National Children's Advocacy Center

Legal Guidebook

for Children's Advocacy Centers

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This project was supported by

Grant #2020-CI-FX-K001 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author and do not necessarily reflect those of the Department of Justice.

Preferred Citation:
Agatston, A. (2023). Legal Guidebook for Children's Advocacy Centers. National Children's Advocacy Center.

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About the National Children's Advocacy Center

The National Children's Advocacy Center (NCAC), located in Huntsville, AL, was established in 1985 as the first children's advocacy center (CAC) in the world. The CAC model of a multidisciplinary team (MDT) approach, developed through the vision of former Congressman Robert E. "Bud" Cramer and a group of key individuals, pulled together law enforcement, criminal justice, child protective services, and medical and mental health workers into one coordinated team. By improving overall outcomes for abused children and their non-offending caregiver and family, this model and approach revolutionized the response to child sexual abuse in the United States. The NCAC has served tens of thousands of children since the 1980s.

After developing its innovative CAC/MDT approach on the local level, the NCAC earned a national reputation and began to train others to deal effectively with the critical problem of child maltreatment. Through its influence in training, communities across the country and across the world began to model their child abuse programs after the CAC/MDT approach created at the NCAC. The NCAC has served as a model for the 1,000+ CACs now operating in the United States and in more than 34 countries throughout the world.

The NCAC began providing training for child abuse response professionals in February 1985 with the *Southeast Symposium on Child Sexual Abuse*, with 367 attendees from states in the southeastern United States. That symposium has now grown into the *International Symposium on Child Abuse*, with an average of more than 1,500 attendees from throughout the United States and nine foreign countries. The *Symposium* is part of the NCAC Professional Services Department, which also includes divisions for the national training and technical assistance grant for child abuse professionals, the Southern Regional Children's Advocacy Center, and fee-based trainings. The Professional Services Department trains thousands of people each year on how to recognize and support maltreated children. More than 158,697 child abuse professionals from all 50 states and 179 countries have been trained by the NCAC since 1985.

About the Author

Andrew H. Agatston is the president of the Law Offices of Andrew H. Agatston, P.C. Primarily an attorney for injured persons, Mr. Agatston began in 1998 developing expertise as legal counselor for children's advocacy centers (CACs) in Georgia and across the U.S. from 1998 to 2019. In addition to his law firm, from 2013 to December 2019, Mr. Agatston represented eight CACs. He also served as the CEO and General Counsel for Children's Advocacy Centers of Georgia, the state membership network that provides technical assistance, training, support, and other services to Georgia's more than 50 CACs throughout the state.

In 2009, 2010, 2012, and 2014, Mr. Agatston published legal books designed to assist CACs in Georgia and across the U.S. Additionally, for 10 years he operated a national listserv for professionals who work in CACs, as well as their MDT members. This legal listserv reached more than 1,000 members in 49 states.

Mr. Agatston is a member of the National Crime Victim Law Institute, which assists him in representing and counseling crime victims while they navigate the criminal justice system and the criminal litigation system related to their cases. He is also a member of the National Crime Victim Bar Association and the National Center for Victims of Crime.

Though Mr. Agatston exited the CAC field in December of 2019, he has remained a champion for CACs and, more importantly, the children they serve.

Mr. Agatston and the NCAC would like to thank our VOCAA partner, Zero Abuse Project, for their review of this guidebook. Zero Abuse Project provides training and technical assistance to prosecuting attorneys of child abuse cases through a grant from the Department of Justice.

Introduction

Greetings to the children's advocacy center (CAC) community and thank you for serving children and families all across the United States. It is a unique honor to work alongside so many committed and talented professionals. It is our most sincere hope that the *Legal Guidebook for Children's Advocacy Centers* will be useful to your CAC.

The inspiring success of CACs giving children and families hope, healing and justice is a monumental feat, and it continues to this day. For those who have answered this call for service to children and families, it is well known that any success in helping children, one child at a time, comes only after navigating endless obstacles along the way. Thank you for serving the children.

It is clear that, as the CAC movement has advanced, states' laws and statutes addressing CACs and their needs have not. One reason is CACs are *hybrid* organizations unlike any other. CACs are largely private, nonprofit corporations, yet we partner with state actors as members of a multidisciplinary team (MDT). *Hybrid.* CACs are unique and difficult to fit into ready-made laws that do not consider our methods, structures, and activities.

As an example, we have high-level mental health clinicians who, should they decide to go into private practice tomorrow, will be every bit as successful and likely more so (in the case of counseling trauma clients) than their colleagues currently in private practice. Yet, these clinicians sit at a table in MDT meetings with prosecutors and detectives and, to a degree, share limited information about their young clients. *Hybrid.*

We have information on our premises that may have originated with law enforcement or child protective services (CPS). *Hybrid.*

We perform these amazing forensic interviews of children on the premises of our private, nonprofits and then we provide the end result of these interviews to detectives, prosecutors, and/or CPS case workers. *Hybrid.*

Everything just written about "*hybrids*" has significant legal overlays. And that brings us to the point of this guidebook. It is unmistakable, or in legal parlance, irrefutable, that the majority of CACs across the United States are in severe need of competent and qualified legal counsel to represent their interests in legal matters. At least it is to this author, who just concluded 21 years of providing legal services, trainings, and support to CACs throughout the country.

Preliminarily, the *Legal Guidebook* is *not* for your CAC if you have an attorney on retainer who

- is well-versed in your state's rarely known and often unresearched rules and statutes related to or that impact CACs and their professionals;
- can respond to legal demands directed to CACs from attorneys and judges in civil, criminal, family court, juvenile court, and CPS matters—sometimes all at once;
- knows the confidentiality and privilege rules related to mental health records;
- understands the Health Insurance Portability and Accountability Act (HIPAA) and its exceptions that may or may not apply to CACs;

- knows which of the MDT members have the authority to claim "ownership" of the forensic interview materials and why that might be important;
- can navigate records-sharing among the MDT agencies;
- can navigate records-sharing, or the objection to records-sharing, between the CAC and anywhere else;
- can understand the concerns that the CAC's forensic interviewers and mental health clinicians have when they are brought into litigation;
- can respond effectively in court on behalf of the CAC and its employees;
- will provide the client (the CAC) with important appellate court decision and statute updates; and
- can respond to the "known unknowns" of what awaits CACs and their employees in civil, criminal, and family court cases.

Otherwise, welcome! The National Children's Advocacy Center (NCAC) is pleased to provide the *Legal Guidebook for Children's Advocacy Centers* that examines the existence of CACs for more than 35 years, the legal challenges that await CACs when they are brought into criminal, civil, and family court litigations, and a plan to address these challenges.

But, before beginning this journey into legal matters that impact CACs when they are brought into litigation as third parties,[1] it is important to step back and examine the state of the litigation world as it relates to CACs. To understand where CACs are now and the best path for the future, there is a need to understand where CACs have been and the process that got us to this point.

When I started assisting in court and litigation matters for CACs in 1998, it seemed like a relatively quaint proposition. I would almost exclusively be called to respond to a records request or demand, such as a subpoena for CAC's records, which was usually sent by a criminal defense lawyer who often had little understanding of what a CAC was or did. Then I would go to court and try to educate the judge about CACs, and generally speaking, the judge would rule in our favor.

An interesting development occurred through the years, and it understandably got members of the criminal defense bar concerned. More and more of their clients (criminal defendants in child molestation cases) were convicted or otherwise brought to justice, often on the strength of the witness testimony and documentary evidence provided and produced by CACs and their MDT partners.

And then something else started happening. Criminal defense lawyers who failed to properly explore and request CAC files related to their criminal defendants would, after their client-defendants were found guilty, be accused of ineffective assistance of counsel, meaning their clients accused them of inadequate representation at trial. Why? Because these defense lawyers should have known that evidence used by the prosecution against their clients was contained in CAC files—and the lawyers failed to even attempt to obtain it prior to trial, usually because they did not know about the roles and functions of CACs. See, e.g., *Darst v. State*,323 Ga. App. 614, 746 S.E.2d 865, 2013 (aggravated child molestation conviction reversed on appeal where trial counsel was found to be ineffective for failing to subpoena CAC therapy records, CPS records, and admitting that it "never crossed his mind" to consult with a medical expert to counter the State's trial experts).

And then another interesting twist arose—the criminal defense bar started to share and exchange ideas about CACs. Members started comparing notes on CAC witnesses, their procedures, and protocols. Defense attorneys started convening at legal conferences that had as a primary focus the defense of child sexual abuse. They started hiring experts who came to court to present an alternative view to the CAC model and an

1 "Third parties" in this context means that the CAC is neither a plaintiff nor a defendant in a civil case, nor the State or the defendant in a criminal case. It is a third party that is brought into the case, for example, by being subpoenaed by a defendant or the State in a criminal case, or a plaintiff, or a defendant in a civil case.

opposing view of how the CACs completed their procedures and protocols. Defense attorneys began to attack the expertise of CAC professionals, such as forensic interviewers, sexual assault nurse examiners (SANEs), and mental health clinicians, who often testify in trials.

