



# Representing the Respondent: A Whole New World

Natalie J. Sal, Esq.  
Sal Sellaro Culpepper Legal Group, PLLC

# Representing Respondents in a Rapidly Changing World (Thanks, COVID-19)

- Challenges associated with legal representation at a physical distance
  - Staying in contact and building professional relationships
  - Educating clients on new (and changing) procedures and rules
  - Effective participation in remote MDTs
  - Access to resources / Services
  - Video and phone visitation issues: past, present and future
  - Tools for our toolboxes
  - Self-care
- 

# One More Barrier to Success.....

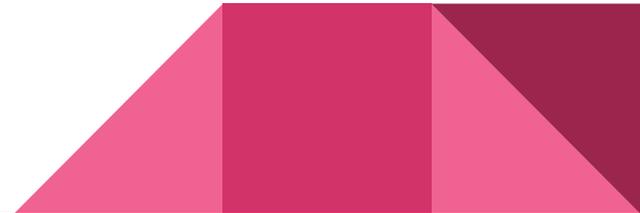
- Respondents have barriers to success which include
    - Substance abuse
    - Mental illness
    - Childhood trauma and/or abuse
    - Family history
    - Poverty
    - Lack of transportation
    - Lack of parenting role models
    - Mistrust of the CPS system
  - Changing rules, lack of in-person access to their lawyer and MDT, and other complications are just one more barrier to their participation and success
- 



# Overcoming Challenges Associated With Physical Distance

# Challenges Associated With Physical Distance

- Personal contact has been a critical part of relationship building
- Lawyers at disadvantage when not with client in person
  - Can tell a lot, especially in cases where there are controlled substance use or mental health issues
  - Use all their senses - sight, smell, hearing to help determine status
  - Difficult to consult during proceedings
  - Clients feeling isolated during proceedings



# Challenges Associated With Physical Distance

- Courts and other members of the MDT at a disadvantage - cannot assess status
  - Difficult to assess when client in distress / not competent for the proceeding
  - Trust issues
    - Client feels alone / unrepresented / isolated
    - Doesn't feel like "real court"
    - Accountability challenges
- 

# Change the strategies, not the goals.

- WV Rules of Professional Conduct requires (among other things):

## **Rule 1.4. Communication.**

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



# Change the strategies, not the goals.

- WV Rules of Professional Conduct requires (among other things):

## **Rule 2.1 Advisor.**

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.



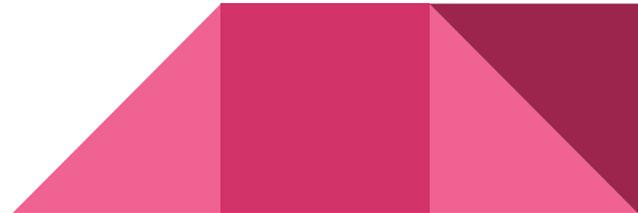


# Staying in Contact and Building Professional Relationships

# Staying in Contact and Building Professional Relationships

It's much harder to build a professional relationship when there is no or little in-person contact, especially with respondents who are struggling under “normal” circumstances. A few thoughts:

- Be honest about expectations
- Be candid about how timeframes to accomplish tasks may be less predictable
- Take into account the way clients' lives have changed
- Meet them where they are emotionally



# Staying in Contact and Building Professional Relationships

- Be open regarding ways your practice has changed that are directly relevant to your client and his/her case
  - Policy regarding in-person meetings in your office / courthouse
  - Staff absences / reduced or modified office hours
  - Working from home / availability by phone and text
  - Availability and access during reasonable business hours
    - Work cell number
    - Call or message forwarding
    - Checking office messages frequently
  - Let your clients know what you're doing to stay in touch.



# Staying in Contact and Building Professional Relationships

## Client Meetings

- In person whenever safe and possible
  - Specific instructions regarding office or meeting location procedures (masks, procedures upon arrival, etc.)
  - Be candid about when / why can't meet in person
- Video is the next best option - Seeing your face builds trust
- Phone calls / Emails / Texts
- Social Media (Not recommended!)



# Some Thoughts About Technology

## **WV Rules of Professional Conduct - Rule 1.1. Competence.**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

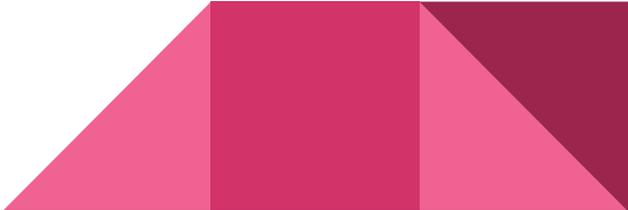
The American Bar Association Model Rules of Professional Conduct Rule 1.1, Comment 8, states, “[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”

Technology is a powerful tool to help meet the current challenges.



