understanding, reasoning, and appreciation. *Understanding* is the capacity to provide relevant information to counsel and to make sense of courtroom procedures and personnel. *Reasoning* is the ability to recognize information relevant to a legal case and to process information for legal decision-making (Grisso, et al., 2003). *Appreciation* is one's ability to recognize the relevance of information for one's own situation.

Assessing and understanding all of the factors above give you insight into your child client's developmental level. This insight is key to your ability to communicate with and counsel your client so he can make well-advised, informed decisions about his case. Another foundational prerequisite to good decision-making on the part of the client is the client's ability to trust you, the lawyer, and the advice that you give him. To that end, the next section delves into the topic of building rapport and establishing trust with your child client, and provides strategies for achieving these two interrelated goals.

Section II. Building Rapport and Establishing Trust

Successfully counseling the child client requires a collaborative approach between you and your client. To develop an attorney-client relationship that encourages collaboration, you must build rapport and establish trust with your child client. “[G]ood decision[-]making [by the child client] is predicated on the lawyer’s ability to create an appropriate environmental context for counseling and to develop a good relationship with the client.” (Henning, 2005). This section presents clear strategies to help you build rapport and actively create conditions that promote collaboration and the counseling process.

As an initial matter, always think about establishing and re-establishing rapport as the first order of business. During client meetings, you will severely compromise the collaborative process if you do not cultivate rapport before launching in to discuss legal issues with your client. Let your client begin the conversation. Allowing a non-structured start at the beginning of an interaction is strongly recommended to draw a sample of the child's own phrasing and language. It also will provide you with information about what is most important to the client. Moreover, such stress free conversation can also go a long way toward building rapport and establishing trust – key components to successful counseling. Following are some concrete strategies that will assist you in developing rapport and establishing trust with your child client.

A. Create a quiet, distraction-free, and comfortable meeting environment

Creating an appropriate environment in which to meet with your child client is key to building rapport, establishing trust, and being able to counsel the client effectively. Empirical evidence suggests that when a child feels safe and comfortable, he will be more likely to communicate his desires and preferences, and to engage in positive decision-making (Vernon, 2004). This is particularly important in this population because, as noted earlier, children with a history of trauma often exhibit difficulties with concentration and hypervigilance. Yet even in the most difficult situations, it is possible to create conditions that will enhance your ability to communicate with and counsel your client.

Whenever possible, you should view the meeting location in advance to assess the environment and make any necessary adjustments to room configuration. Helpful adjustments include reducing and eliminating any visual, auditory, and/or motion stimulation in the environment to reduce potential anxiety and distractions. A quiet environment with dimmed lights and reduced visual or tactile distractions works best. For instance, if you are meeting in a room with a television monitor, window, radio,

computer, or another obvious distraction, then have your client sit with his back to the distraction.

Where you sit in relation to your child client also impacts productivity. For example, do not sit directly across the table, interrogation-style from a client, because this can be perceived as threatening and—literally—creates a barrier between you and the client. Instead, try to sit beside or catty-corner to your client, demonstrating that you are, literally, side-by-side and working on issues collaboratively. Looking at materials together creates a sense that you are “with the client” supporting him as he makes sense of the situation and determines his best course of action.

Also consider the impact that your own body language has on the meeting environment and tone. Children are adept at reading the body language of adults. Thus crossing your arms, frowning, looking down over your glasses, checking e-mail or text messages, and other body language can set the wrong tone send your client the message that you are not on the same team. On the other hand, taking the steps above to ensure a safe, collaborative, and distraction free environment will further enhance your relationship with your client, and lead to more productive sessions.

B. Develop a collaborative, interactive, style

The human development literature repeatedly links a collaborative³ style in adults with positive behavioral outcomes in children and adolescents (Baumrind, 1991; Maccoby & Martin, 1983). Adults with a collaborative style set clear rules and guidelines within a democratic context. This is in contrast to an authoritarian style, which is characterized as rigid, harsh, and demanding complete obedience. Instead, a collaborative style includes being assertive, but not intrusive or restrictive, and supportive rather than punitive. Collaborative adults are warm, nurturing and responsive, while at the same time setting clear expectations. Extensive verbal give-and-take is common between collaborative adults, children and adolescents. This approach is shown to result in higher self-esteem and independence because of the democratic give-take nature of the collaborative style (Baumrind, 1991).

Strategies to help you develop a collaborative style to interact with child clients include:

- Actively engaging clients in verbal give-and-take;
- Actively encouraging children to have their full say;
- Staying open to and encouraging questions and negotiation;
- Providing clear explanations and rationale behind legal advice;
- Setting expectations for clients that will instill a “you can do this” attitude;
- Recognizing the child’s individual interests and attributes; and
- Being responsive, warm and nurturing, while at the same time assertive and supportive.