Then, over time for many states, statutes and appellate opinions that related to CACs increased significantly. Some of these statutes and opinions have been very helpful to the work and mission of CACs. Others have been titanic shifts that, if unnoticed by CAC professionals, prosecutors, and other MDT members, can lead to significant problems in the courtroom.

And, still, today, almost four decades into the CAC movement, a concerning omission continues for CACs. Many across the country still do not have trained, competent legal counsel on retainer to assist with third-party litigation needs. And this is not a slight to that real estate lawyer who sits on the advocacy center board, who is really nice, and really helpful, and a real lawyer. But if he or she practices real estate law exclusively, the skill set is not in place to research and review the legal issues that have a real impact on the CAC's needs when it is brought into a civil or criminal proceeding as a third party.

As I write this introduction, my 21-year journey of representing some CACs and consulting with others on legal issues that CACs face has concluded. The goal over those years was to emphasize the importance of CACs across the nation having access to legal counsel so they can respond fully and competently in the justice system. The days of simply worrying about subpoenas as the only need to retain an attorney are long gone (although that is still a concern). Toward that end, I believe all CACs should

- have a competent and qualified "go-to" lawyer on retainer to represent the needs and legal interests of CACs and their professionals in the courtroom;
- fully understand the common legal issues that involve CACs in civil and criminal litigation;
- fully understand the common legal issues that arise prior to litigation;
- have a comprehensive "legal toolkit" that is adequate to respond to the demands and orders for information in civil and criminal cases; and
- respond effectively as witnesses in legal cases so the juries across the country can make informed decisions in rendering their verdicts.

It must be emphasized that the need to focus on the legal aspects of CAC work is not any more important than any of the 10 (or in some states 11 accreditation standards)[2] that our CACs must competently meet. It is not the intention of this guide to state otherwise. Instead, as CACs are into their fourth decade of service, we are fully aware of the hazards that exist for our CACs, to our CAC employees, and to justice itself when legal matters are not sufficiently addressed by our CACs.

Please note this guide is not intended, nor should it be construed, as the offering or giving of legal advice, and it should not be relied on as such. This guide is never to be seen as a substitute for legal representation by a competent and qualified attorney of a CAC's own choosing. Throughout this guide, we will discuss and describe some—but not all—of the legal issues that impact CACs. It is important to note that addressing legal issues impacting CACs is fact-specific, and legal counsel must respond professionally and effectively.

2 In 2019, CACs of Georgia enacted an 11th standard for its state CAC membership, a legal standard, which states: "All Georgia Children's Advocacy Centers shall demonstrate the ability to respond to civil or criminal child abuse matters in which the CAC is joined as a third party, including by means of legal counsel if necessary or required."

Section 1:

Three Tools for All Children's Advocacy Centers

There is little difference in the legal issues that await children's advocacy centers (CACs) and their professionals in small towns and big cities. The difference is volume, but each case relating to each child should be safeguarded by a professional legal response on behalf of the CAC, should the need arise.

Volume, and having appeared in court on behalf of CACs hundreds of times over many years, informed this writer's view of certain legal tools that made a difference to CACs and the children who were thrust into these cases through no fault of their own. Many of these tools were unique to the CACs represented; however, before speaking to the common legal issues that involve CACs in litigation in later sections, there needs to be a discussion about three of them that can make a difference to any CAC anywhere in the country.

Obtain Qualified and Competent Legal Counsel

First, and always first, each CAC should get qualified and competent legal counsel to represent it when the CAC and its professionals are called into the legal process as third parties in civil and criminal cases. Without that, the next two tools do not matter. CACs are moving toward 40 years in existence as an essential part of justice for children and families in criminal and civil cases. There is no mystery any more of what can happen to cases in court when CACs are not competently represented.

Build Relationships with Prosecutors

Second, the CAC lawyer must develop a relationship with every prosecutor who tries cases in the courts where the CAC and its professionals may be subpoenaed and may testify. There must be an ongoing dialogue with those prosecutors following each case where the CAC's professionals are involved. This is so the CAC understands the prosecutor's needs, and, more importantly, so the prosecutor understands the needs of the CAC and its professionals, such as the forensic interviewer, the trauma-informed therapist, the sexual assault nurse examiner (SANE), the family advocate, and others who may be called to court.

Most, if not all, states have a "Crime Victims' Bill of Rights," which begins with a preamble written by the state's legislature such as, "The legislature hereby finds and declares it to be the policy of this state that victims of crimes should be accorded certain basic rights just as the accused are accorded certain basic rights." The bill then lists such "basic rights" as the alleged victim be provided notification of all-important matters; the availability of victim compensation; the availability of community-based victim service programs; and the like.

Those working in the field do not equate the victim's rights under state law to the CAC's needs in litigation. However, there is great value in discussing with the prosecutor's office the CAC's needs from prosecutors. We must not forget that it was a prosecutor—Bud Cramer in Madison County, Alabama—who started the CAC movement. Indeed, many prosecutor's offices do the following as their normal professional practice. These include:

1. Notifying the CAC and/or its lawyer when a defense attorney in a criminal case files a motion (a request to the court) seeking to obtain information from the CAC as part of a case. This allows the CAC an opportunity to respond to the motion and raise legal matters that need to be addressed by the court. (See Sections 4 and 5 of the *Guidebook*.)
2. Notifying the CAC's professionals, such as the forensic interviewer or the therapist, well in advance of trial, that they may be called to testify. The CAC lawyer wants team members to re-familiarize themselves with their case, which they may have completed many months ago.
3. Preparing the CAC witness for trial. Not, "I'll need you at 9 a.m. next Wednesday," but actual prep sessions.
4. Keeping the CAC updated on all important appellate opinions that impact the testimony of CAC professionals.
5. Keeping the CAC updated on all important local court opinions and local rules that impact the testimony of CAC professionals.
6. Ensuring the prosecutors understand how CACs work.

7. Ensuring the prosecutors understand the expert work of forensic interviewers. It is critical that child abuse prosecutors have a working knowledge of the NCA-approved forensic interviewing models, the science that informs those models, and obtain training related to those models. Without this education, prosecutors may struggle in putting forensic interviewers on the stand, in cross-examining the defense expert, and in their own questioning of a child in court.
8. Ensuring the prosecutors understand the expert work of trauma-informed therapists, including the therapists' gigantic concerns related to the privilege of confidentiality between them and their clients.
9. Ensuring the prosecutors understand the expert work of the medical professionals.
10. Ensuring the prosecutor will seek, *in every case*, a protective order to ensure that any forensic interview, counseling, or medical records are not disseminated outside of the actual case (among other things), and that the judge is responsible for enforcing the protective order.

Other "courtesies" can be agreed upon by the CAC and the prosecutors. And as before, while many prosecutor's offices already engage in the above activities, for the CACs that are working with a new prosecutor who needs to get up to speed, the CAC or even a retired prosecutor can assist. Remember, courtesies are two-way streets. The CAC must be fully engaged and amenable to the needs of the prosecutor's office. For example, the CAC's forensic interviewer may be in a good position to see the weaknesses in the argument of a defense expert called to critique the forensic interviewer. Alerting the district attorney as to the weaknesses of the critique may enable the prosecutor in cross-examining the expert.

Develop an Understanding of State Statutes Related to Confidentiality of Records in Child Abuse Cases

A third valuable tool, when it finally came to pass, was an amendment to a confidentiality statute passed by the General Assembly in Georgia.

It is essential for CACs to understand their respective state statutes particularly as they relate to responding to demands for records in their possession, such as forensic interview records, mental health records, and medical records. Each state is different so the CAC must have a clear understanding of its state's statutes in order to protect the confidentiality of the child and family. Specifically, CACs should educate themselves on the following three areas that impact the CAC's response to demands for records:

- First, every state should have a confidentiality statute that protects records, including in the broadest of terms, all records related to child abuse.
- Second, every state should have a confidentiality statute that specifically sets forth the individuals, entities, or organizations who shall have reasonable access to records related to child abuse so they can perform their professional responsibilities in the face of child abuse allegations.
- Third, every state should have a confidentiality statute that specifically sets forth the procedure under which those who *do not* have reasonable access to records related to child abuse must follow to attempt to obtain them.

The CAC's State Chapter organization can advise on current statutes and can educate on the impact of current statutes on child abuse cases.

The immediate benefits of such legislation include:

- The records are maintained as confidential and not passed around the world by people who should not have them in their possession.
- The subject of the records, meaning the children, are not revictimized by having their forensic interview video improperly accessed or their mental health or medical records egregiously open to public view.
- The CAC, which is often the entity that receives the subpoena, has an actual tried-and-true legal process it can follow and rely upon, rather than haphazardly trying to fend off an improper subpoena for records while falling into an ugly trap.

The statutory template highlighted comes from Georgia and can be found at O.C.G.A. § 49-5-40 and § 49-5-41.[3] (O.C.G.A. stands for "Official Code of Georgia Annotated," which is the compendium of all laws passed by the Georgia General Assembly. Your state has such a similarly named system, such as Iowa Code § 602.1614.) The code sections discussed below were enacted in Georgia in 2016 and have been so enormously beneficial for CACs in Georgia that it can hardly be measured. Please take notice: These protections for CACs, forensic interview materials, mental health counseling records, and medical records (including videos of colposcope exams) will be game changers in your state if they are not already in place.

