

CASA Legal Training: Parties, Roles & Responsibilities



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Watch Video

- Before continuing, please review the following video. This video was created by the Child In Need of Aid (CINA) Court Improvement Project (CIP). This video was created to help introduce parents involved in CINA cases to who all is involved in CINA cases, the intent behind a CINA case, and beginnings of the CINA court process.

<https://public.courts.alaska.gov/web/cip/videos/ocs-360p.mp4>

Who all is involved?

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| Legal Party | Representative |
|--|---|
| Child/Youth | GAL/CASA, Attorney |
| Parents/guardians/Indian custodians | Attorney (Public Defender, OPA, or private) |
| Child's Tribe | ICWA Worker |
| Office of Children's Services (OCS) | Assistant Attorney General (AAG) |
| Guardian ad Litem (GAL) & CASA Volunteer | Attorney, if necessary |

"Legal party" means right to notice, opportunity to be heard; right to be represented
Grandparents and caregivers have right to notice and participate, but are not legal parties

Public can also attend, except in certain circumstances (first hearing, hearings with confidential info); can't talk about it

| | |
|--|--|
| <p>CINA court participants have legal and ethical duties</p> |  <small>www.MedicalOrchard.co</small> |
|  <small>Download from www.dreamstime.com</small> | <ul style="list-style-type: none"> ✓ GALS and CASA Volunteers ✓ Judges ✓ OCS staff ✓ ICWA workers ✓ Assistant AGs ✓ Attorneys for parents ✓ Attorneys for youth |

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- The job duties for the various roles may be set out in ethics codes, statutes, regulations, policy manuals, and/or agency guidelines.
- For each profession, we will go through legal and ethical duties; what that professional can bring to a CINA case; the unique challenges faced by each professional

Other CINA court participants have legal and ethical duties

- ✓ Educators
- ✓ Physicians
- ✓ Therapists
- ✓ Substance abuse treatment providers
- ✓ Foster parents or other caregivers



- Other professionals also have legal and ethical duties (and challenges), but it is beyond the scope of this session to discuss them here.
- A link to the ethical codes for all the legal participants as well as for educators, treatment providers and foster parents is available through the Alaska CASA office.

Roles & Responsibilities



Awareness of your own profession's duties and expectations



Appreciation of the roles and obligations of other stakeholders



Understanding of the challenges faced by all professionals involved in a case

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What do we hope to accomplish by talking about Roles & Responsibilities?

- Hope to increase your awareness of your own professional obligations and your appreciation for the roles and expectations of the other professionals involved in your cases, and an understanding of the challenges we all face
- Ideally, the lives of the children and families will be better than when they entered our system and there will be no need for them to become re-involved in the system
- Lack of such awareness, appreciation and understanding can cause a breakdown in the capacity of our child welfare system to work for the benefit of our clients.

Guardian ad Litem

- Role: represents and advocates for best interests of child in light of federal and state law
- OPA Staff GAL
 - Not necessarily an attorney
 - Varied backgrounds
 - High caseloads
- CASA Volunteer
- Attorney assistance



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The Office of Public Advocacy (OPA) is required to provide a GAL for every child in CINA case

“Guardian ad litem” is a legal term meaning guardian for the lawsuit
OPA model:

Staff GAL

CASA volunteer in certain cases – under supervision of assigned GAL

Attorney assistance available as needed

Law - CINA Rule 11 sets out qualifications and job duties and addresses other issues.

Job descriptions are further refined in OPA’s Policies & Processes and the CASA Volunteer Handbook.

What GALs & CASAs Are Not

- Expert witness
- Advocate for expressed interests (though must disclose)
- Friend
- Decision maker
- Service provider
- Visit supervisor



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Before we talk about duties of a GAL, let's talk about what GALs are not:

- Expert witness – person hired to give opinion, based on person's knowledge and expertise
 - GAL/CASA has *position* about child's best interest, based on the facts of the case
 - GAL/CASA may rely on experts (such as psychologist) to formulate position
 - GAL/CASA rarely testifies – only on factual issues that can't come in some other way
- Advocate for expressed interests – attorney will be appointed in some situations (we'll talk about that later)
- Friend – you may develop a close relationship with child, but you are not their friend
- Decision maker – GAL/CASA doesn't decide placement, etc. – we advocate to OCS and judge
- Service provider – we're not the therapist, etc., even if that's your background
- Visit supervisor – useful to observe interaction at visits, but you're not the supervisor