In addition, you should create a style and atmosphere that encourages the child to ask questions and clarify any confusing issues. By setting a collaborative tone and creating

³ The human development literature uses the term “authoritative style” to describe the style discussed in this section. The authors prefer the term “collaborative”, which more accurately describes this particular style in the context of the attorney-client relationship.

an open and respectful environment, you will enhance communication and ultimately your ability to effectively counsel your client.

C. Use language consistent with the client's comprehension level

Legal interviews and counseling sessions with child clients are often conducted in language that exceeds the client's verbal comprehension and developmental level (Korkman, Santtila, Drzewiecki, & Sandnabba, 2008). Child clients are confused by complicated language, compound or excessively long sentences, and legalese. Using language the client does not understand also interferes with your relationship. Conversely, using language the client readily understands reinforces and enhances rapport, trust, and collaboration.

To that end, be attentive to the client's language, phrasing, terms, and names of important people, places, or things. Casual conversation at the beginning of an interaction draws a sample of the child's own phrasing and language, giving you a better understanding of the client's developmental level. Getting the child to discuss a neutral topic, using humor, and getting a child to smile and laugh puts the child at ease with the situation and also gives you a sample of the child's own language use (Walker & Warren, 1995). Unfortunately, lawyers frequently fail to adapt their language to child clients (Korkman, Santtila, Drzewiecki, & Sandnabba, 2008). It is better for you to err on the side of using language below or at a child's developmental level (and become more elaborate once a client's comprehension is well established) to enhance the likelihood of comprehension.

One important caveat is to avoid assuming clients cannot comprehend all relevant information and material. Child clients usually understand considerably more than adults give them credit for understanding. Even young children of a relatively low developmental level and those with developmental delays or verbal communication deficits comprehend significantly more than is obvious. This may seem to contradict the advice above about matching messages with the client's developmental level; however, the two are not mutually exclusive. Using the non-verbal and verbal strategies can enhance comprehension. Even if a concept seems out-of-reach, you should attempt to convey it in ways that make sense to the client. Children, especially those with a history of trauma or maltreatment, are adept at "reading" adults and can see when someone is withholding information even in a benevolent, well-intentioned way. Open, back-and-forth discussion of information will enhance your rapport and produce better outcomes for clients. Using accessible and understandable language with the child client also will lead to productive counseling sessions and more informed decision-making by the client.

D. Keep your messages simple, concise and on point

Making information accessible and understandable to the child client requires not only appropriate language, but also simple and concise delivery of the information. Young children tend to focus on one aspect at a time in conversation and, therefore, the best sentence structure is one with a simple subject, a verb, and an object. This pattern is recommended until at least age 8 (Walker & Warren, 1995) and probably older (11 years) for this population. Avoid long and complicated sentences altogether.

Lawyers working with children tend to present information in an unstructured way that is fluctuating and off topic, especially with younger children. This sort of topic incoherence is typical in younger child clients, and it may be that attorneys mirror the communication style of younger clients. Thus, take care to avoid frequent or rapid switches of topic. Children can be serious and task-focused when needed, but if they can choose between playing and discussing (likely difficult topics), they might well opt to be playful and off-topic.

In addition, be aware of what your client has been through prior to meeting with you. If you speak with your child client after he has been through a crisis, you will want to keep your meeting especially short and simple, and repeat important points several times.

E. Practice active listening

Active listening builds rapport and enhances trust. Active listening can take many forms, including repeating what a client has said, asking clarifying questions, using empathic statements at appropriate times, restating client-generated ideas, and using the child's words for people and things. For example, if your client calls her brother "Shorty" (instead of his given name), you should refer to him as Shorty as well. "Active listening is not just a nodding of the head, it is making comments throughout a child's story that lets them know that you're hearing them. So if they're talking about being frustrated, you might say, 'That sounds really frustrating', and if they are talking about a really difficult situation at home, you might say, 'Wow, that must have been really hard'." Mary Ann Scali, *Interviewing the Child Client* (video). Through active listening, you build rapport with your child client, and further cement the foundation necessary for successful counseling.

F. Use open-ended questions

Open-ended questions facilitate and reinforce building rapport and establishing trust. Conversely, closed-ended or leading questions, particularly at the beginning of the relationship (and even at the beginning of a conversation) can effectively shut-down communication because they inhibit the exchange of information and severely limit responses. Thus, use open-ended questions to optimize the ready exchange of information. Strive to be ever mindful of your phrasing, making modifications as needed.