# Video Conferencing

The best video conferencing services offer:

- Face-to-face interaction
  - Screen share
  - Remote access to other attendee's computers (if granted)
  - Private and group text chat
  - File exchanges
  - Security measures
- 

# Video Conferencing

Some of the top / commonly used Video Conferencing services

- Cisco WebEx\*
- SKYPE\*
- ZOOM\*
- GoToMeeting
- ClickMeeting
- Apple Facetime
- WhatsApp video
- Microsoft Teams

New services are entering the market at a rapid rate.



# Video Conferencing

PC Magazine reviewed 10 of the top video conferencing services (3/18/2020):

<https://www.pcmag.com/picks/the-best-video-conferencing-software>

Forbes Magazine reviewed 14 different video conferencing services (4/20/2020):

<https://www.forbes.com/sites/louiscolumbus/2020/04/20/which-web-conferencing-software-is-the-most-popular-with-their-users/#20c4e34f5440>

TechRadar.com reviewed video conferencing services (5/20/2020)

<https://www.techradar.com/best/best-video-conferencing-software>



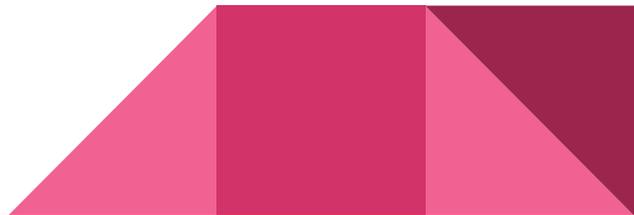
# Video Conferencing

## Increasing Security:

- Lock meetings once everyone has joined
  - Use waiting room features
  - Enable password protection
  - Do not allow screen sharing as the “default”
  - Turn on the “sound on entry” feature
  - Don’t reuse the same meeting ID
  - Promptly update all software
  - Use a secured network / not public WiFi (if possible)
  - Review security measures available for your chosen video conferencing service
- 

# The Power of Texts

- According to Pew Research Center, 97% of smartphone users text regularly.
- Various polls show that American Millennials spend 2-3 times more time texting than calling or emailing on their cell phones. (Text Request, AdWeek)
- Text messaging is the preferred means of communication for teens and Millennials. (Forbes, Common Sense Media, Gallup)
- Gallup polls show that texting is the most frequently used form of communication among Americans under age 50



# The Power of Texts

Some of the MANY popular secure texting applications:

- iMessage
- Signal
- WhatsApp
- Silence
- Telegram
- Wickr Me

Security: Look for end-to-end encryption

Be especially aware of confidentiality risks



# Staying in Contact: Text, Email, Mail

## Email / Texts / Mail

- Record of the contact
  - Record of dates, times, names, phone numbers
  - Considerations
    - Client access to devices / cell service or WiFi / Stable address
    - Client reading ability
    - Alternate means of communication - what is “plan B”?
    - Be certain that your client has the technical capability to receive email and texts, the access to download and review them timely, access to a private place to review them, and the ability to read your text / email.
- 

# Staying in Contact

## Email / Texts: Confidentiality Considerations

### **Rule 1.6. Confidentiality of information.**

**(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).**

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer representation of the client.





# Attorney-Client Relationship

# Building the Professional Relationship

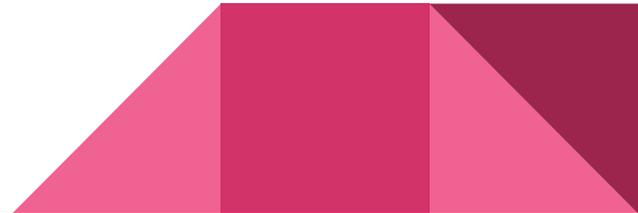
- The goals are the same - the path to achieve them may not be.
  - BUILD rapport
  - LISTEN to your client
    - Everyone wants to feel like they have been heard
    - Everyone has “a story”
    - Even “irrelevant” information about your client can be relevant - every piece of information tells you something about your client as a person, their perspective, their beliefs and biases
    - Pay attention to word choice, tone, body language
    - Everyone needs to feel like their case is important to their lawyer
- 