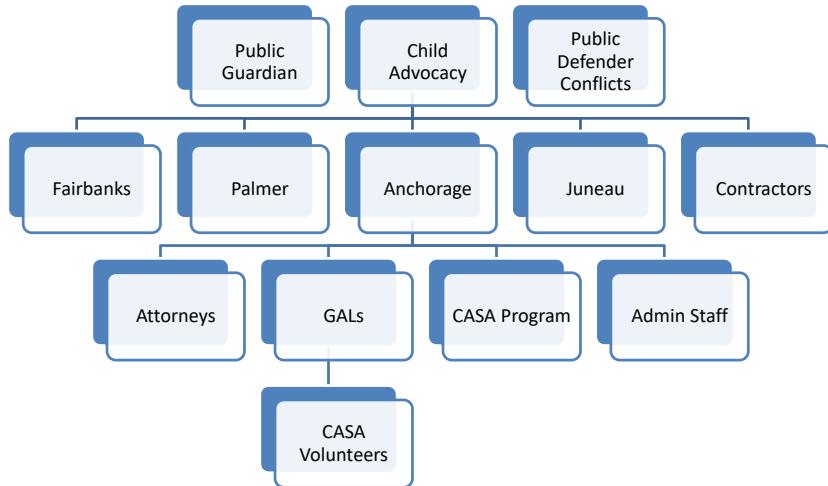
Job Description

- A. Independent investigation
- B. Facilitate progress of case
- C. Identify and advocate for child's best interests
- D. Monitor progress
- E. Keep case records
- F. Adhere to CASA policies



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Office of Public Advocacy



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This is an organization chart for OPA. Here you can see how CASA volunteers fit into OPA. CASA volunteer will likely interact with GALs, Admin Staff, & CASA Program.

Division of CASA/GAL Duties

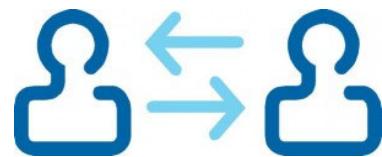
| Duty | CASA | GAL | Comments |
|------|------|-----|----------|
| | X | x | |
| | x | | |
| | | | |
| | | | |

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This division of responsibilities will be discussed during the Live Virtual Legal Session.

CASA and GALs

- Case Assignment Meeting
- Summaries of home visits, meetings
- Preparing for court
- Writing reports
- Resolving disagreements



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The Volunteer Handbook covers (which will be covered in Session 5 of your CASA Volunteer Training Manual):

Initial case assignment meeting:

- Get acquainted
- Exchange contact information
- Discuss communication expectations and means
- Generate initial “to do” list

Summary notes of home visits and meetings need to be sent to the GAL within 3 days

Timing to communicate before court depends on individuals involved

Schedule and responsibility for written reports – depends on individuals, GAL preference, and case needs

Procedure for resolving disagreements – contact CASA program coordinator; program coordinator and GAL’s supervisor will assist; if necessary, GAL’s position controls

GALs - Challenges

- High caseloads
- Geographical barriers limit contact with children
- Lack of legal expertise
- Lack of culturally appropriate placements
- Lack of services for families
- System delays



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You will hear from local GALs during our Live Virtual Legal Session.

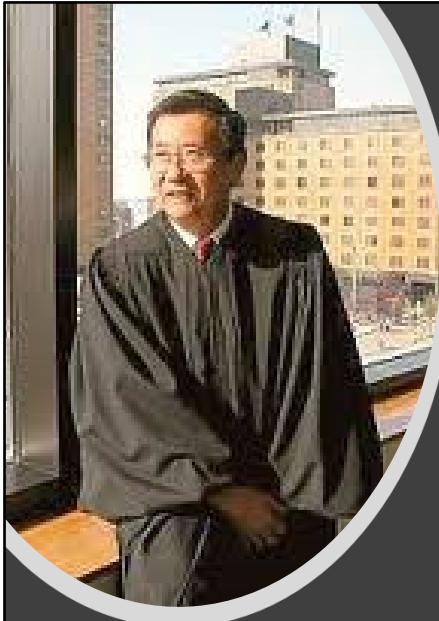
CASA Volunteers – Challenges

- Lack of experience in CINA system
- Uncomfortable speaking in court
- Intimidated by other case participants
- Disagreement with GAL



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(These come from CASAs) – these are in addition to those identified by GALs
We will discuss these challenges and working with GALs more in depth during our Live Virtual Legal Session.



Judge

- Ensure that all parties have notice and an opportunity to be heard
- Determine factual and legal issues at every stage in accordance with state and federal law
- Make timely decisions

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- First bullet is “Due Process”
- Last bullet: make sure case is moving forward (hopefully with the child’s sense of time)

Judges – What Can They Bring?