Also, be aware when clients are providing limited, brief, yes-or-no responses, and craft questions designed to evoke greater responses. For example, using a phrase like "tell me more" conveys to your client that you are listening, that you are interested, and that what he is saying matters. You could be talking about his daily life, family, school, or the case. In any event, such informal prompts encourage a client to provide more information, including key facts that otherwise the client might keep to himself.

The initial, rapport-building period of the legal conference is a good time to ask open-ended questions and set the stage for ongoing open-ended questioning throughout the relationship. Once you have built rapport and established trust with your client, you can then begin to ask more pointed, specific questions to clarify and to obtain more specific information. This technique is often referred to as the funnel technique. The funnel technique can be an effective tool for gathering information, in particular with child clients. In brief, the funnel technique guides the attorney to begin gathering

information using open-ended questions. Letting a child tell his story from start to finish without any interruption is invaluable. In allowing your client to tell his story uninterrupted, you learn more than just the facts. You also learn what parts of the story are important to *him*. These parts may not be critical to your case theory, but knowing them will enable you to better understand your client and counsel him effectively. It also demonstrates to your client that you respect him and what he is saying, thus encouraging further communication. During stage two of the funnel technique, the lawyer continues to use open-ended questions, though these questions can be directed at clarifying and filling-in missing information (“Was anyone with you?” and “Where did you go next?”). In stage three of the funnel technique, your goal as the lawyer and counselor is to make sure that your client fully understands important legal terms and issues, and also the pros and cons of choosing one option over another. Thus, it is during stage three that you will ask more pointed, specific questions.⁴

G. Encourage the client to actively evaluate options

The child client is the one who must ultimately live with outcome of his case, as well as the decisions he makes during the course of his case. As the lawyer, it is your job to actively and continually support your client so that he can fully evaluate his options and think through various potential consequences and outcomes.

What are some strategies to help your client fully understand and evaluate his options? One suggestion is to have the client make a pros and cons list to fully elaborate and evaluate his concerns about potential consequences of given choices. For younger children especially, you can serve as scribe, allowing your child client to voice thoughts and concerns and watch them take shape on paper. Working collaboratively with a client in this way signals how central their input and ideas are to the process and reduces concerns about suggestibility.

Having the client actively evaluate options also helps to reduce impulsive or snap decisions, and helps the child client feel a sense of ownership over the decision-making process and the ultimate outcome. “Because youth tend to have a higher level of trust and satisfaction with attorneys who spend more time working with them, the child is more likely to receive and accept input from the collaborative lawyer. The child will also be able to avoid hasty, short-sighted decisions when he has the assistance of a lawyer who will patiently help him identify and consider all of the long-term implications of any given decision. When provided with all of the relevant information and given all of the appropriate environmental and emotional supports, a child may make well reasoned decisions and appropriately direct his counsel in the course of the representation.” (Henning, 2005). Keep in mind that, as the lawyer, you are responsible for making sure that the client understands and properly evaluates all of his or options as well as the short- and long-term consequences.

H. Take an unbiased, non-judgmental approach

⁴ For more information about the funnel technique, see David A. Binder, Paul Bergman, Susan C. Price and Paul R. Tremblay, *Lawyers as Counselors: A Client-Centered Approach* (2d Ed. 2004)

Avoid allowing your personal biases or relevant personal history to interfere with providing objective, clear, concise advice. Working with clients in the juvenile justice and child protection systems is challenging and may evoke strong personal reactions. These clients are often difficult inter-personally and their lives can be fraught with disadvantage. All of this combined can trigger strong emotional reactions from even the most unflappable adults. You are encouraged to take an honest inventory of any personal reactions and biases that arise from this work on an ongoing basis. It is important for you to acknowledge these challenges when they arise, understand and work within your limits, and develop a system of supportive colleagues, mentors or others who provide you relief and serve as sounding boards.

I. Be honest and reliable

Honesty and reliability are two of the most important tools at your disposal as a lawyer for a child. Moreover, failure to use these tools can irreparably damage your relationship with your young client. Be honest with your client and do not make promises you might not be able to keep. It is tempting to want to make your client feel better, but only offer to do as much as you *know* you can achieve. For example, your client may be begging you to see his siblings. However, this decision may not be in your hands. So instead of promising that you will get him a visit, tell him what you know you can do – namely, you can ask the judge for an order allowing your client to see his siblings. Explain that you cannot promise the judge will grant your request, and use it as an opportunity to collaborate and come up with alternatives. This might not be what your client wants to hear, but it will be in his best interest, and in the best interest of your relationship with him, to be totally honest at all times.

