

Legal Letters by Andrew Agatston: The Legal List

The Issue of Legal Representation for CAC's

Background: If you look at the National Children's Alliance website, it sets forth certain standards for Children's Advocacy Centers. Standard No. 3. is as follows:

“Forensic interviews are conducted in a manner that is legally sound, of a neutral, fact finding nature, and are coordinated to avoid duplicative interviewing”

Writing in the Thomas M. Cooley Journal of Practical and Clinical Law (Vol. 12, 2010), the authors of the law review article: “The CornerHouse Forensic Interview Protocol: RATAAC,” write, *“Professionals charged with investigating child abuse allegations or serious physical abuse allegations must be able to interview children that is legally defensible, developmentally appropriate, and not unduly suggestive.*

When I'm at CAC conferences and seminars, when speaking to forensic interviewers, CAC directors and others who have worked many years in this area, I ask: “What does a ‘*legally sound, legally defensible*’ forensic interview mean?” The answers vary -- a lot.

In 1999 when my wife, then a board member for a local CAC in Georgia, strongly “encouraged” me to become the Center's pro bono attorney, it was like working for the Invisible Man. No one -- the public, the local legal bar, defense lawyers, and many judges -- knew what CACs were, let alone what they did.

I would fly into court with my motion to quash based upon a defense lawyer's subpoena that sought records that a private, non-profit CAC didn't even have! For the difficulty of work that I did, I would say that pro bono was probably the proper amount for me to be paid.

Man oh man, 13 years later, and how times have changed.

There is so much more of an accurate understanding about what CACs do in the legal arena, and clearly one of the reasons for this change is because of how successful CACs and their professionals have been in assisting both the criminal and civil justice systems in the discovery of the truth.

Over the years, I have also seen a dramatic increase in research, scholarly articles, appellate cases, changes in statutes, and other legal expansions that directly impact CACs. In fact, changes through (1) appellate court legal opinions and (2) newly passed statutes that directly impact CACs was the leading reasons that this List Serv and the Legal Letter began 5 years ago.

One thing has not changed. The vast majority of CACs across the country, and at last count I believe there are more than 780 member CACs allied with the NCA, have no regular, reliable, go-to legal counsel for the myriad legal issues that can and do routinely occur.

Statistically there are some CACs that have effective legal counsel for all of the legal issues that can and will arise. But “some” is not “all” or even “most.” On a one-on-one Center level, this is not good. On a global CAC movement level, when the mission is to rid communities of child abuse across the country, we should evaluate whether a lack of legal resources to protect and assist the organization helps advance the overall mission.

Let’s start from this premise, which if true, should form a basis of establishing a reliable, competent legal representation structure to serve the needs of CACs.

The premise is this: ***CACs and their professionals are involved in legal matters where ultimate decisions on critical issues are routinely made in some legal forum, whether before trial or at trial.***

Within the context of this premise, CACs have legal obligations and concerns too numerous to name right here. But these concerns, great and small, involve both pre-trial matters (starting from the date the child's file is opened) and trial matters. We constantly review these matters on this listserv.

Adding to this are standards and protocols, as well as accrediting body requirements, such as conducting forensic interviews in a "legally sound" manner, which is a requirement that undoubtedly requires legal analysis.

For those of you who work at CACs who have an attorney, ask her to define a "legally sound" forensic interview. If you don't have an attorney, ask your executive director. If you're the ED, what do you think?

Back to our above premise. It speaks to the fact that CAC professionals are in, to an important degree, an organization that has *legal responsibilities*. This is similar to a CAC being an organization with medical responsibilities, and counseling responsibilities, and law enforcement responsibilities, and child protection responsibilities, and victim advocacy, as well.

And as you know, there are ten standards properly set forth by NCA on almost every one of these topics:

1. Multidisciplinary Team
2. Cultural Competency and Diversity
3. Forensic Interviews (and the aforementioned requirement to complete them in a "legally sound" manner.
4. Victim Support and Advocacy
5. Medical Evaluation
6. Mental Health

7. Case Review
8. Case Tracking
9. Organizational Capacity
10. Child-Focused Setting

You don't need to be a lawyer to realize what is missing.

Further, everyone -- the jurors (which as we know are the most important people in the courtroom), the judge, the lawyers, the victim, the victim's NOCs, and even the CAC itself expects a CAC organization to be able to effectively and professionally respond to any legal issue that confronts it during the course of a criminal case or a civil case that involves the allegation of child sexual abuse.

At this point, I must step back and emphasize the tremendous professionalism and the important work done effectively by CACs day in and day out. Whether there is a competent and reliable attorney at an individual CAC's disposal does not change that impact.

But it leaves open the potential that a routine or a not so routine legal matter will be overlooked, resulting in risk -- not just to the CAC, but to the case itself.

Hospital physicians work tirelessly to heal patients, day in and day out. But it is not the physician's role or a counselor's role or a cop's role to quash a subpoena, or file a motion, or respond to legal inquiries, or research legal cases that impact their practice, or interact directly with lawyers who are adverse or even allies to their organization.

Some of you have gone through my trainings on these very issues and concerns. Without being too indelicate, CAC folks sometime leave the training with a mix of understanding and terror.

Terror is not the purpose. The purpose of the trainings, like the listserv for these 5 years, is to inform. But I have received enough feedback over these 5 years to know that it is the *legal* aspect of CACs that is lacking. Sometimes an organization assists other so much, they forget to focus on the assistance *they* need.

For more information that covers the various legal issues and needs of CACs, I've attached information on the aforementioned workshop.

This workshop adopts another, unofficial, standard: ***“The Children’s Advocacy Center will have reliable, effective and competent legal representation to meet all of its legal needs.”***

Best regards.

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