

## 1.5 Communication and Contact with Client

In all cases counsel must maintain sufficient contact with the client to establish and maintain an attorney-client relationship that will enable counsel to keep abreast of the client's circumstances, interests, needs, and positions in the action.

- a. Immediately upon receipt of notice of the assignment, counsel shall take appropriate steps to locate the client. Counsel shall inform the client of the assignment and meet with the client as soon as practicable. To the extent possible, the initial meeting should take place sufficiently prior to any upcoming court hearing to permit counsel to prepare for the hearing. As soon as practicable, and to the extent possible given the client's age and abilities, counsel shall explain to the client the nature of the court proceedings and applicable law, the role of counsel, and the existence of and limits to privileges covering the client's communications with counsel, therapists, social workers, and other relevant individuals. Counsel shall also ascertain the client's circumstances, interests, needs, and positions in the proceeding.
- b. At a minimum, counsel shall meet with a child client every three months, except under extraordinary circumstances. Irrespective of a child client's age, counsel shall meet with the child client at their residence promptly upon receiving notice of the assignment.

Thereafter, counsel shall meet with the child as necessary to provide competent representation to the client, to ascertain the child's circumstances, interests, needs, and positions, to inform and advise the client about the proceedings, as appropriate, and to maintain an ongoing attorney-client relationship with the child. To meet this requirement, counsel must meet with and contact their client as described below.

- c. Except under extraordinary circumstances, counsel ***must promptly meet in person*** with their child client, irrespective of the child's age, when they become aware of any the following:
  1. The child asks to meet counsel in person;
  2. The place where the child is living has changed, regardless of who has custody;
  3. The place where the child is living is about to change and the child is capable of expressing a preference about the change, but counsel and the client have not previously discussed it;
  4. The child has been psychiatrically hospitalized or hospitalized due to an injury or serious illness;
  5. The child is being held at a DYS facility or in a DYS placement;
  6. The child is the victim of a crime;

7. A 51A involving the child’s residence has been newly supported or a question has been raised regarding the appropriateness of the child’s placement that warrants investigation by the attorney; or
  8. DCF has changed the proposed goal for the family.
- d. If a child client can express a preference, counsel ***must contact the client*** in an age-appropriate and developmentally appropriate way when counsel becomes aware of any of the following:
1. A separation of siblings who were placed together;
  2. A significant change to family time (either the schedule or the nature of the contact);
  3. A change in the child’s school during the school year;
  4. A significant school-based issue (repeated absences, discipline, failure of the school to provide necessary services, etc.); or
  5. The place where the child is living is about to change, and counsel and the client have previously discussed the change.
  6. An upcoming trial or hearing on any other issue where the attorney will need to advance the child client’s position (including but not limited to a hearing on a substantive motion, a permanency hearing, or a *Rogers* hearing).

***Commentary:*** Establishing and maintaining an appropriate attorney-client relationship with the child client is the foundation of effective representation. It is often more difficult to develop a relationship and trust with a child client than with a parent client. Meeting with the child regularly allows counsel to develop a relationship with the client and to assess the child’s circumstances. The child’s circumstances, interests, needs, and positions change over time. Counsel cannot be fully informed of such changes without developing a relationship through frequent contacts. Accordingly, counsel must meet with child clients at least every three months. Counsel for a child must also meet with or contact the client upon the occurrence of certain events in the child’s life or in the child’s case as described above. This will ensure that counsel is fully informed of the client’s circumstances interests, needs, and positions as the case proceeds.

Under extraordinary circumstances, however, counsel for a child may not be able to meet with the client as required above. For example, the child may be “on the run” and their whereabouts are unknown, or there may be strong evidence that the child will be adversely affected by meeting with counsel, the child may refuse to meet with counsel, or the child may be placed at a distance that makes it impracticable to meet in the situations listed above. Where these circumstances exist, counsel should document any

variance from the performance standard, as well as their efforts to meet with or contact their child client, in their case file. Please note that when distance is the issue, counsel must still meet with child clients virtually.