In addition to being honest, be reliable. Child clients often come from backgrounds in which adults frequently let them down and fail to follow-through on promises. So set yourself apart, and show your client that he can rely on you. For example, tell your client you will call him every week on a certain day at a certain time to check-in, and do it. And be careful to avoid making promises that you cannot keep.

Employing the tips listed above will help build rapport and establish trust – prerequisites to successfully counseling the child client. Children involved in any court system are regularly called upon to make difficult and sometimes life altering decisions. The fact that you have taken the time to build rapport and establish trust will tremendously enhance your ability to counsel your young client through these difficult times and ultimately to better decision-making and outcomes for your client.

Section III. Concrete Tips for Effective Counseling

This section encourages a multimodal approach to working with child clients. This includes utilizing and combining several instruction techniques (e.g., auditory, visual, verbal and tactile modes of information delivery) to improve information processing and retention, and thus improve the counseling and decision making process.

Many child clients have diagnosed or undiagnosed learning disabilities (LD) that may interfere with the legal counseling process. Individuals with LD may struggle to achieve educational skills, coordinate their movement, maintain attention, remember information, and/or interact appropriately with others (Nelson, Copley, Flanigan, &

Underwood, 2009). The multimodal approach promoted here is intended to preempt and minimize these and other barriers. These strategies also enhance the child's ability to plan, make decisions, troubleshoot, and resist temptation.

A. Keep meeting agendas brief

Attorneys frequently face severe time constraints and feel forced to cover too much material in too little time. It is tempting to assume unrealistic expectations and cover as much ground as possible. Instead, you should be realistic and reasonable with respect to what can be accomplished during a meeting with the client. Identify a few, concrete, manageable items for meetings. You will find that your clients will remain more attentive, actively participate, and benefit most from meetings focused on a few, key agenda items.

Agendas also serve as important scaffolding for legal conferences. In the same way that first browsing through a book or article before reading it enhances comprehension and retention of information, reviewing an agenda with the child client at the outset of the meeting provides structure and allows the child to better process and recall the information (Restak, 2001).

B. Use Memory Anchors

Memory anchors are discrete events that are meaningful to a client such as holidays, birthdays, school vacation, and newsworthy events that can be used to develop a timeline for the child to make sense of time as it relates to the child's case. Studies suggest that youngsters remember anchor dates and can readily recall events based on these dates (Sobell & Sobell, 1995). Using memory anchors to develop a timeline or a calendar helps a child make chronological sense of important past and future events, supporting the child's ability to process and make decisions about time-related information.

Memory anchors also increase chronological understanding of past experiences and establish expectations for potential future events such as the length of time between court hearings, out-of-home placements, or periods of detention. They help you counsel and prepare clients for possible and likely outcomes. For younger clients still developing a sense of time, a timeline or calendar enhances their understanding of time in between important events since days of the week, months of the year, and other measures of time may not make sense to them.

C. Use several means of communication

A child client's ability to fully contribute during meetings and the counseling process can be seriously compromised if he is expected to rely solely on verbal communication. A child client—who may already experience PTSD symptoms that impair focus and concentration—is likely to feel apprehensive, overwhelmed, preoccupied, angry, threatened, or any combination of these emotions during legal conferences. These types of strong emotions interfere significantly with a child's ability to process and retain information. Under these circumstances, clients are unable to truly listen to and comprehend what is said.

One way to offset this emotional interference is through the use of visual aids such as charts, diagrams, timelines, or drawings to illustrate information for clients. Small objects, such as writing implements, folded or torn pieces of paper, or other items

can be used for the clients to handle and manipulate as another strategy to reinforce and exemplify concepts. Additionally, thoughtful use of technology (e-mail correspondence, text messages, and other forms of telecommunication) may foster successful communication. Since adolescents tend to be adept and comfortable with technology, these mediums provide a means for communicating between meetings that will likely enhance information processing and retention.

D. Present Information Visually

Presenting information visually works to scaffold and reinforce legal advice. Bold, clear, and attractive stationary images activate the brain, support information processing, and secure the storage of information in long-term memory. Looking at images also offers another medium for reflecting on choices or courses of action in legal cases, especially for child clients with difficulty holding information in their memory for a period of time. Children especially need a concrete representation to form a mental image to bolster memory and make connections between images. As a result, when an image is stored it becomes a key for future recall and further insight.

Use paper to draw out options, ideas, and consequences for your client. For instance, if there are three alternative courses of action then make three columns and chart out likely outcomes to help the client evaluate choices. Use symbols such as arrows, shapes, and simple drawings to diagram ideas or sequences of events. Use different colored pens in diagrams, outlines, lists, calendars and timelines to more clearly illustrate information. Have your client take notes, draw diagrams, and use calendars as a physical representation and reminder of his plans.

