



TALKING WITH KIDS

OUTLINE

PRIMARY CORE PRINCIPLES:

- Principle 2: “The child is the client, and a juvenile defense attorney is obligated to represent the client’s expressed interest. A juvenile defense attorney never acts as a guardian ad litem.”
- Principle 3: “A juvenile defense attorney is expected to promptly interview clients in person and to identify client goals and objectives of the representation, to counsel clients about options, and to keep clients informed during the course of the representation. Interviewing children requires age-appropriate communication methods and skills.”
- Principle 5: “A juvenile defense attorney must consider the legal competency of all juvenile clients to proceed by reviewing all relevant records and obtaining an evaluation of the client when appropriate.”

STATUTES/ETHICAL RULES:

- Wis. Stat. §938.23(1g): “In this section, ‘counsel’ means an attorney acting as advocacy counsel.”
- Preamble to SCR 20: “[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system....”
- SCR 20:1.4(b): “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”
- SCR 20:1.6(a): “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent”
- SCR 20:1.14(a): “When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental

impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”

- SCR 20:2.1: “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”

REMEMBER: KIDS ARE DIFFERENT!

- Biology: ongoing myelination of the pre-frontal cortex means they are often operating with “half a brain”
- Communication style: grown up in an era of tweets, texts, snaps, DMs.
- Language is different: what’s the “new slang?” (e.g., “high key” v. “low key”)
- Adverse Childhood Experiences (ACEs): experienced trauma, early and often, which impacts, among other things:
 - Emotional Regulation: Difficulty identifying or labeling feelings and communicating needs¹
 - Cognitive Ability: Problems with focus, learning, processing new information, language development, planning and orientation to time and space²
- The impact of trauma, in their own words:
 - DIFFICULTY ORGANIZING INFORMATION: “Sometimes, I don’t say things in the most optimal order because I have not organized it all in my mind before speaking. Sometimes I mix things up even if I had them organized before beginning the conversation. If I’m nervous I might be scrambled.”³
 - LACK OF CONCENTRATION/FOCUS: “I can get distracted by things while trying to communicate. I may experience distracting thoughts or feelings. I may need to ask you to tell what you just said again.”⁴

FOUNDATIONS FOR TRUST/RAPPORT:

- What are the “basic rules” about me being your lawyer?:
 - Explanation of your role:
 - Distinguish between advocacy counsel and GAL.

¹ Cook, A., Spinazzola, P., Ford, J., Lanktree, C., Blaustein, M., Cloitre, M., et al. (2005). Complex trauma in children and adolescents. *Psychiatric Annals*, 35(5), 390-398.

² Id.

³ “10 Ways PTSD Messes with Communication.” <http://www.new-synapse.com/aps/wordpress/?p=1614>

⁴ Id.

- Advisor, but zealous advocate.
 - Empower them; “you’re the boss!”
 - The importance of clear words:
 - Check for understanding.
 - “if I am doing a lousy job explaining something, you should tell me!”
 - Gauging for competency.
 - Confidentiality
- Get to know your boss:
 - Family?
 - School:
 - Attendance? Grades?
 - IEP? “Do you get any extra help in any classes?”
 - Any favorite classes/teachers?
 - Activities, clubs, or sports?
 - Hobbies/Interests?
 - Job?
 - Medications? Therapy?
 - Listen ... ask follow-up questions which demonstrate you are listening!
- Introduction of how the system works:
 - Prior involvement?
 - How did we get here?
 - Who are all of the people involved?
 - What are their roles?
- Their specific case:
 - Understand the charges?
 - What is their version of events?
 - Options for how the case can unfold
- Do they have goals/desired outcomes?

- Be realistic with them at all times
- What can they expect from the prosecution, from the judge?
- Moving forward...
 - How can they reach you?
 - How can you reach them?
 - How much can you share with parents?
 - Can you use parent's email/phone to leave messages?
 - BE RESPONSIVE!

COMMON DIFFICULTIES

- What about the parents?
 - No legal/ethical obligation to them, but may want to consider the pragmatics of completely shutting them out.
 - Client has right to confidential conversations.
 - If all else fails, "do you want to be called as a witness by the State against your child?!?"
- "ADHD Kid" (easily distracted, can't sit still, gets up and walks around):
 - Can you still get the information you need?
 - Would you tell your boss to sit down? Stop leaning the chair back? Stop playing with the rubber band?
- "Radio silence" (head on table, doesn't want to talk, won't take your calls)
 - How about video games? Music?
 - Can we text?
 - "Option A" v. "Option B" ... "Just pick one!"
- Competency

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