Here is an overview of how these sections work for the benefit of the children, the CAC, and justice.

1. There are certain records related to children that should be confidential by law.
2. Records that relate to child abuse are such records.
3. The state should adequately define child abuse and adequately define the records related to child abuse that should be confidential by law.
4. The title of the code section can be, "Confidentiality of records; restricted access to records." O.C.G.A. § 49-5-40.
5. Child abuse can mean: (a) Physical injury or death inflicted upon a child by a parent, legal custodian, or caretaker thereof by other than accidental means . . . (b) Neglect or exploitation of a child by a parent, guardian, legal custodian, or caretaker thereof; (c) Sexual abuse of a child; (d) Sexual exploitation of a child; or (e) Emotional abuse of a child. O.C.G.A. § 49-5-40 (3)(A) through (E). Each of these terms, in turn, can also be adequately defined.
6. The term "child advocacy center" will have a definite meaning. O.C.G.A. § 49-5-40(4).
7. **IMPORTANT:** "Records" must be adequately defined so it captures forensic interview materials, forensic medical exam materials, and mental health counseling materials. O.C.G.A. § 49-5-40(a)(9).

Once all of this is accomplished, the statutory scheme should then describe (1) the persons or agencies permitted access to these records related to allegations of child abuse and (2) how the records may be requested—and will be protected—in court cases.

In the Georgia statute, at O.C.G.A. § 49-5-41(a), set forth at the end of this section, specifically spells out that law enforcement, prosecutors, CACs, child protective services professionals, judges and a few others shall have reasonable access to these confidential records related to child abuse as part of their normal professional roles. That means ***everyone else does not have the right of reasonable access.***

But what happens when defense lawyers in criminal cases (who are not granted reasonable access to these records) or plaintiffs or defense lawyers in civil cases, like divorce and personal injury cases (who are *not* granted reasonable access to these records), want these records from a CAC as part of their cases?

3 These code sections are reprinted in Appendix A.

Before O.C.G.A. § 49-5-41(a)(11) was enacted, it was the wild, wild west. After O.C.G.A. § 49-5-41(a)(11) was enacted, it is as calm as a blanket of snow. Here is the process:

1. The lawyer who is not granted reasonable access under O.C.G.A. § 49-5-41(a) must follow § 49-5-41(11).
2. First, that lawyer must serve a subpoena on the CAC and ***at the same time*** (the statute calls this "contemporaneously") that lawyer ***must*** file a motion[4] seeking the records and requesting an *in camera* inspection[5] of the records. O.C.G.A. § 49-5-41(11).
3. The purpose of the in camera inspection is to determine whether the records are "reasonably calculated to lead to the discovery of admissible evidence," meaning they have the potential of allowing the attorney to introduce evidence to the jurors in the case. O.C.G.A. § 49-5-41(C).
4. When filing this motion, the attorney ***must also*** serve a copy of the motion on child protective services (CPS) and the prosecutor's office, ***even if CPS and the prosecutor's office are not parties to the case.*** O.C.G.A. § 49-5-41(B)(ii) and (iii). This is a nice provision, because it allows the State, through CPS or the prosecutor's office, to object to the release of the child abuse records if it infringes on a state interest.
5. Finally—and this is huge—if the judge determines that the records should be produced, then the judge ***shall*** issue a protective order to ensure the confidentiality of the records and that they are solely and properly used in the case. See O.C.G.A. § 49-5-41(g)(3) for specific language that can be used in a protective order.

In Georgia, the first CAC opened in approximately 1989. The above amendments were enacted in 2016 and were much too long in coming. However, looking now and into the future, there never needs to be a situation where records related to allegations of child abuse are not fully protected under state law, and where there is not clear guidance of how they will be disseminated in a court case. It is a tool for now; it is a tool for as long as we have CACs.

4 A "motion" is a legal request to the Court, which asks the Court to make some sort of a decision.
5 "In camera" means that the judge's inspection will be in her chambers, outside of the presence of the lawyers and the public.

Section 2:

Setting the Stage: What Is in Your Building That May End Up in a Courtroom?

Embrace the courtroom. It is a place for justice. We know most cases that proceed into litigation do not end up in front of a jury. But the prosecutor's office must take the position that each case will be prepared as if it is going to proceed to a jury for its decision. The children's advocacy center (CAC) must too.

It has been remarkable to watch over the decades, since CACs were established, the amazing work accomplished in the courtroom by forensic interviewers, mental health clinicians, children and family advocates, and medical professionals as witnesses in these cases. Testifying in court is not something to dread, but an honorable opportunity to participate in the justice system. Being present can change the lives of the children and families we serve in our communities. So, what may end up in the courtroom?

Our People

At a conference for CAC and multidisciplinary team (MDT) professionals, the topic was testifying in court, which invariably led to many in the audience discussing their fears and concerns about this occurrence. Preliminarily, this is very real, very valid, and very healthy. It shows that the CAC professionals who testify take their roles seriously and are adamant about wanting to be prepared so they can be professional and objective in their testimonies.

After addressing these concerns at the conference, the facilitator asked if anyone had a different perspective. A crimes against children detective stood up and said, "I do. I love testifying. I look forward to it. We have worked so hard on these cases, and I want the jurors to hear about how hard we worked and what we did in this case. For me, it's my chance to finally tell people, the jurors, who can actually do something about it!"

CAC professionals will end up in the courtroom. The question is, what lens are they going to look through when testifying?

It is beyond dispute—beyond a reasonable doubt in legal parlance—that the law raises up as high as it can raise the work CAC professionals do. Just look at the statutes that relate to our work. They are all about safety, rule-following, security, privacy, protection, and punishment for those who would go against all of that. We are the front lines in every statute our state legislators enact into law for the protection of children. That should and must carry over to the mindset that our CAC professionals take with them as they are called to the witness stand.

Forensic interviewers: These professionals have a significant role in the courtroom. Indeed, your CAC attorney can do a simple search on *Westlaw* or *Lexis* to determine the activity level of forensic interviewers.[6] In Georgia, for example, a *Westlaw* search revealed the term "forensic interview" or "forensic interviewer" in 350 Georgia appellate opinions. Your state may have similar activity. What this reveals is: (1) forensic interviewers are critical to the prosecution's case, and (2) the testimony related to forensic interviewers is often attacked on appeal after a defendant is convicted of child abuse.

Here are some suggestions and activities that your attorney and your CAC can do to assist the forensic interviewer in court.[7]

- Review (or have your attorney review) *every one* of those appellate cases in your state. They are gold. They are the "rules of the road" regarding forensic interview testimony and the legal issues that impact forensic interviewers that either have been approved by the appellate judges of your state, or the "wrong turns" that your state's appellate judges do not want to happen again at trial. It enables forensic interviewers to understand how other forensic interviewers testified as a fact witness or an expert witness; it enables forensic interviewers to understand the areas of expertise the state recognizes; it enables forensic interviewers to uniquely understand what the criminal defense attacks on their credentials and testimony will be.

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6 For a comprehensive review of the current law related to the testimony of forensic interviewers at trial, see Victor Vieth, "The Forensic Interviewer at Trial: Guidelines for the Admission of the Scope of Expert Testimony Concerning a Forensic Interview in a Case of Child Abuse (Revised and Expanded)," *Mitchell Hamline Law Review*, Vol. 47, Issue 3, Article 1 (2021).
7 Many of these suggestions hold true for mental health clinicians and your medical professionals.

- Review (or have your attorney review) *every one* of your state's statutes that have the terms "forensic interview" or "forensic interviewer" in them. Many states have unique rules for specific qualifications that must be possessed by a forensic interviewer. Some state statutes may also recognize the forensic interviewer's product as confidential by law, which will inform the CAC how and the best way to protect the product from being disseminated.
- Obtain the forensic interviewer's trial testimony transcripts. These transcripts can be used by the forensic interviewer to review his or her prior testimony and also prepare for future testimonies.
- Build an expert literature library for the forensic interviewer. Of course, the preeminent place to obtain expert materials and research is through the NCAC's Child Abuse Library Online (CALiO™).
- In that regard, build an appellate case database listing your state's appellate cases that discussed the various expert witness areas for which forensic interviewers in your state have been approved.
- Provide the forensic interviewer with knowledge of the state's child hearsay statute (if your state has one) or "outcry" statutes (if your state has one) and how that may impact the testimony of forensic interviewers.

Mental health clinicians, sexual assault nurse examiners (SANEs), and medical professionals: These professionals also have a significant role in the courtroom, although they traditionally have been called as witnesses far less than forensic interviewers. But the quality of the evidence and information that may be gained by including them as witnesses at trial cannot be overstated.

The bullet points, above, apply to mental health clinicians, SANEs, and medical doctors. But another area that is ripe for understanding is the hearsay exception for purposes of diagnosis or treatment. These typically are found in Rule 803 of your state's evidence code. A full understanding (with the help of analysis by your CAC's attorney) is essential because there may be opportunities for the mental health clinician to testify at trial and state what the child told her during session regarding the alleged abuse. A full analysis will not be done here; however, it is an area of critical importance.