# Building the Professional Relationship

- EXPLAIN to your client
    - Process - Roadmap of the case
    - Relevant Law
    - Options and Recommendations
    - What to expect (including your client's responsibilities in the case)
    - Your role - what you can and cannot do for them
    - Attorney-client privilege
    - Current procedures, rules, and limitations
- 

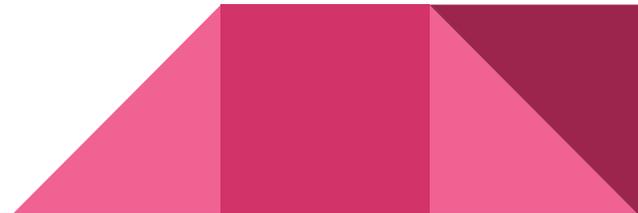
# Building the Professional Relationship

- BE available to your client
- BE honest and realistic with your client about the situation and likely outcomes
- REPEAT or RECAP information at each step
- PROVIDE ground rules for your professional relationship
- BALANCE rapport and effective information gathering
- DISCUSS client goals
- USE language familiar to your client (minimize Legaleze)
- BE respectful to your client and his/her situation
- Professional relationship building is a PROCESS, not an event



# Ongoing Contact / Boundaries

- Importance of regular updates from client
  - Client's view of progress
  - Client's opinion about barriers to success
  - Updates on client residence / phone numbers / employment / significant others
- Clear boundaries
  - Calls / texts / emails / drop-ins
  - Requests for assistance (transportation / financial)
  - Requests to file frivolous motions / make unreasonable requests / “sue the Department”
  - Professional relationship, not friendship





# Educating Clients on Changing Procedures and Rules

# Educating Your Client

- Talk - really TALK - with your client
- Teaching our clients about the law, the legal process, and their rights, but also now teaching clients about procedures to keep everyone safe - added layer of education necessary now
- Communicate what is being done to keep everyone safe
- Be honest about the fact that the situation is in flux - encourage questions



# Educating Your Client

- Discuss health and safety rules ahead of time, and be certain that your client has access to things like masks.
  - Discuss social distancing rules in courthouses and in your office (if you have clients in the office) ahead of time. Don't surprise clients when they arrive by letting them know then that they aren't in whispering distance to you.
  - Discuss procedures and rules for video conferences, phone conferences, MDTs, courtroom proceedings, visits
  - Set clear boundaries for communicating with you
- 

# Educating Your Client

- Ask your client if there is any barrier to them following those rules
  - Lack of technology for video / phone conference / visits
  - Lack of resources to obtain masks
  - Lack of transportation
  - Health conditions that prevent them from complying with the rules
  - Drug testing procedures



# MDT Considerations

# MDT Considerations

- In addition to past MDT considerations, now need to consider and discuss additional barriers to:
  - Healthcare
  - Services
  - Visitation
  - Drug testing / treatment
  - Participation / technology needs / access to the internet
- Discuss with your client ahead of time whether they have the technology necessary to participate
- Access to a phone, a private place to talk, and phone service / internet service is now necessary



# Remote MDT Considerations

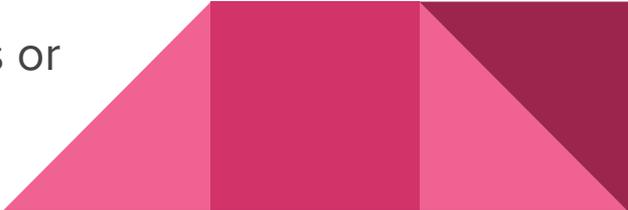
- A few practical tips for effective video conference participation:
  - Mute your device unless you are talking
  - Don't use distracting backgrounds
  - Participate from somewhere private where there are few distractions
  - Wear work-appropriate clothing (if on video)
  - Be certain participants can see your face - lighting, angle (if on video)
- Remember the goal - it has not changed- Child's safety, permanency, well-being, best interest - only the medium of communication has changed.





