

A Top 5 List to Keep the CAC Machine Running Smoothly

Legal Eagles – We’re going to take a letter off from reviewing appellate cases and discuss a Top 5 list, which is designed to have a CAC run like a well-oiled machine.

Number 1: Who is the records gatekeeper? You know my theory of releasing records by now. It’s “No, no, no (generally) unless a court says so.” There are exceptions, as my “generally” qualification indicates, but that’s for another Legal Letter.

To understand the “why” of this rule, you have to understand “what.”

What records do we have on site at a CAC? First, records that are confidential by law because they involve allegations of child sexual abuse and/or child physical abuse. In Georgia, those records are confidential by statute (i.e., a law passed by the state legislature), and can be found in O.C.G.A. § 49-5-40 et seq. In your state outside of Georgia, you almost certainly have such a statute, which can be easily researched by the attorney of your choice. There are also federal statutes that trigger such confidentiality.

What else do we have at our CAC? Counseling records, which usually trigger issues of client privilege. I say “usually” because your state’s privilege statute is going to list the types of professionals who can maintain the counseling privilege with the client. For example, in Georgia the professionals include Ph.D., LCSW, LPC, M.D., and some others.

What other records do we have at our CAC? We can obtain records that originated outside of our four walls. For example, some centers, through the MDT approach, may end up with law enforcement-type records, or medical records, or even school records. A non-offending caregiver may bring records to the Center that are then placed in the file. The importance of this? It means that if a request for “any and all documents in any form related to (the subject child)” comes into the CAC, such a request means “**any and all documents in any form,**” including the records that did not originate with the CAC. Thus, those other entities, such as law enforcement, or the medical facility, etc., probably did not get notice that their records were being sought. If provided with proper notice, they might want to file their own objection on behalf of their department or facility.

So who is the gatekeeper, the person who without fail will be funneled every request for records that comes through the doors? The gatekeeper helps keep the CAC from releasing records that should not be released unless a judge says so.

But we know that requests come in other forms. So that leads to Number 2.

Number 2: Who is the keeper of the telephone “request” line? Requests often come via the old telephone, many times by lawyers, or their clients, or people who have no lawyer. Many of these requesters genuinely believe that they are entitled to records, and don’t understand that there are procedural requirements for obtaining many of them (as described above in **Number 1.**)

If there is one rule you should know about lawyers, it’s *they want your stuff*. Some lawyers, even those who know that there might be certain procedural requirements that must be ticked off the list before obtaining the records, still might not care to worry about them. And sometimes there is a

misunderstanding that just because a child of their client was seen at a CAC, the non-offending caregiver can obtain any records related to their children.

A telephone response has to be consistent and clear. The best situation is where the record gatekeeper is also the telephone “request” line responder. What the response entails should be discussed with the CAC lawyer, but in short it should be, well, short. For example, there is a procedure for obtaining records, and any requests for records should be submitted in written form, which will then be forwarded to the CAC lawyer for review. Again, the right response for your CAC can be established with the assistance of legal counsel.

For requests that solely relate to counseling records that originated with the CAC by the CAC therapist, there can be a discussion with the CAC lawyer to ensure the most efficient manner of producing the records, which of course will still apply with all applicable laws.

Number 3: Who is your Center’s go-to lawyer? I don’t have to tell you that CACs are professionally run organizations, staffed with people who have unique skill sets that have been obtained through years of experience, years of higher education, or both. Many times at trial, an enormous amount of reliance is placed on those who work in CACs, and often their encounters in one form or another with children are critical to the court proceedings. Further, many times, on the strength of this testimony, life-changing decisions are made by jurors.

I have seen first-hand through reviewing appellate cases involving child molestation that the court system generally views CACs as expert organizations. True, there have been lows with regard to poor CAC testimony reviewed in some appellate decisions, but the vast majority of the cases I have read involve cases where ultimately the appellate court has endorsed the professionalism of those who have testified from a CAC.

Where am I going with this? If CACs are seen as professional organizations, then the legal system is going to expect that the *entirety* of a CAC’s response to legal matters are done in a professional manner. CPS has attorneys responding for them in Court. Medical organizations have attorneys responding for them in Court. Many doctors, therapists and counselors in private practice have attorneys responding for them in Court. Legal representation, despite the bad PR lawyers may receive in the stereotypical sense, allows the justice system to move matters more efficiently. And the person in charge of the courtroom – the judge – appreciates this.

And so I say it again: obtaining competent legal counsel to handle these issues should not be seen as “a luxury that we cannot afford,” or “a piece of the puzzle that we just don’t need.”

Once a competent and qualified lawyer is hired, you will feel the weight of the world release from your shoulders. No longer does your director, or your therapist, or your forensic interviewer, or your child and family advocate have to navigate what can be seen as perilous waters. Instead, these matters are sent to the lawyer for response.

I have the privilege of working for some CACs, and I have a confession to make even though it pains me to admit.

It isn't hard work. In fact, for a lawyer with a civil trial practice, it is positively easy work, once you understand the handful of statutes that are involved, and the typically lawyer tactics that CACs encounter. You should know this when hiring a lawyer – he is not analyzing international transactions involving Chinese monetary policy – so he shouldn't be paid like it! And a further discounted fee for working for an organization that assists alleged child sexual abuse victims is in order. Make sure she understands that. Pretty soon, your lawyer will be working for free, happily or otherwise.

Number 4: What is the system for notifying your CAC's lawyer of every legal request for records that the gatekeeper has obtained? Requests for records have time deadlines, as we all know. Subpoenas, requests for production for documents, lawyer letters demanding records, court orders – they all make the same sound: *tick, tick, tick*.

We want to diffuse them properly before the go *boom!*

A request in any form for records continues to tick until it is properly responded to, meaning in a legal way. There is a name for the letter response sent by the CAC director back to the lawyer who has subpoenaed CAC records. It is called a "letter." It is not a legal response.

Your lawyer's CAC needs to be notified promptly of all demands for records – I like e-mails, faxes and phone calls (office and mobile) – so that the proper and timely response can be made.

Number 5: What kinds of meetings and discussions are occurring regarding the legal issues affecting your center? Practicing law is in at least one respect like practicing medicine. Preventative medicine is a nice goal for your health, and preventing legal time bombs from exploding is nice for your CAC.

Your lawyer will not mind putting on the bomb detonation clothes if he has to, but the better practice is for a CAC to forward their lawyer some legal subjects to discuss periodically, and even request their lawyer to conduct periodic in-service trainings. Or CACs in a geographical area can combine forces and bring in a lawyer who might be working at one of the nearby centers. When these in-service trainings happen, there is never a problem with taking questions from the floor; there are always questions to address.

Best regards.

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