A more detailed view of testifying in court is set forth in Section 5 of the *Guidebook*.

Records

Let's just be clear about records and define their significance on our own terms. An attorney for a CAC once made the following argument in court, in response to a party who wanted to get his hands on a forensic interview DVD so he could watch it in the comfort of his own home.

> *"Your honor, releasing this forensic interview DVD to Mr. Jones would be a poor decision because it is potentially dangerous, and with certainty a harmful one. These parties who come before you and assert that they just want a copy of a videotaped forensic interview for their convenience ignore an absolute truth. These forensic interviews should be safeguarded and protected by the Courts just like the Courts protect images of children being sexually abused. Child pornography materials would never be released to Mr. Jones so he could have the convenience of viewing them in his own home. No, I am not suggesting that a forensic interview is child pornography. But I am telling the Court this: These children are providing descriptions of acts that happened to them that, if God forbid were being filmed in real time, would be child pornography, among other crimes. They are just as worthy of a Court's full arsenal of protections. The reason a forensic interview is confidential by law— or should be—is because it includes descriptions of crimes against children; is because by releasing this information it can create safety risks; is because releasing this information will be an invasion of a child's privacy; is because releasing this information can re-traumatize children; and by releasing this information, it prevents this Court from being able to ensure that people receiving this information won't pass it along to whomever they choose.*

There is more to argue about the importance of protecting forensic interview products, and the argument above begins to highlight it. Supporting this argument in court with case law and a solid statute

protecting confidential records related to allegations of child abuse can lead to the likelihood that a judge will favor it.

The forensic interview, and its release, matters to other MDT partners: the prosecutor, the detective, and the CPS case worker. When the forensic interview is sought by attorneys directly from the CAC, these MDT partners may not be aware of this request because they did not directly receive the demand for the records. This often occurs when an attorney in a civil case subpoenas the CAC for the forensic interview. The attorney in the civil case does not need to notify the prosecutor in the criminal case unless there is a specific requirement for doing so in the state. Most states have no such requirement. Therefore, in these states, the prosecutor receives no notice that the forensic interview is being sought, and no opportunity to object to its release in the civil case, even if it may impact the criminal case.

Thus, the CAC has to have a uniform response (an example is discussed in Section 4 of the *Guidebook*) so that *all* of the MDT partners are aware that forensic interview records are being sought.

Let's move on to mental health records. Earlier, it was suggested the law endorses what CAC professionals do for a living. The following passages from a United States Supreme Court decision, *Jaffee v. Redmond*, is all that needs to be said regarding the importance of protecting mental health records.

> *"The psychotherapist–patient privilege is "rooted in the imperative need for confidence and trust. ... Reason tells us that psychotherapists and patients share a unique relationship, in which the ability to communicate freely without the fear of public disclosure is the key to successful treatment."*
>
> *"Effective psychotherapy ... depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears. Because of the sensitive nature of the problems for which individuals consult psychotherapists, disclosure of confidential communications made during counseling sessions may cause embarrassment or disgrace. For this reason, the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment."*
>
> *"Our cases make clear that an asserted privilege rule must 'serve public ends.' ... The psychotherapist privilege serves the public interest by facilitating the provision of appropriate treatment for individuals suffering the effects of a mental or emotional problem. The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance."*
>
> *Jaffee v. Redmond*, 518 U.S. 1, 10–11.

Similar arguments can be made regarding medical records, including records documenting forensic medical examinations. Once the CAC fully absorbs the legal protections placed upon the information routinely in its possession, the question moves from, "How can we protect this information?" to "Why wouldn't this information be protected?"

With that, here are some guidelines your CAC, through consultation with legal counsel, can consider in order to implement reliable procedures for your organization.

With the CAC–MDT model, one critical entry point is determining who or what entity has true "ownership" of the records. As we have discussed, the CAC often has records in its possession that originated from another source.

And then there is the million-dollar question regarding forensic interviews: Who is the "owner" of the forensic interview product? First way to answer: Review your state's statutes to see whether forensic interviews are defined by law, and within that definition it sets forth the "ownership" equation. If it is silent, then this is a big and important question to answer with your State CAC Chapter or network in conjunction with representatives of the prosecutor's offices statewide and representatives of child protective service (CPS) offices statewide. At a minimum, it should be discussed with your MDT, so that everyone is in agreement.

The issue is this: With ownership comes the responsibility of protection of the product and decision-making of who can obtain the information. Your state may have statutes that describe which entities can have reasonable access to records related to allegations of child abuse (which includes a forensic interview recording), but that does not address the ownership issue.

If your CAC or your state network takes the position that the CAC is the owner of the forensic interview recording, then that usually means private, nonprofit corporations with resources far inferior to those in state government (such as the district attorney's office) are responsible to ensure the forensic interview recording is absolutely protected. With that comes the increase in legal liability risk, and private, nonprofit corporations do not enjoy sovereign immunity protects like the State does.

If your CAC or your State Chapter or network takes the position that the entity (either law enforcement/prosecution or CPS) that referred the child to your CAC is the owner of the forensic interview recording, then a more coherent framework for protection of the forensic interview recording can be established. This framework accepts that the forensic interview is but one tool that the referring agency uses in its investigation. This framework understands that CPS or law enforcement will need the forensic interview to continue its investigation, and that the CAC, because it is not the owner, cannot withhold the forensic interview product from them, nor instruct them to pursue a particular course of investigation following the forensic interview. This framework understands the prosecutor's office will be in charge of the forensic interview during the criminal trial, as well as during the course of criminal discovery when the forensic interview no doubt will be produced to the criminal defense. This framework also understands the district attorney's office, in producing the forensic interview recording in the course of criminal discovery, can seek a court order of protection to ensure the forensic interview is not wrongfully copied or disseminated.[8] This framework understands that these actions taken by the district attorney's office are protected by immunity protections that do not apply to private, nonprofit CACs, many of which in the United States still do not have adequate attorney representation. Indeed, for every CAC in the United States that believes (whether correctly or not) it is sufficiently designed to overcome these hurdles, there are certainly dozens of CACs that are not.

If your CAC, in consultation with state laws and MDT members, believes the *referring agency* is the "owner" of the forensic interview product, then the rules *for your CAC to consider* come into focus:

Rule 1: The forensic interview conducted at the CAC is not the CAC's work product. It is law enforcement's/prosecution's (if referred by them) or CPS's work product (if referred by them).

Rule 2: Your CAC and MDT will have a uniform agreement of ownership, and an understanding of which MDT partner has access to the forensic interview and when they do, also considering what your state's statute says on the matter.

Rule 3: Forensic interviews (or forensic evaluations, or extended forensic evaluations, or extended forensic interviews) are never counseling and therefore, the counseling privilege is inapplicable. Forensic interviews may be defined in your state statutes. If so, it is commonly categorized as a record related to allegations of child abuse. It is hoped, if this is the case, the state statute also deems such records related to allegations of child abuse as confidential by law. The significance of *counseling* privilege is discussed below.

Rule 4: The fact that a forensic interviewer has a degree as a licensed clinical social worker (LCSW) or a licensed professional counselor (LPC) or has a doctorate of philosophy (PhD) in a specialized area does not make the forensic interview a counseling function. In the law of counseling privilege, it is the subject matter that controls. Important note to CACs that have

8 A sample court order protecting these records is set forth in Appendix B. Protecting the wrongful dissemination of these records is critical to the protection of children. If, for example, a forensic interviewer video makes its way onto social media it can damage the victim all over again in much the same way that the dissemination of sexually exploitative images can. If these materials are used at defense bar training courses, a child's telling of abuse could be used to acquit or otherwise undermine justice in other cases of child abuse—something that can be emotionally harmful to the victim.

professionals who can do forensic interviews and also provide counseling: Don't mix these roles. If one is doing the forensic interview, he or she cannot also be providing the counseling to the subject child of the forensic interview. If he or she is counseling a child and that child later comes in for a forensic interview, the same professional should not do the forensic interview. Mixing up such roles creates legal issues that should be avoided.

Rule 5: The counseling notes from sessions conducted at your center and by your center counselor are your work product, and more than likely privileged. *Important: Have your CAC's attorney review your state's statutes and case law for exceptions to this rule that are specific to your state.*

Rule 6: Counseling notes are privileged if they are the product of a person who has qualifications set forth in your state's counseling privilege statute. Knowledge of your state's counseling privilege statute is a must. For example, such a statute may allow the privilege to attach when the counselor is a LCSW, doctorate in law and policy (LPD), licensed and family therapist, PhD, etc., but *not* a licensed master's in social work (LMSW).

Rule 7: The privilege of confidentiality is for the client not the counselor. However, it should always be asserted in response to when the CAC is served a subpoena in a Motion to Quash if it applies. After all, the client (through the non-offending parent/guardian) is not going to be subpoenaed for the records, but the therapist will be. Also, some state statutes specifically provide that the counselor may raise the privilege argument in a Motion to Quash.

Rule 8: The counseling privilege applies as to communications among the therapist, doctor, counselor, etc. and the client. It may go away when the communications are made with someone else present who is not a necessary or customary participant in the counseling treatment.