As recommended earlier, you should always have an agenda and review it with your client. If possible, solicit input from the client before the conference to collaborate on it. Or, take a few minutes at the beginning of a meeting to get the client's input about the agenda. Offer the client a chance to add to or change the agenda. Provide the client a copy and a pen so he can take notes and actively follow along. With young children and early or non-readers, provide an agenda as well and guide them through it as you move from item to item. You can always use symbols or short words the child client understands to make it meaningful.

E. Use Social Scripting

Social scripting teaches clients "scripts" for legal situations, including what will happen during a given court appearance. Social scripting involves reviewing such proceedings with your client with special attention to what he will say and do during the course of the proceeding. In the same way that a lawyer might moot a big oral argument in front of colleagues, so too, it is helpful for the child to run through potential questions and issues as a way to prepare.

This type of scripting helps a child predict and anticipate what will happen in a given situation, including what others might say, how the judge might react, and what potential outcomes might be expected. Some clients may benefit from the use of a support, such as a note card or outline with the script available to read during the proceeding. Social scripts can reduce the stress associated with interactions during legal proceedings (which is likely intensified for clients with a trauma history) and assist clients with understanding the perspective of others.

F. Use Metaphors

The use of concrete metaphors to convey information during client meetings speeds comprehension and memory (Scott, et al., 1999). Metaphors provide child clients with mental pictures to hold in their mind's eye to bolster understanding of legal information. Concepts become easier when a client has metaphors related to real life events or experiences, drawing on examples that are familiar to children. For instance, when explaining the role of the judge, one could look to other decision-makers in the child's life-- the principal at school or a teacher. In describing the plea bargaining process you can talk about paying money for something, you must give up some cash to get something in return and in a good plea bargain you will get a good value/more for your money.

G. Identify and Minimize Anxiety

As mentioned before, court-involved children often have trauma-related anxiety, thus even routine meetings and legal proceedings can be highly anxiety producing. This section outlines techniques to calm anxious clients and enhance counseling. To begin, here are signs of stress to look for:

- A tight, closed posture (e.g., arms or legs crossed, head turned down);
- Emotional sensitivity and low frustration tolerance (e.g., tears, irritability, aggression);
- Nervous behaviors (e.g., nail biting, hair twirling, and fidgeting);
- Poor eye contact (e.g., looking down, eyes darting around the room);
- Shaking or trembling;
- Quiet, soft-spoken tone with brief or one-word responses;
- Physical complaints (e.g., stomachaches, headaches, fatigue, diarrhea); and/or
- Low self-esteem (e.g., negative, doubtful statements about self-worth, abilities).

If you notice that your client exhibits one or more of these behaviors, you can employ some of the techniques below to reduce and manage the child's anxiety.

- Acknowledge that the circumstances are difficult and anxiety-producing. Empathic statements such as, "this is hard" or "it is scary when you don't know what will happen" or others customized to the client's circumstances will help them label their feelings and reduce anxiety.
- Ask open-ended questions to learn what in particular is making the client anxious. This provides the client time to voice concerns, and allows you to correct any misconceptions contributing to it.
- Have your client engage in soothing activities. For example, give the client something to hold, like a stress ball. For a younger child, have a small toy, game or other object available. You can also provide paper, pens or crayons for drawing. Playing music is also soothing. Note: small gaming machines are not advised because they heighten anxiety and arousal, and they interfere with memory encoding/ability to remember legal advice. If you see a client repeatedly, certainly bringing something specific for her/him goes a long way to build rapport and instill confidence.

- Offer water. Hydration reduces anxiety and builds rapport by showing care for the client.
- Try walking and talking with your client (conditions permitting). Walking reduces anxiety and depression, lowers blood pressure, and stimulates dialogue.
- Keep chewing gum with you and offer it to your client. Chewing gum is shown to improve memory and reduce anxiety (Smith, 2010). It also serves as an easy, ready conversation starter, a simple way to open the interaction.
- Use humor where appropriate. Try making your client laugh and smile. Granted, material covered in these conferences is often grave. Yet, showing a sense of humor at appropriate times adds levity that both reduces client anxiety and teaches the client a strategy for stress management. You also can use emotional contagion to your advantage during legal conferences to induce more positive emotions and reduce anxiety. Emotional contagion begins with the human tendency to mimic others' facial expressions or emotions. For example, when you see someone smiling it is likely to automatically evoke a smile from you. Research suggests that people not only mimic different facial expressions, but also have a tendency to experience the corresponding emotion, indicating there is a relationship between facial muscle activity and subjective emotional experience (Dimberg & Andreasson, 2008). Therefore, using a warm, welcoming smile and humor with clients is likely to induce an automatic smile, which in turn induces positive emotions. Ultimately, reducing anxiety this way will bolster information processing and memory.
- Breathing techniques are known to help with relaxation. Diaphragmatic breathing ("belly breathing") calms the mind and induces a state of relaxation in one's body. The directions are straightforward: have the client sit comfortably, put his hand on his belly, and take slow, deep breaths, feeling the belly rise and fall. With children, belly breathing is easier to learn when imagination and fantasy are involved. For instance, when practicing belly breathing, have a child imagine that he is inflating and deflating a colorful balloon in his belly.