- Legal expertise
- Courtroom experience
- Commitment to public service
- Authority to convene parties in court
- Authority to make and carry out orders



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Last two bullets really important

Judges - Challenges

- Heavy caseloads; lack of court time
- Delays caused by circumstances beyond control
- Inability to change way cases are dealt with
- Balance between being active/involved and respecting separation of powers (deferring to OCS expertise)
- Not knowing what's going on behind scenes
- Lack of services for families

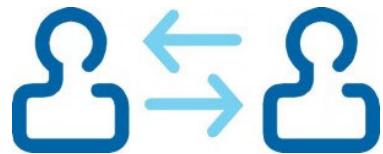


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These challenges came from judges

CASA and Judge

- No ex parte communication
- Speak up in court; judges want to hear from you



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Interaction is only in court and through written materials (reports, legal filings)

Judges/magistrates vary in perception of CASAs

Some judges don't understand/appreciate CASA role - most are truly grateful and respectful

GAL & CASA will work together to decide who will speak in court. Judge may ask you how the child/youth is doing

You will hear from your local program about the relationship and practice in your area during the Live Virtual Legal Session



Office of Children's Service: Initial Assessment

Intake/Initial Assessment

- Respond to reports of abuse or neglect
- Perform assessments to determine if abuse or neglect has occurred
- Evaluate circumstances of families and children
- Provide reasonable/active efforts
- Determine initial placements
- File petitions

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This is one of three slides regarding OCS duties/responsibilities
Kim Guay, OCS Child Welfare Administrator



Office of Children's Service: Family Services

Family Services

- Provide reasonable/active efforts
- Case planning
- Monthly visits with children
- Monthly contact with parents
- Facilitate family contact
- Communicate with Tribes, service providers
- File reports
- Conduct relative searches
- Determine placements

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This is one of three slides regarding OCS duties/responsibilities
Kim Guay, OCS Child Welfare Administrator



Office of Children's Service: Administrative Duties

- SSI applications
- PFD applications
- Medicaid applications
- Maintain IV-E eligibility
- Facilitate TDMs and administrative reviews
- License and monitor foster homes
- Statistics
- Federal reviews

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This is one of three slides regarding OCS duties/responsibilities
Kim Guay, OCS Child Welfare Administrator

OCS – What Can They Bring?

- Commitment to help families and keep children safe
- Training in analyzing safety, assessing service needs, and providing guidance to families
- Ability to establish relationship with parents and children
- Knowledge of available services



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Last two bullets really important

OCS - Challenges

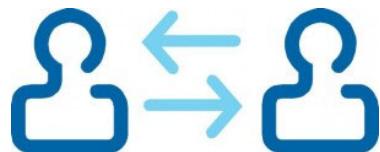
- Balance between responsibility to place child's safety first *and* desire to reunify as quickly as possible
- Managing duty to maintain confidentiality, but also to disclose information when there is a need to know
- Everyone second-guessing decisions (supervisors, GALs/CASAs, attorneys, tribes, judges)
- Avoiding taking the adversarial court process personally
- Lack of services, especially in rural areas
- High caseloads, high turnover, difficult clients, reports, reports, reports . . .



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CASA and OCS

- Important relationship
- OCS perception of CASA Volunteers varies
- Find balance between advocating and nagging
- Strategies to resolve issues between yourself and OCS worker



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CASAs will have contact with assigned worker, supervisor, support staff (SSA), and independent living services (ILS)

Other than relationship with children and the GAL, this will be the most important relationship

Some OCS workers embrace CASA; some are jealous or perceive us as nags

There is a lot of turnover in OCS and CASA volunteers are only on about 10% of cases.

This being the case, you may find that the OCS worker is not familiar with your role

It is important to find balance between advocating and nagging

Ask GAL/program staff for tips on particular workers



ICWA Worker

Duties in CINA Cases

- Respond to Notice of ICWA Proceeding to confirm whether Tribe is “child’s Tribe”
- Intervene if directed by Tribe
- If not an attorney, file Designation of Tribal Representative
- Ensure Tribe’s rights are protected
- Represent position of Tribe in court
- Provide information regarding extended family members and potential placement options

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Geraldine Nicoli, Knik Tribe

Depending on Tribe, may have many other duties (e.g. participate in out-of-state cases; provide services)

ICWA Worker – What Can They Bring?