Rule 9: The counseling privilege only applies to therapeutic topics. If the communications are outside the scope of these topics, there is no privilege. See **Rule 4** example: a LCSW who is a trained forensic interviewer and who performs a forensic interview.

Rule 10: The medical notes from evaluations conducted elsewhere but are in the CAC file are not the CAC's work product.

Rule 11: CPS records: same.

Rule 12: Law enforcement records: same.

Rule 13: If the CAC is served a subpoena seeking information that is in the CAC's file but is *not* the CAC's work product (such as forensic interview materials; CPS records; law enforcement records; medical records; school records; national protocols owned as intellectual property by another entity; etc.), then the Motion to Quash should raise that "*the information requested, while it may be in the possession of Anywhere CAC, is not the CAC's work product and the entity who has such work product status has not been provided notice that its work product has been subpoenaed through Anywhere CAC, and therefore has not had the opportunity to object or otherwise be heard.*"

Rule 14: If a subpoena is directed to your center and its intention is to harass the CAC by asking for board of directors' information, financial information, funding source information, or other information in an attempt to intimidate, there is more than likely a catch-all objection in your state that your legal counsel will locate, such as the subpoena is "overbroad" or "unreasonable" or "oppressive." As with all objections in these Motions to Quash, it shifts the burden to the party serving the subpoena to demonstrate to the court why the information sought should be released.

Rule 15: All of these rules which particularly involve responding in court are to be enforced by your CAC's *legal counsel*. The CAC's legal counsel may need to dialogue with the prosecutor's office to determine what the respective positions will be in response to any subpoena.

Rule 16: There may be other rules implemented to meet your CAC's specific needs, in keeping with your state's rules and statutes.

This lays *some of* the groundwork regarding who or what may end up in the courtroom. But before we get there, let's examine more fully how to respond to these demands for your people or the materials in your CAC's possession.

Section 3:

Creating a Children's Advocacy Center Legal Toolkit

Your children's advocacy center's (CAC's) legal toolkit has one purpose: to respond to predictable legal matters that will arise sooner or later in the life of your CAC. We are not implementing legal toolkits for theoretical purposes; instead, they are designed to allow the CAC to run like a well-oiled machine once it is involved in criminal or civil litigations as third parties.

The first order of business is to assign a records gatekeeper. The long-ago days of releasing records without a deliberate review and an understanding of the legal rules and statutes that apply are gone. We can all strongly consider a general rule of response to those who seek our records in CACs: No, *unless a court says so.* There will be exceptions, but to understand the "why" of this general rule, we must understand the "what."

That is, what are the records we have within the premises of our CACs? First, they include records that may be confidential by law ***(have your attorney review your state's statutes)*** because they involve allegations of child sexual abuse, child physical abuse, neglect, or exploitation. These are the forensic interview materials, but also can be arguably expanded to include: intake information; questionnaires; testing data; mental health records; medical and healthcare information; and more.

As a critical aside: It is ***imperative*** that your state legislature enact, by statute, laws that protect records that relate to allegations of child abuse and create a statutory framework that (1) defines these child abuse records as confidential by law, and (2) creates a framework to protect them. And "child abuse" records should have an expansive meaning to capture forensic interview materials and forensic medical exam materials.

If there is no such statute in your state, then CACs need to do everything they can to *protect them anyway*. The procedures described below in this section can be of assistance in this regard. It can be seen as a launching point to create the toolkit that specifically meets your CAC's needs. An essential tool in the toolkit of *any* CAC is an attorney who is retained by the CAC to review and implement these processes.

Next, a CAC has counseling records on its premises, which usually triggers issues of client confidentiality and privilege. "Usually" is important for the CAC to understand: Many state statutes specifically delineate the types of professionals who can maintain this counseling privilege with their clients. The test as to who has this privilege is the "alphabet soup" test: PhD, LCWS, LPC, MD, or whatever your state statute reflects.

CACs also have records on premises that did not originate within their four walls. That is, some CACs, through their MDT approach, may possess law enforcement-type records, medical, school records, and other records. The non-offending caregiver may bring records to the CAC, which are then placed in the file. This understanding is important, because many subpoenas that are served on CACs demand "any and all records of any kind related to Jane Doe, date of birth … ." "Any and all" is very broad (in fact, it should draw an objection from the CAC due to its overbreadth) and casts a wide net to include those records that did not originate with the CAC.

So that leads back to our first order of business: **Assign a gatekeeper for all requests and demands for information that come to the CAC.** Anything that ever so slightly triggers a request or demand for records or anything legal should be directed to the CAC's gatekeeper. Most CACs will use their executive director to fulfill this important role. The gatekeeper will be the first responder to begin addressing such things as:

- subpoenas;
- court orders;
- Health Insurance Privacy and Portability Act (HIPAA) authorizations, or authorizations for the release of information;
- legal letters, including certified letters;
- letters from lawyers;
- phone calls from lawyers;
- phone calls for private information from the public;
- drop-ins by lawyers or their staff seeking information; and

- pleadings served on the CAC in civil cases, such as Non-Party Requests for Production of Documents.

These types of matters should go to the CAC gatekeeper so he or she can determine the nature of the requests and initiate an appropriate and required response. And if the gatekeeper is out of town, out of commission, or otherwise unavailable, make sure the CAC has a secondary gatekeeper.

The second order of business is to notify the CAC's attorney after receiving a legal request. The gatekeeper immediately notifies his or her CAC's attorney of the legal request or demand that was received. Many of these requests and demands carry time-sensitive responses that are mandatory. If, for example, the CAC attorney is not made aware of a subpoena, then the time in which to respond with an objection or any other legal tool may be lost. The CAC and the CAC's attorney will already have a response plan in place *before* the legal demand is received by the CAC. However, if the attorney is not timely notified, then the response plan can wash away in the sands of time.

There are some readers who see that last paragraph and think: What attorney? Who said we had an attorney? Let us look at this.

It need not be said that CACs are professionally run organizations, employing people with unique skill sets obtained through years of study, experience, or both. If CACs are to be seen as professional organizations in the courtroom, then they need to understand the legal system is going to expect the entirety of a CAC's response to legal matters are done in a professional manner. It will be said once more: Obtaining competent legal counsel to address these legal matters cannot be seen as a "luxury we cannot afford" any longer.

Indeed, once a competent and qualified attorney is hired by the CAC, you will feel the weight of the world release from your shoulders on these legal demand matters. No longer does your director, your therapist, your forensic interviewer, your child, and family advocate have to navigate what may seem like perilous waters. Instead, these matters are sent to the lawyer for a response.

A lawyer confession must be made here. For a competent and qualified attorney, these waters are not perilous. In fact, it isn't intellectually hard work. For a lawyer with a civil trial practice, it is pretty straightforward, once the lawyer understands the statutes and procedures that are involved, as well as the privacy and safety significance of the documentary materials that are being sought.

Thus, the formula so far for a well-oiled CAC machine:

Legal demand on CAC → Gatekeeper notified same day → CAC lawyer notified same day

The third order of business is to notify other MDT members about legal requests. Call the cavalry. Every time. What does that mean?

CACs are part of a MDT, and one core philosophy is we communicate with our team members. Invariably, when legal requests or demands are made on the CAC, it impacts other members of the MDT. When these matters are in litigation, whether a criminal or a civil case, it is important for a CAC to notify its MDT members that a record demand has been made on the CAC. This certainly includes demands for forensic interview materials, but also mental health or medical records.

The purpose is *not* for the prosecutor's office to respond to the demand *for* your CAC, but to allow it to respond in its own right, if it feels it is necessary. Often, the prosecutor's office may not know about a records demand that is made on a CAC, particularly where the demand is made as part of a civil case (such as a divorce case or a personal injury case), even if the civil case is proceeding simultaneously with the criminal case, and even if the defendant in the criminal case is the same defendant in the civil case. Further, it is important to understand that prosecutors, who learn that someone is trying to access a document, a forensic interview, or other material that might be harmful to a victim, will want to take a lead role in protecting these records. It may well be that a court, when faced with the CAC attorney and a prosecutor who both intervene, will be more receptive to the arguments from the prosecutor. Depending on the case and the response of the prosecutor, the CAC attorney may play a more secondary role at a hearing on the matter.

Ultimately, the CAC is part of a MDT, which means we collaborate and *share information and updates.* Thus, by notifying our partners when we receive a subpoena, we are continuing with the theme of sharing information with the MDT and keeping the members apprised of what is happening in the CAC. This means notifying the lead detective assigned to any criminal matter involving the same individuals, as well as the lead case worker assigned to any CPS matter involving the same individuals.

Finally, as it relates to a subpoena or demand for the mental health records, *call the cavalry* means notifying the non-offending caregiver that his or her child's records are being sought by subpoena. The reason: such non-offending caregiver has the *primary* right to retain his or her own counsel to object to the release of the mental health records if he or she is so inclined.

Here is our current formula:

Legal demand on CAC → Gatekeeper notified same day → CAC lawyer notified same day

and

Gatekeeper notifies lead prosecutor, detective, and CPS worker related to the case; and, in cases involving demands for mental health records, the non-offending caregiver who signed the informed consent form.