H. Avoid over-influencing the child

Certainly, the purpose of the advice already presented here is to enhance communication with child clients and optimize the child's active participation in the process and ability to voice his desires, concerns, and choices. The fact remains that children of all ages are highly suggestible. Lawyers for children must remain mindful of this, and avoid over-exerting their influence on the child client. Yet despite the dangers of suggestibility, even young children can provide accurate accounts of experienced events, discern legal matters, and make informed decisions if adults question and counsel them skillfully (Olafson & Kenniston, 2008). Some tips to avoid unduly influencing the child client include:

- Know your biases, prevent them from influencing your work, and quickly recognize and curb them when they arise;
- Be aware that the order in which you present options to the client may have an impact on his decision-making;
- Be mindful of your own reactions, facial expressions and body language;
- Use neutral language when presenting information and options; and

- Have your client take the lead in mapping out options and weighing the pros and cons.

These are just a few examples of tools the lawyer can use to avoid over-influencing the client in one direction or the other. Remember that ultimately, it is the client who has to live with the outcome of his case, so it is important for his voice to be heard, and for his preferences to be expressed.

Section IV. Common Challenges

When working with the child client, address difficult issues directly. Being open and honest with your client makes the client feel more comfortable as you discuss difficult issues. Honesty and directness also go a long way toward building rapport and collaboration, thus enhancing the client’s ultimate ability to make good decisions. Following are some common challenges faced by attorneys working with child clients to provide additional guidance with respect to counseling child clients.

A. Time Constraints

Attorneys are often faced with the reality of significant time constraints. Effective counseling under such circumstances is even more difficult. Following are tools and strategies, some of which are mentioned above, which help to reduce the impact of time constraints:

- Keep it simple. Focus on one or two key aspects of the case to cover.
- Stay on topic. Remain focused on the key aspects of the case you have identified. If your client seems preoccupied or distracted, acknowledge that and shift their attention back to the matter before you.
- Review your agenda first to maximize understanding and collaboration. Give your client a copy of the agenda to follow and check off or highlight items when they are finished.
- Set expectations and be mindful of the time. For example, “We have 10 minutes to work together and I need your full attention because this is important. It is a short time and I am confident we can do this.” If you have a wristwatch or a clock nearby use it to keep track of the time together with your client.
- Reinforce the positive. Brief bits of praise reinforce desirable behavior and motivate the client to keep up and meet the goal of working within given time constraints.
- Always engage your client in brief open conversation at the start. Even when you only have a few minutes, it is important to relax them and orient them to you and the situation.
- Provide your client with paper and a pen or pencil to make notes, organize ideas, or weigh options.

B. Meeting Locations

Section II.A. above describes strategies for creating the most ideal meeting environment possible. But the reality is that it is not always possible to create such an environment. There are times when counseling has to take place in a juvenile court building hallway, in a holding cell at the detention center, at a child’s busy or even

chaotic home, etc. Bearing this in mind, here are some strategies that can make any environment more conducive to counseling:

- Ask for help. Enlist others who work in and know a particular building if there are alternative places (more quiet corridors, available rooms, waiting areas, a cafeteria) to meet.
- Always minimize distractions and make adjustments during meetings as needed. Scan the environment for potential distractions and attempt to find the least distracting place possible. Move if a location becomes suddenly inundated with distractions.
- Always try to sit down. Sitting down next to your client as recommended above, even if it means moving furniture to do it.
- If possible, go outside. At times, being outside can lead to a more productive meeting. Perhaps plan meet with your client outside a courthouse (weather permitting) before going inside and through security.

C. Safety

One of the most challenging times in the lawyer-client relationship occurs when a client wants to pursue a course of action that is not safe. Imagine that you represent a 10-year-old girl who has been sexually abused by her mother's live-in boyfriend. Your client tells you unequivocally that she wants to return home to her mother, despite the fact that the mother's boyfriend is still living in the house. You know that the judge, who has been made aware of these facts by the caseworker, will not grant your client's request to return to her mother as long as the boyfriend is there.