# Access to Services / Resources

# Access to Services

- Flexibility in working with service providers and accessibility are key to Respondents' success.
  - Find out what new rules / procedures / limitations providers have, and communicate those to your client ahead of time
  - Most services can be accomplished virtually, either through video (preferred), or phone. However, in-person meetings are extremely valuable so that the service providers can provide the best information about your client, their progress, their environment, their competency, their level of cooperation and dedication, and a host of other things.
  - Unique opportunity to unobtrusively observe services or visits in progress
- 

# Access to Resources

- Mental health providers - telemedicine
- Substance Use Testing / Treatment
  - No drug testing complicated situations and stalled progress
  - Know the current procedures / rules - failure to test often means inability to visit
  - Many treatment programs required 2-week quarantine before entry - an almost impossible criteria to meet while also staying clean for many with addictions to controlled substances
  - Not as amenable to telemedicine - fewer resources available
- 844-HELP4WV - ask which programs are requiring quarantine
- A few who have not been requiring a quarantine:
  - Serenity Hills, Wheeling
  - Shepherd's House Program of Recovery and Transformation, Huntington

# Access to Resources

- Medical resources / COVID testing
    - Keep up to date with free no-appointment testing in your area
    - Most medical practices are allowing telehealth - educate your client on this option
  - Physical access to resources has been a bigger challenge than usual
    - Limitations to public transportation
    - Limitations on access to purchase or receive food, clothing, housing, emergency financial assistance
    - Widespread unemployment
  - Address these needs in MDTs
  - Look to local agencies / nonprofits to supplement current assistance and benefits
- 

# Visitation Issues

# Visitation Issues

- In-person visitation was restricted during COVID, and may be restricted again if situation warrants
    - be honest with parents about the situation
    - stay up to date on the latest developments
    - Know the rules / procedures / limitations, and communicate them to your client
  - Made use of video visitation
    - Not ideal, but prevented long periods without visitation
    - Easy to supervise
    - Be creative! Help with homework, play a game, etc.
  - Be aware of the current protocols for in-person visitation, including all safety measures and facility rules
- 

# Visitation Issues

- Other situations may require restriction of visitation (distance, Respondent being in treatment, etc.) that may still allow video visitation as we saw during the past few months - if it is not in DHHR policy, the Court can still Order it upon motion
- Creative solutions - we can think outside the box. Visitation does not have to be cookie-cutter.
- Remember the goal - Child's safety, permanency, well-being, best interest





# Tools Added to Our Toolboxes

# Necessity: The Mother of Invention

Tools for our legal toolboxes: Videoconferencing / Enhanced Telephone Conferencing

- Attorney-client meetings
  - Hearings
  - MDT meetings
  - Visits
  - Observe CAC Interviews remotely
  - Telehealth (physician / psychiatrist / counselor)
  - Service providers
- 

# Necessity: The Mother of Invention

These are not meant to REPLACE in-person participation, but rather to SUPPLEMENT when appropriate.

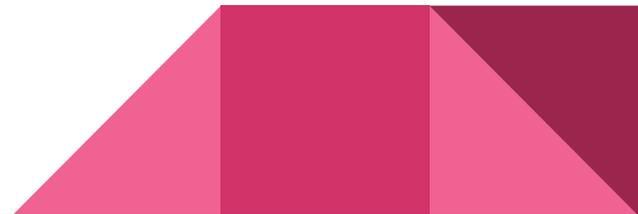
- Allows more participants to attend more regularly without disrupting other necessary activities
  - More flexibility in scheduling
  - Fewer cancellations for weather, family issues, minor illness, etc.
  - Allows supplemental visitation when travel distance is significant
  - Visual check-ins on clients who are vulnerable
  - Telemedicine, Telecounseling, and other Telehealth overcome some existing barriers for clients (transportation, work schedule)
- 



Self-Care

# Necessity of Self-Care

- Secondary trauma is part of the job
- Trauma is cumulative - COVID has taken a toll on everyone
- Safety and health of counsel
- Reaching out for help - WV Judicial and Lawyer Assistance Program (WVJLAP)
  - 304-553-7232
  - <https://wvjlap.org>



# Some Parting Thoughts

- Show respect for everyone involved in the system.  
We are all working toward the same goal - safe families and safe kids.
  - Don't coast - if your clients were routinely organized, motivated, and engaged in services to improve, they likely would not be involved in this case
  - Maintain perspective about respondent parents
  - Remember the goal of the proceedings, and be creative about how to help families succeed
  - Be willing to share your experience and knowledge. If you find something that works, share that information so that another family may also benefit.
- 



THANK YOU  
for all that you do!

Natalie J. Sal, Esq.

Sal Sellaro Culpepper Legal Group, PLLC

430 Spruce Street, Suite 3

Morgantown, WV 26505

(304) 599-5291

[Natalie.J.Sal@gmail.com](mailto:Natalie.J.Sal@gmail.com)