The fourth order of business is to await instruction from the CAC attorney. Awaiting instruction from your legal counsel is difficult but important as the CAC is paying for this counsel. The toolkit tools the lawyer has at his or her disposal are discussed in Section 4, "Responding to Demands for Information in Criminal and Civil Cases."

Section 4:

Responding to Demands for Information in Criminal and Civil Cases

Subpoena demands on CACs are part of the course of criminal proceedings. Let's review a subpoena for the production of evidence, served upon the CAC, by the criminal defense attorney in a criminal case involving allegations of child molestation. The following is a *framework*; your own state's statutes will have specific rules related to subpoenas and responses to subpoenas. Again, the CAC is in premium position by having legal counsel to navigate these subpoena matters.

Typically, the subpoena will state the CAC is herewith demanded to produce the "documentary and other tangible information" set forth in Exhibit 1, at a date, time and place designated in the subpoena.

Then flip to Exhibit 1, which reads (and this actually happened):

> "*Exhibit 1: The term 'document' is used in its broadest sense and means any record of information of a kind or description, however made, produced, or reproduced, whether by hand or any electronic, photographic, mechanical, or other process. Documents can take the form of any medium, film, paper, phonographic records, tape recordings, videotapes, and video disks. The term 'document' means any written recorded, or graphic material of any kind, whether prepared by you or by any other person, that is in your possession, custody, or control. The term includes agreements; contracts; letters; telegrams; inter-office communications; memoranda; reports; records; instructions* ***[next 7 lines redacted by the Guidebook author]****. The term 'document' also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archive or back-up system), together with instructions and other materials necessary to use or interpret such data compilations.*"

This subpoena for the production of evidence is served on the CAC, and we know what to do:

1. **Gatekeeper:** The subpoena relates to something legal, so it is provided to the gatekeeper of the CAC.
2. **Call the cavalry:** The gatekeeper notifies the CAC's legal counsel, and also the lead prosecutor in the criminal case; the lead detective, the CPS worker; and since "any and all records" can capture mental health records, the non-offending caregiver of the child is notified.

Competent and qualified counsel for the CAC will see this subpoena for what it is: an overbroad subpoena designed to be, as the law calls it, "an instrument of discovery." The problem for the party serving the subpoena: ***The CAC is NOT part of criminal discovery in a criminal case involving allegations of child molestation.*** Criminal discovery runs between the State (the prosecutor's office) and the defendant. The CAC is neither.

> **NOTE:** *As always, the competent and qualified attorney of your CAC's choosing can research your state's rules to determine whether there is an exception to this proposition that CACs are not part of criminal discovery, or whether there are other legal rules or statutes that would require certain responses.*

Because CACs are not part of criminal discovery, criminal defense attorneys cannot serve subpoenas as "instruments of discovery," that is, use a subpoena to cast a wide-reaching net to try to discover any information that may be useful to them. The CAC attorney can research your state's appellate cases on *Westlaw* or *Lexus* with a search query that includes "fishing expedition" and will likely find what is needed. The above subpoena is used by an attorney on a "fishing expedition" of the CAC's files, when in fact the subpoena in the criminal case, when served on a non-party entity like a CAC, must be used to subpoena information that will be relevant evidence at trial.

The legal tool for a CAC to use for such a subpoena is a Motion to Quash. This must be filed, and only filed, by an attorney licensed to practice law in your state. It is a "legal pleading" filed on behalf of a corporation (your private, nonprofit CAC), and there are very likely rules in your state that

mandate an attorney be the one who files it, not a layperson, and argue it in court if it reaches that point. This is yet *another* reason your CAC must have a competent and qualified attorney licensed to practice in your state.

In short, the Motion to Quash the above subpoena sets the legal justifications for the judge quashing the subpoena and shifts the burden on the party who seeks the information to convince the judge to order the CAC to release the information.

If no Motion to Quash is filed, the subpoena stands and must be complied with. Thus, a good rule to follow is a subpoena that is properly served will be deemed legally valid until someone or some entity (like a CAC's attorney) files a motion with the court attempting to show the court that the subpoena should be deemed legally invalid.

Thus far, we have examined subpoenas served in criminal cases and focused on a singular idea: The CAC is *not* subject to discovery, and a subpoena should not be used as an instrument of discovery on a non-party like a CAC.

Next, however, we must examine *specific information* that is on the CAC property to add to your legal responses—whether it is a criminal case or a civil case—when subpoenas and other demands are made on CACs.

We know in this area that information on the CAC premises involves significant privacy and safety interests that are triggered when *anyone* seeks to obtain records and video recordings of materials.

We also know there will be people who contact the CAC and state they have valid claims to obtaining portions of a file or records. The ultimate question a CAC should ask when receiving a request or demand for information on the CAC's premises is, "Should the CAC give the information to this person?"

After speaking to the competent and qualified attorney of your organization's choosing, the answer is: "It depends," which is precisely why having a designated attorney can help set the course for proper responses.

There are some questions to answer to create the proper response:

- Who is requesting the records?
- What records are being sought?
- What legal tool is being used to seek the records (standard authorization, subpoena, request for production of documents, court order, etc.)?
- What action, written or otherwise, is necessary on the CAC's part to: Respond to the request? Respond to a subpoena and appear in court? Respond to a request for production of documents? Respond to a standard authorization?
- Is there any anticipated objection to the request for the records from any other individual or entity?
- Has the person with standing waived the privilege (i.e., agreed that the counseling records at issue can be released)?
- Is there any rule, policy, statute, or appellate case that prevents the release of counseling records, even in the face of what appears to be a valid request for the records?

All of these considerations, and others, will have to be addressed by legal counsel in most cases.

A useful response system template for your CAC may be:

1. **Who is requesting the information?** Typically, it will be a non-offending caregiver; attorneys in either civil or criminal cases; an MDT partner; or a judge, through a court order.
2. **What records are being sought**? Forensic interview materials; mental health records; personnel files; rules, standards, protocol materials; medical records; training materials; course materials, etc.

3. **What legal tool is being used to seek the records?** Subpoena; letter; phone call; request for production of documents; release of information/HIPAA authorization; court order.

4. **What action is necessary on the CAC's part to respond (through counsel if necessary)?** Notify CAC gatekeeper (always); call the cavalry (always); notify CAC attorney (always); attorney responds by letter; attorney responds by formal pleading or motion; and seeks hearing.

Let's put this into practice by adding multiple variables into the following hypothetical: Assume that a criminal defendant has, through his or her lawyer, served a subpoena on the CAC for the alleged victim's therapy records; the forensic interview materials; the personnel records of the CAC's forensic interviewer and therapist; and funding information for the CAC. In such a situation, the following steps should be initiated (the actual response may vary depending upon the facts of the case and your attorney's legal judgment):

- The gatekeeper reviews the subpoena to collect necessary information.
- The gatekeeper contacts the CAC's lawyer and shares the subpoena and any attachments.
- Call the cavalry. Notify the lead prosecutor, law enforcement detective, and CPS case worker that the CAC has been subpoenaed for these therapy records.
- Call the holder of the privilege, that is, the non-offending caregiver who brought the child to the center for therapy. The non-offending caregiver has the *primary* right to object to the release of the records.
- The CAC lawyer may find an appellate case that states a non-party, like a CAC in a criminal case, is not subject to this sort of discovery in a criminal case.
- As such, the CAC lawyer may find an appellate case that states a subpoena of this sort served on a non-party in a criminal case cannot be used as an instrument of discovery.
- The CAC lawyer then finds an appellate case that states the subpoena must be specific enough to target information in the therapy file that may be relevant to the guilt or innocence of the defendant (such as exculpatory evidence), and further that the subpoena must suggest that type of information would be contained in the therapy file.
- The CAC lawyer may find an appellate case that states the subpoena cannot be overly broad, harassing, and unduly burdensome in the event of the personnel file and the funding information.
- Next, the CAC lawyer can find an appellate case that states counseling privilege is a reason to quash the subpoena. Once this occurs, it shifts the burden on the defendant to show the court why the records should be released.
- Next, the CAC lawyer can state the actual holder of the privilege (e.g., the non-offending caregiver) has not been served with a subpoena (if this is true) so that person does not have notice and opportunity to be heard in regard to the records being sought through the CAC.
- Next, the CAC should ***always*** ask for a protective order to be issued should the trial court decide to release any information in the clinical file, even if sensitive information is redacted.

The question now arises: What is a *protective order* as it relates to records? It is an order issued by the court that prevents the disclosure of certain sensitive information and records except to certain individuals and under certain conditions. This is *mission-critical* for many reasons, including the nature of the material, the privacy and safety concerns that are triggered, and the ease with which that information may be shared and even posted online in the age of social media.

Therefore, the CAC lawyer and also the State's prosecutor can *always* and *should always* request a protective order be issued if the trial court determines this sensitive CAC-related information and records are going to be released to the parties in the case, whether the case is a criminal case, a civil case, or a family court case.