As an initial matter, be honest and direct with your client regarding your assessment, and what you believe will be the outcome in court. Also keep in mind that using open-ended questions and a non-judgmental approach will allow your client to confide in you regarding why she wants this option, which will inform what alternatives might be acceptable. If you have been able to build rapport and establish trust, you will be able to discuss difficult subjects like this without your client shutting you out. This foundation will enable you to help the client think through options (e.g., is there a grandmother, aunt, cousin or other family or community member she would like to live with? What about a group home near her school? Or a foster placement? What are the pros and cons of each of these options?).

Clearly talking through and weighing each option with the client might also give the lawyer an opportunity to see that she does not accurately understand her client's motives for wanting to go home. For example, the lawyer may not understand initially that the client is concerned her mom will not take her medication if she (the client) is not home to help her. By coming up with an alternate way of ensuring mom will get her medication, and thereby alleviating the client's concern, the client then may be more interested in exploring alternate placements in order to avoid the abusive boyfriend.

Ultimately, it is the child client who has to live with even the very toughest of decisions. As the child's advocate, it is the lawyer's job to effectively counsel the client to make a good decision. If you've spoken to your client, the client is demonstrating adequate reasoning skills, the client is competent and clear about what he wants, then your role is to advocate accordingly for your client.

D. Working with parents and caregivers

As the lawyer, your ultimate responsibility is to your client. However, it is likely that you will need to develop a positive working relationship with your client's parents, guardians and/or other caregivers. In addition to having strong bonds with these individuals, your client also may rely on these individuals for transportation to and from important meetings and court appearances, as well as for support in complying with any court ordered services or conditions. Moreover, your client's parents/caregivers may be key to your ability to have access to the client. Some tips to keep in mind as you balance your duties to your client with maintaining a positive relationship with his family and/or caregivers:

- When parents or guardians are represented by counsel, be sure to ask to have their counsel present or seek permission from counsel prior to speaking with them.
- Be open and honest about your role as the lawyer for the child.
- Take time to explain the attorney-client privilege so that the parents/caregivers understand the legal reasons behind your duty to keep certain conversations with your client privileged. Parents/caregivers may feel alienated and frustrated by your need to have private conversations with their child. However, a careful and honest explanation of your legal obligations can go a long way toward easing any concerns in this regard. Indeed, sometimes explaining this to a parent/caregiver in the child client's presence may help to empower the client and reinforce the veracity of your promise of confidentiality.
- Keep the lines of communication open to the extent possible, and answer the parent/caregiver's questions to the best of your ability (without compromising your duties to your client).
- Avoid judging. As with your client, evaluate your own biases and take care to prevent your own biases from interfering with your relationship with your client's parents/caregivers.
- Be mindful of the order in which you are interacting with the parent/caregiver and the child client. If you are meeting with the parent/caregiver immediately after meeting with the child client, remind the child about confidentiality (as the child could reasonably fear that you are now sharing information with the parent/caregiver).

Lawyers for children face myriad challenges, many of which are not listed above. Thus, the strategies and principles outline above are designed to assist with the representation and counseling of child clients across the board, not just with respect to those challenges listed here.

Conclusion

Counseling is a key component to the successful representation of any client. When the client is a child, additional factors come into play, making the work of counseling yet more complex. Key to any lawyer's success in this area are: understanding your client's developmental level, building rapport and trust, and employing well thought out strategies and techniques to most effectively communicate with your client. Together, these tools will best position you—the lawyer—to guide your child client to successful decision-making and more positive case outcomes.

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The “HOW TO” Guide: Infants/Toddler

- Keep primary caregiver in the room
- Approach slowly, let them warm up
- Have toys
- Observe baby with primary caregiver
- Get down on their level
- Have them come to you
- May want to hold child
(if they seem willing & you are comfortable)
- Seek info from primary caregiver as you interact with baby

The “HOW TO” Guide: Pre-School

- Get down on their level
- Be informal
- Keep conversation concrete & relevant to them
(e.g., ask them about a toy they brought)
- Interact with their important adults
- AVOID suggestive questioning & do not pressure
- Balance power/choice with limits
- NO jargon
- Have markers and toys
- Move slowly toward sensitive/relevant material
 - Attempt to incorporate organically
 - Risk of suggestibility
- Give 5-minute warning before ending meeting