- Knowledge of child, parents and extended family
- Historical context of families
- Knowledge of relevant cultural practices
- Knowledge of resources and support systems
- Resource for family or tribal placements
- Resource for culturally relevant treatment and services



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Last two bullets really important

ICWA Worker - Challenges

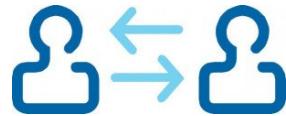
- Limited training and formal education
- Part time position; other non-CINA duties
- High turnover
- Court culture/process unfamiliar and uncomfortable
- Limited or no access to attorney representation
- Often geographically isolated from other parties
- Difficulties with telephonic participation
- Other parties unwilling to accept traditional healing methods



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CASA and ICWA Worker

- Important relationship; natural alliance
- Send introduction letter
- Communicate early and often
- Learn about Tribe's culture and values
- Solicit ideas for culturally relevant services
- Consider joint home visits



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Also a very important relationship – culture, family connections, history, etc.

Attorneys – General Information



- Attorney-client relationship
- Attorney's role as advisor
- Attorney's role as advocate
- Attorney's relationship with others

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“Lawyer” and “attorney” are used interchangeably.

In CINA cases, we can have a lot of attorneys:

- Assistant AGs representing OCS;
- Attorneys representing parents, guardians and Indian custodians;
- Attorneys for older youth (more and more common)
- Attorneys for Tribes (occasionally)
- Attorneys for GALs (occasionally).

Bullet points come from Rules of Professional Conduct (ethics are a big deal to attorneys)

Attorney-client relationship

- Client determines objectives of representation; attorney determines strategy
- By representation, attorney does not endorse client's political, economic, social or moral views or activities
- Attorney keeps client informed of status of case so client can make informed decisions
- Attorney shall not reveal client's confidence without consent (referred to as “attorney/client privilege”)
 - Different than GAL/CASA, who don't have confidential relationship with child
 - Includes statements made by client to attorney and other info obtained about client's case

- Ex: when you get OCS discovery, you'll see that conversations between the OCS worker and AG are marked out

Advisor – one “hat”

- An attorney is more than the client's mouthpiece; an attorney is also an advisor – offers candid advice
- Keep in mind that we don't know what happens behind closed doors
- Decisions of the client should be made only after the client has been informed of all relevant considerations.
- But if the client does not want to follow the lawyer's advice, the lawyer must abide by the client's decision – and can't tell anyone that the client is not following the advice.
- **Example:**
 - Maggie's attorney explains what happens at a temporary custody hearing and tells Maggie that it is his assessment that there is very little likelihood of prevailing at a contested hearing at this stage.
 - The attorney warns that a lot of bad stuff may come out during the testimony.
 - The attorney advises Maggie to stipulate to probable cause.
 - The attorney may also advise Maggie that for her safety and wellbeing she should consider seeking alcohol treatment and staying away from Franco.
 - After listening to the attorney's advice, Maggie decides she still wants to contest PC – she does not think OCS should be involved with her family.
 - The attorney must follow Maggie's direction, and cannot tell the other parties that Maggie is not following his advice

Advocate – the “other hat”

- Lawyers have a duty to zealously advocate for their clients, but that advocacy has limits.
- The lawyer must have a basis for asserting an issue or taking a position that is not frivolous; in other words, the lawyer must have a good faith argument in support of the client's position.
- An action is not frivolous just because the lawyer believes that the client's position ultimately will not prevail.
- Lawyers can't make false statements in court

Relationship with others

- Lawyer cannot knowingly make false or misleading statement of fact or law to others involved in case
 - However, this does not mean that the lawyer has an affirmative duty to inform an opposing party of relevant facts,
 - Or that the lawyer may disclose confidential client information.
- Lawyer cannot directly communicate with party who is represented unless party's

lawyer consents

- ***However:***

- While OCS is represented by the Attorney General's Office, direct communications between parents' attorneys and case workers are common.
- This practice has been condoned for years, so there is an implicit consent to the contact.
- Infrequently, OCS workers or AAGs will direct that any communications from a parent's attorney be in the presence of the AAG.
- Lawyer should exercise special care when interacting with unrepresented party
 - In CINA cases, oftentimes at the initial court hearing the parents do not yet have attorneys; the AAG must be careful to explain the AAG's role and the parents' options, including the option of requesting an attorney appointment.