In requesting a protective order be entered, the CAC attorney or the state's prosecutor can argue to the trial court that the court can enter an order *that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.*

Language for a protective order for records may include the following:

- the records cannot be reproduced except as authorized by court order;
- the records be viewed or disclosed only on specified terms and conditions;
- the records be sealed and only opened by court order;
- the order be applicable to all parties, their counsel, and any agent or representative of a party;
- the records released pursuant to such order be returned to the court upon completion of the matter that caused the production of such records;
- any person who fails to obey a protective order issued under this subsection shall be punished as contempt by the court; and/or
- other protections/requests as necessary for the records at issue, such as guarding against information from being used in a defense bar training course or mentioned in interviews in the press.

Once objections to non-party requests, or Motions to Quash in response to a subpoena *duces tecum*, have occurred and been put in front of the trial court, the judge will issue an order. A court order is a directive issued by a judge that requires a person or an entity (such as a CAC) to either do something or not do something. An order requires compliance *unless* the person or entity (such as a CAC) files a timely motion requesting that the court reconsider the order, or otherwise timely appeals the order. A lawyer is a *must* in this situation.

More often than not, court orders merit compliance. However, and only for illustrative purposes, suppose a trial judge orders a CAC to allow an alleged perpetrator on its premises to view a forensic interview recording with the alleged perpetrator's attorney. That would be an instance where an attorney, on behalf of a CAC, could file a motion for the trial court to reconsider the order.

Ultimately, when the CAC receives a court order, it is important that the CAC gatekeeper *immediately* forward the order to its legal counsel for review and instruction *and* "calls the cavalry."

In closing this section, here are some reminders: (1) Get an attorney for your CAC to navigate these waters; (2) have the attorney research your state's laws to determine what specific rules and procedures must be followed; and (3) thank you for all you do!

Section 5:

Testifying in Court

If you speak to 100 trial lawyers, you will likely hear 100 different ideas of how they prepare their witnesses to testify. There is some overlap, to be sure, but true trial lawyers who are serious about their craft will have battle-tested ideas of what makes a great witness and what can be done prior to walking toward the witness stand to be prepared to testify in the best manner possible. Ask them about their ideas before it is time to testify!

When people ask me what makes a great witness, I turn the tables and ask them to answer their own question through this lens: *What qualities do you think would make a great witness if you were a* ***juror*** *in the case*? Jurors are, after all, the target audience in a jury trial, the ones who are going to have to listen to the evidence, digest it, and decide. Talk about these attributes with the lawyer who is calling you as a witness. Get feedback from him or her. Bounce ideas back and forth. You might be surprised how much it helps you understand and focus on the road ahead as a witness. You will also be surprised about how much these qualities describe *you*!

This is a list I have compiled over the years, based upon my own work with witnesses and listening to some other really smart trial lawyers talk about what has worked for them. So, well before your next witness testimony, read this list and discuss it with colleagues and the prosecutors on your MDT. Use these as a launching point in what might be the best ideas for your jurisdiction.

50+ Ways to Improve Your Skills as a Witness

Take Your Own Inventory

1. What is it about you that helps you effectively explain things to others? Take an inventory of your "explaining" skills. Are you good at describing? Defining? Teaching? Using analogies to break down complexities?
2. What are the qualities of other people that have allowed them to help you understand things? Was it patience? Brevity? Candidness? Expertise? Storytelling? Passion? Their likeability? Their credibility? Their interest in *you*?
3. What tools of persuasion have you used over the years to help others make important decisions? Remember that at trial, the general rule is an expert cannot testify as to the ultimate issue (i.e., the defendant molested the child). Therefore, it is important that a witness can present facts and information, which allows jurors to draw their own conclusions from the information (evidence) they receive during the course of the trial.
4. After taking "inventory" as set out in Nos. 1-3, you should realize that you already have tools that can immediately be put to use when testifying.

Preparation

5. Pre-trial preparations pay off in the courtroom. When you find out the trial date, be proactive. Make sure your CAC has a method to stay up-to-date as to when potential trial dates involving your cases are scheduled, whether it is discussed at MDT, or if your CAC keeps its own trial calendars. This can prevent the last-minute notice of trial calendars.
6. Always have a mindset that the case will be tried—it is not going away, it will not plea out, you will ultimately be on the witness stand, and it involves a child (or children) who are awaiting a verdict.
7. Start reviewing your documents. Review them with a critical eye because the cross-examining lawyer will.

8. Being proactive means making sure you speak to the attorney who has subpoenaed you early in order to understand when you will be called. *Why* you will be called? (A good question for the attorney: *What are you trying to prove through my testimony*?) What is expected of you? When should you arrive at the courthouse? What should you bring with you, if anything? *When will the attorney who subpoenaed you interview/prepare you prior to trial*?

9. Being proactive is being able to tell the assistant district attorney (ADA) who tells you that "I don't need to interview you, you'll be fine," "Thanks, I appreciate that. Now when are you going to interview me about my role in this case?"

10. Here are some top tips from a prosecutor, in following up to No. 9: (a) The CAC witness must be flexible if a prosecutor is in trial or otherwise overtaxed; (b) consider an early morning, evening, or weekend meeting, which might be necessary sometimes; (c) the CAC witness should come prepared to the meeting so the issues to be addressed are discussed as efficiently as possible; (d) the CAC employee could also send the prosecutor an e-mail in advance alerting the prosecutor of what the CAC employee would like to discuss.

11. During the pre-trial interview, make sure the lawyer who is interviewing you understands your documents, your credentials, your findings, your investigation, and your concerns. Do not provide incomplete information to the interviewing lawyer or else nasty surprises can happen at trial.

12. ***Pre***-Pre-trial preparations pay off in the courtroom. It's when the initial document is created—well prior to trial—that proper procedures and protocols are so important to follow and will pay off at trial.

13. ***Pre-***Pre-trial preparations also include having regular meetings with fellow staff members about testifying in court and discussing courtroom experiences.

14. ***Pre-***Pre-trial preparations also include having meetings to debrief fellow staff members who have testified following the trial after they are no longer sequestered and the trial is over, to hear about their experiences.

15. ***Pre-***Pre-trial preparations also include staying current with the authoritative literature in your field. You are a complete professional, which means doing everything you can to know the authority and doing everything you can to *be* the authority.

16. ***Pre-***Pre-trial preparations means going to every professional workshop or conference or meeting you possibly can. Get out of the office! Besides professional growth, it allows a lawyer to help qualify you as an expert. Remember the expert formula: skill and/or education and/or experience and/or training = expert.

17. What is a professional resume? One that doesn't include unrelated jobs and job duties (e.g., "Was a manager at Fast Food Burger World."). One that describes the workshop attended if the workshop had a gratuitous title such as, "How to Best Those Obnoxious Defense Attorneys."

18. Social (Ugh) Media: It will find you when you are on the stand. Posting, "We got another slime bucket off the street today," will be used to show bias and other unwanted possibilities.

The Target Audience

19. It's all about the jury—the jury is the target audience, no one else. (Unless it's a bench trial—then the judge is the target audience.) Spend more time thinking about how the jurors feel about being part of a trial and less time about how you think about being part of a trial.

20. Understand that the majority of jurors at first do not want to be put on the jury, while also understanding that most jurors will be motivated and diligent in the discharge of their duties.

21. Once jurors learn the type of case at issue—child abuse—it is going to be upsetting for some or even most of them.

22. Respect their feelings.

23. How? By respecting their presence with your professionalism.

24. How? By respecting their presence by being prepared.

25. How? By respecting their presence by being concerned and credible.

26. How? By respecting their presence by being on-task and "about this case." That is, you have multiple other cases you are working on that are important. But this is the one case these jurors will ever sit in judgment on. So, for you, there can be no other case more important at the moment than this one, and you must be *engaged* in it.

27. How? First, dressing the part. Show up dressed professionally and err on the side of conservative dress. You want jurors paying attention to what you say, not what you wear.

28. How else? By understanding that jurors have expectations, and most of them do not have first-hand experience with trials and litigation. There are expectations generated by the news media, or the political discussion of lawyers in society, or TV shows, or any number of outside influences. They have an idea of what a witness should look like and be like.

29. Understand how people like jurors make decisions these days—*quickly*! Get to the point with your answers. Try to make every word (or most words) count.

30. Understand a general courtroom principle: Less is more. Talk in advance to the prosecutor who is bringing you to trial to discuss the times when you might need to elaborate.

31. Bring only what the lawyer who has subpoenaed you tells you to bring. Ask the lawyer if the judge has made any pre-trial rulings that impact your testimony in any way.

Presentation

32. There is no need whatsoever to stare or look at the jurors as you pass them on your walk toward the stand. Walk straight and confidently toward the witness stand, get there, remain standing until you are sworn, say "I will" or "I do," and sit down. After the first question, tell them your name loudly and clearly.

33. Define what you do clearly and concisely. Before the trial, try defining what you do as a forensic interviewer as if you are telling it to a 12-year-old. Then try out that definition to the people at your CAC. Refine it. Run it by the ADA. This preliminary information has got to be reliably understandable. You don't want to get tripped up here, at the beginning.

34. Surf the internet for CACs. Look at descriptions they use to describe their CAC and their CAC's services. Many of them are quite good.

35. Remember that your testimony can be *complicated.* Remember what it was like learning your area of expertise the first time. Remember that the jurors are in the same boat—but they only get a few days to figure out what it took you years to know.