Where the performance standards require contact with the client but do not require that it be in-person, for many older child clients this communication might be possible using Zoom, FaceTime, or other video platforms or through phone calls or text messages. Counsel should assess what type of contact is appropriate given the nature of the issue, the developmental level and maturity of the client, the client's ability to effectively engage with counsel, the client's preferences, and any privacy issues. Younger clients may not be able to communicate effectively with counsel in these ways and would instead still require an in-person meeting. Counsel should be mindful of the risks associated with communicating with child clients through letters, email, and text messages. Children may not receive such communications or may not be the only ones to read such communications. This places counsel's work product and attorney-client privilege at risk.

In order to provide competent representation, child's counsel should meet with the child in the child's environment to understand the child's personal context. Viewing the child in their environment is also an important part of counsel's required, ongoing investigation (see Standard 3.1) and can illuminate whether a client is receiving the services necessary to achieve their goals. (See Standard 4.1.)

The benefits of meeting with an older child who can convey information and express his or her wishes are obvious. However, meeting with younger children, including preverbal children, is equally important. Mass. R. Prof. C. 1.14 recognizes the value of the child client's input and further recognizes that the degree of input from children may vary depending on their developmental stage. In addition, preverbal children can provide valuable information about their needs through their behavior, including their interactions with their caretakers and other children or adults.

- e. Counsel shall remain in communication with the client during the case to discuss, to the extent possible given the client's age and abilities, the progress of the case, trial strategy and preparation, negotiation and settlement strategies, and post-trial goals. Counsel shall inform the parent client of all court hearings and administrative proceedings and inform such client of his or her right and/or obligation to attend such hearings. Where appropriate given the child's age and abilities, counsel should inform the child client of court hearings and administrative proceedings. If the child client expresses a desire to attend a hearing, and such attendance is appropriate given the child's age and abilities and the nature of the proceedings, counsel shall take

steps to assure the child's attendance. If the client is involuntarily committed or incarcerated and wishes to attend a hearing, counsel shall make all necessary arrangements for the court to issue a writ of habeas corpus to assure the client's presence at the hearing, and shall, if necessary, ensure service of the writ.

- f. Counsel shall explain the result of all court hearings and administrative proceedings to the client. If a final judgment is adverse to the client, counsel shall explain the client's right to appeal the decision, the appellate process, including the time limits in which a notice of appeal must be filed, and any alternative post-judgment strategy that may be appropriate. Counsel shall also explain the process and availability of post-trial reviews, if applicable. If a final judgment is not adverse to the client, counsel shall ensure that opponents adhere to time limits and discharge other appellate responsibilities until appellate counsel files an appearance. In communicating the results of court hearings and administrative proceedings to a child client, counsel shall provide such information as is appropriate given the child's age, abilities and wish to be so informed.

**Commentary:** Where counsel is unable to communicate effectively with the client because of a disability or a language barrier, counsel should take whatever steps are necessary to ensure that he or she is able to communicate with the client and that the client understands the proceedings to as great of an extent possible. Such steps may include obtaining expert assistance or an interpreter.

The lawyer has an obligation to explain clearly, precisely, and in terms the client can understand the meaning, implications, and consequences of legal proceedings. A client may not understand the legal terminology and, for a variety of reasons, may choose a particular course of action without fully appreciating the implications. With a child the potential for misunderstanding may be even greater. Therefore, the child's attorney has additional obligations based on the child's age, level of education, and language skills. There is also the possibility that, because of a particular child's developmental limitations, counsel may not completely understand the child's responses. Therefore, child's counsel must learn how to ask developmentally appropriate questions and how to interpret the child's responses. The child's attorney may work with social workers or other professionals to assess a child's developmental abilities and to facilitate communication. In addition to initiating contact with the client as described above, counsel should respond promptly to telephone calls, letters, and other inquiries from the client.