The “HOW TO” Guide: School Age

- Be informal
- Keep conversation concrete & relevant to them
(e.g., ask them about school that day)
- Emphasize their competence, how big they are, what they can do
- Balance choices with limits
- Don't use jargon (explain new words)
- Have markers, toys/games
- Move moderately toward sensitive/relevant material
 - Be direct, but open-ended
 - Be clear of non-judgement, neutrality
- Inform them as meeting is coming to an end

The “HOW TO” Guide: Adolescents

- More formal, not as much as with adults
 - Shake hand
 - Can use professional title
- Jargon ok with explanation
- Have pen/paper, maybe markers
- Pace →
 - slightly slower than with adults
 - Be direct

April 2, 2020

Dear CAFL Appellate Panel Attorneys:

We are sending this letter to provide guidance and answer your questions about contact with appellate 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 appellate mentors, the Appellate Panel Support Unit, and (in some circumstances) the staff Appellate Unit members are available to provide support and respond to questions you may have.

CAFL private appellate attorneys 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 appellate attorneys regarding in-person and other forms of client contact.

Representation of Parents at the Outset of a Case

The Appellate Performance Standards require attorneys to “make all reasonable efforts to meet” with their clients within a week of the assignment in order to enable the attorney to establish an attorney-client relationship. App. Perf. St. 5. What efforts are “reasonable,” as well as the meaning of “meet,” are different under the current circumstances than in ordinary times. **If, upon being assigned to an appellate client, 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 the attorney may do so and postpone the initial in-person meeting.²**

Keep in mind, of course, that in-person communication is almost always best for sensitive discussions and relationship-building. Please tell your parent clients that you *will* speak together in person soon, when such meetings are safer. In some cases, the client may insist on immediate in-person communication, even when alternative ways to communicate may seem more

¹ Video conferencing is available through Facetime, Skype, WhatsApp, Google Hangouts, and Zoom, among others. Information about these platforms is available on the CPCS/CAFL website.

² The attorney should document the reasons for that decision in the client’s case file.

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), we ask that you either (a) not accept the assignment, return the assignment, or move to withdraw³; (b) hire an associate or a social worker who is willing to meet in person with the client; or (c) ask the Appellate Panel Support Unit to assign co-counsel for the client for this purpose.⁴

Representation of Children at the Outset of a Case

Appellate attorneys for children must also “make all reasonable efforts to meet” with the client after assignment. App. Perf. St. 5.⁵ **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.⁶ 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 child 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 (cooperatively with trial counsel) for

³ If you are returning the assignment or withdrawing from the case, please make sure that the Appellate Panel Support Unit and successor counsel are aware of the need for in-person contact with that client.

⁴ Please note that the two-attorney prohibition in G.L. c. 211D, sec. 6B does not apply to appeals.

⁵ See also CAFL Appellate Practice Advisory (August 28, 2019), “Meeting & Communicating with Child Clients on Appeal,” available at: <https://www.publiccounsel.net/cafl/wp-content/uploads/sites/7/Child-client-practice-tip-8-28-2019.pdf>

⁶ The latest prevention guidance from the Department of Public Health (as of April 1, 2020) is available at <https://www.mass.gov/info-details/covid-19-prevention-and-treatment#prevention->.

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.⁷

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 take one of the steps set forth at the top of page two, above.

Ongoing Contact with Parent and Child Clients

The Appellate Performance Standards require that, on an ongoing basis, appellate counsel “confer with the client” and “keep the client informed” about the case; they also require that appellate counsel for a child “communicate with the child to the extent necessary to maintain a normal attorney-client relationship with the child.” App. Perf. St. 6. The Appellate Panel Support Unit explained in an August 2019 practice advisory (see footnote 5) that appellate counsel for a child should, after the initial meeting, meet with the client (a) after any placement change; (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.

As noted above, in-person meetings are preferable for such ongoing contact. However, if counsel is unable to meet with the client in person,⁸ and the client has access to a phone or computer, counsel 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 child clients, the attorney should find means for regularly ensuring (cooperatively with trial counsel) that 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.

We recognize the challenges that the Covid-19 pandemic presents, not only with respect to representation of appellate clients in CAFL cases, but also in your personal life. We hope that

⁷ As with the representation of parents, if an attorney representing a child decides not to meet in person with the client within a week after being assigned, the attorney should document the reasons for that decision in the client’s case file.

⁸ As noted above, if counsel is unable to meet with the client in person but the client insists on in-person communication, or effective or confidential communication is impossible without it being in person, counsel should take one of the steps set forth at the top of page two. Attorneys are encouraged to consult with their mentor (if they have one) or the Appellate Panel Support Unit in the course of making this decision. The reasons for the decisions should be included in the client’s case file.

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 or the CAFL Appellate 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, CAFL
and
The CAFL Appellate Panel Support Unit