Assistant Attorney General (AAG)

AAG Duties in CINA Cases

- Provide formal notice of case
- Advise OCS of options and likely outcomes at every stage
- Maintain confidentiality
- Discuss all information so OCS can make informed decision how to proceed
- When appropriate, attend out-of-court meetings and administrative reviews
- Zealously represent OCS consistent with law and facts
- Monitor cases to ensure OCS acting in accordance with law, policy and procedure

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- In addition to the general ethical rules that all attorneys must follow, AAGs have duties specifically related to CINA cases.
- The AAG represents OCS as an agency (i.e. OCS is the “client”), as long as OCS is acting within statutes, regulations and policy.

AAG – What Can They Bring?

- Commitment to public service
- Legal expertise
- Negotiations skills
- Courtroom experience
- Knowledge of case facts when OCS caseworker turnover



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Last bullet point is most important

AAG - Challenges

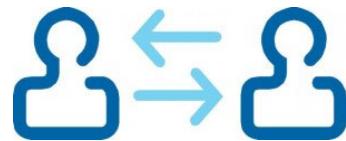
- High caseloads
- Client turnover
- Sometimes difficult to justify active or reasonable efforts argument
- Disagreement with OCS position



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CASA and AAG

- Most interaction will be at court
- AAG may need information from GAL/CASA before going on the record



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Usually not much direct interaction outside court

Parent Attorney

Parent Attorney Duties

- Advise client of options and likely outcomes at each stage
- Maintain confidentiality
- Discuss all information so client can make informed decision how to proceed
- When appropriate, attend out-of-court meetings and administrative reviews
- Zealously represent client consistent with law and facts
- Ensure reasonable/active efforts are made, including family contact
- Strategize when the plan is no longer reunification



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- The parent's attorney and many of the other stakeholders often have very different outcomes in mind.
- The bullet points in this slide describe a parent attorney's ethical duties in the context of a CINA case.

Parent Attorney – What Can They Bring?

- Commitment to public service
- Legal expertise
- Negotiations skills
- Courtroom experience
- Knowledge about client's strengths and challenges



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Parent Attorney - Challenges

- High caseloads
- Difficult clients
- Incarcerated clients
- Missing parents
- Client's position changing during case
- Presenting case with limited evidence
- Bearer of bad news
- Clients getting "legal" advice from others
- Legal arguments changing from one case to next

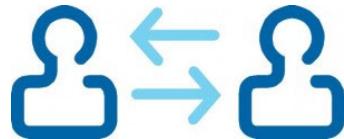


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This list came from parent attorneys

CASA and Parent Attorney

- Need attorney's permission before contacting client
- Most interaction will be in court
- Keep in mind attorney's ethical obligations
- Relationship varies, depending on position
- Strategies for handling problems



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Can be troubled relationship, unless CASA supports parent's position

Liz says: don't be afraid to call attorney to discuss client; but don't discuss anything that relates to criminal charges



Youth Attorney

- **Youth Attorney Duties**
 - Advocate for youth's expressed wishes
 - Maintain normal client-lawyer relationship
 - Advise clients of options and likely outcomes at each stage
 - Maintain confidentiality
 - Discuss all information so client can make informed decision how to proceed
 - When appropriate, attend out-of-court meetings and administrative reviews
 - Zealously represent client consistent with law and facts

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The clear difference here between GAL & Youth Attorney is that the Youth Attorney advocates for what the youth WANTS. The GAL/CASA advocate for what they believe to be in the best interest of the youth.

In addition to GAL/CASA, an attorney may be assigned to a youth for several reasons, including, but not limited to, the following:

1. The expressed wishes of the youth do not align with what the GAL/CASA believe to be in the best interest of the youth.
2. It would benefit the youth to have confidential conversation with legal counsel.
3. The youth is placed in a residential treatment facility.
4. The youth requests an attorney be appointed.

The GAL/CASA can request an attorney be appointed to a youth if they believe it would be in the youth's best interest.

Youth Attorney – What Can They Bring?

- Commitment to public service
- Advocate for youth's wishes
- Confidential attorney/client relationship for youth
- Legal expertise
- Negotiations skills
- Courtroom experience



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Note: same as all the others

Youth Attorney - Challenges

- Lack of training on representing youth
- Ability to locate youth
- Ability to communicate with youth
- Logistics of getting client to court
- Clients with disabilities
- Clients taking unsafe positions
- Clients changing position during case
- Being careful not to exert too much influence

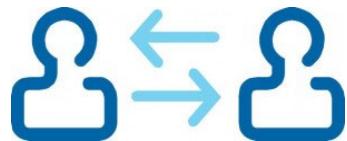


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This list came from parent attorneys

CASA and Parent Attorney

- Can be amicable relationship
- Provide background information
- Consider introducing youth to attorney
- Attorney can't prevent CASA from meeting with youth (but can be present)



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