36. Don't just define yourself clearly, concisely, understandably. Also understand that some of your professional jargon may be introduced to the jury. If so, introduce the professional jargon and then define it in layman's terms.

37. How? Think of Mona Lisa Vito in the film *My Cousin Vinny*. She was tendered as an expert in general auto mechanics. Remember? She introduced the concept of "positraction" to the jurors. "It's a limited slip differential which distributes power equally to both the right and left tires." She then gave an example of what happens with cars without positraction. "If you've even been stuck in the mud in Alabama, you step on the gas, one tire spins and the other tire does nothing." Perfect.

38. Make eye contact with jurors—all of the jurors, not just the one who reminds you of your favorite teacher—when ***explaining*** and ***describing***. You don't need to look at them with every answer but ***explaining*** and ***describing*** gives a witness the chance to speak directly to jurors because you're stringing together important sentences of information while teaching them about your part of the trial testimony.

39. Be ready to stand up in front of the jury to explain responsibilities that relate to your role in the case, your profession, and your CAC. Be ready to go to the board (if there is one) to write main points.

40. Because you are going to explain and/or write on boards, prepare in advance. Explain to yourself in front of a mirror. Practice writing out the information in advance and figure out how the information when written down is most understandable, legible, engaging, even interesting. Know that in your state there are likely courses, such as "Forensic Interview Trial Training," where interviewers can go through mock trials. Experiential training is important.

41. Speak clearly, and slowly.

42. Emphasize the critical points.

43. Know how to follow the attorney's lead. He or she is in control of the questioning.

44. ***Confidence!*** You work for children who have alleged abuse! Jurors will appreciate that.

45. Keep your cool. Keep your composure.

46. Understand the cross-examining lawyer may ask irrelevant questions. Understand the cross-examining lawyer may not know the facts or issues in your area of expertise. Understand objections that you think should be raised, may not be raised.

47. Understand the cross-examining lawyer may yell, shake his head, argue with you, engage in over-the-top histrionics, etc. It is hoped that the ADA will put an end to some of the more ridiculous gyrations, but for you, stay *professional.*

48. On the other hand, also understand some cross-examining lawyers will not play games because they know the issues cold and are quality trial lawyers. The attorneys to be careful with are the soft spoken, respectful attorneys who score points because they are thoroughly prepared. You will be too!

49. When the judge speaks, you stop speaking.

50. Be prepared to think on your feet.

51. This isn't as hard as it may sound. When you know why you are being called and what is expected of you (see No. 8, above), you will know the limits of your testimony's relevance to the case. Many times, the answer to an unanticipated question can be directed back toward the purpose of your testimony when your focus of the questions that you receive is seen through the lens of why you are being called as a witness. Otherwise, "I don't know" is very appropriate if that is your truth.

52. This is not your case to win or lose. You are an important witness, but it is not your job to win the case.

53. More to the point, you are a piece of the puzzle and there are other witnesses who are also pieces of the puzzle who will be called to help prove essential elements of the case. If there are not, then the prosecution is in trouble.

Are there more? Of course! But these may be a good launching point. Talk about it with your MDT, dig in, and good luck!

Section 6:

Hiring an Attorney for the Children's Advocacy Center — Making the Case to the Board of Directors

The premise in this section is the importance for all children's advocacy centers (CACs) to have competent, qualified, and reliable legal counsel to assist in case matters, whether the legal issues occur in civil or criminal court, or whether need arises before the case is in litigation.

Envision the day when every CAC in the United States has access to competent and reliable legal counsel. After all, it is inevitable that a CAC's involvement with children who are suspected victims of child abuse will involve legal matters. A thorough understanding of the myriad legal issues that can and do routinely arise, and that affect CACs, cannot be fully understood, and appreciated by laypeople.

CACs have multidisciplinary team (MDT) members. Law enforcement has legal counsel. Medical has legal counsel. Child protective services has legal counsel. The prosecutor's office obviously has legal counsel.

The missing piece is the one entity that often organizes the MDT meetings; that regularly houses highly confidential and private information; whose professionals routinely testify; and who have demands for information in civil, criminal, and family court matters; does not routinely have counsel. Properly responding to legal matters can be seen as a large part of advocacy for children. Indeed, the CAC is held accountable by judges and lawyers in the courtroom to being responsibly and professionally represented when it has to respond to legal matters that impact the organization.

Clearly CACs and their employees have legal interests that need protection in these matters where the agency is brought into the proceeding as a third party. When CACs and their employees make avoidable legal mistakes, it can impact the case, and impact justice. Indeed, lawyers and judges make mistakes. That is why there are appellate courts in the justice system. Many of these mistakes are made due to a lack of knowledge of the often-hidden statutes and rules related to CACs. Without a lawyer, a CAC is largely unable to correct mistakes, *or even identify them for that matter*, and these legal errors may in some cases ultimately harm justice for a child.

A lawyer in your jurisdiction can assist your CAC regarding the myriad of legal issues that impact it, including the legal issues and concepts the CAC and its MDT need to know: confidentiality of records; hearsay; child hearsay; bolstering; credibility issues; issues related to the Confrontation Clause; standards for expert testimony; issues impacting forensic interview testimony; issues impacting sexual assault nurse examiner (SANE) and other medical testimony; witness testimony generally; subpoena issues; foundational requirements for the introduction of evidence; legal issues related to documentation; and these are just some.

Relying on the prosecutor's substantive legal guidance and advice is misguided—the prosecutor represents the state. Likewise, relying on the fine lawyer on the CAC's board of directors is insufficient, unless that attorney is competent and qualified in the legal areas that directly impact CACs in these cases. He or she must also have contemplated all legal conflicts that may arise from being a CAC board member and its CAC legal counsel in these litigation cases.

The goal, therefore, is for all CACs to have reliable legal counsel for day-to-day needs that may arise, as well as all other needs that CACs may not even contemplate. The following is illustrative of what legal counsel can do, not just on a day-to-day basis when needed, but also as a legal clearinghouse for the CAC:

- Provide legal counsel to the CAC, including advising and counseling on all trial and pre-trial matters in which the CAC is brought into the legal system as a third party. ***But please understand:*** This ***does not*** mean that the CAC actually prepares a CAC witness for trial in a criminal case. That is the prosecutor's job, the prosecutor does not want the CAC attorney preparing the CAC witness or advising them about how to testify. This makes perfect sense: The CAC lawyer is ***not involved*** in the criminal case; does not know the facts of the case; is not the State's lawyer; and has no business interjecting themselves into this role.
- Handle activities including drafting motions and appearing in court on behalf of the CAC and responding to legal matters outside of the courtroom process, as well as general staff legal training.
- Help the CAC compile its "legal toolkit."

- Ensure the CAC has updates to relevant statutes (state and federal) and case law (state and federal).
- Send immediate email blasts with "breaking news" with follow-ups.
- Network with other state CACs, the Chapter, Regional CAC, and national organizations, such as the National Children's Advocacy Center and the National Children's Alliance, to share best practice data.
- Provide regular trainings and "as needed" trainings.
- Be up-to-date (nationwide) with all laws, appellate decisions, research, and trends affecting CACs and provide the information to the CAC as needed.
- Maintain "core" studies and research that are routinely cited in court by attorneys and provide this information to the CAC.
- Provide legal support for specific CAC professionals, in order to ensure their legal needs are met (e.g., forensic interviewers, mental health clinicians, executive directors, child and family advocates, volunteers and support staff).
- Review procedures, forms, documents, and responses to legal inquiries of the CAC and make concrete legal recommendations regarding how to improve.
- Review interaction between the CAC and its MDT and make concrete recommendations regarding how to improve.
- Provide legally reliable responses to all legal requests, including requests for information.
- Commit to "on call" questions being answered.

The list can be intimidating. In building a legal response system for a CAC for the first time, think about answering an attorney's question of, "What do you need from me?" A good answer to start out would be:

- "Our CAC employees must be prepared to testify on matters related to their involvement in the case, as well as understand the need for pre-courtroom preparation, whether the case involves a criminal or a civil matter."
- "Our CAC employees must remain aware of legal cases, newly passed statutes, appellate opinions, and other legal information that directly impact CACs."
- "Our CAC employees, particularly forensic interviewers, must remain aware of the growing body of research, studies, and training related to the forensic interview of children."
- "Our CAC employees must understand specific laws, rules, and protocols that affect their specific job responsibilities. For example, a CAC therapist must understand privilege and confidentiality; mandated reporting; duties of disclosing information in certain events that trigger legal rules that compete with privilege, etc."
- "Our CAC employees must be trained regarding their responses to document requests and demands that arise both in litigation and pre-litigation."
- "Our CAC employees must understand the legal responsibilities involved in interacting with their MDT members."

The question now arises: Where do we start to try to hire a lawyer? Here is a memo I gave to a local board of directors in a different state than the one in which I practiced:

> *I represented numerous CACs in Georgia. These included the big center in Atlanta, two or three big centers in the suburbs, and the rest were smaller centers outside of metro Atlanta.*
>
> *So, the first thing to try: Locate a CAC in your state that has a lawyer. That lawyer can represent more than one CAC. For me, I went approximately 75 miles outside of Atlanta. Any further was problematic for me because I wanted to make sure that I could make it to court*

quickly in the event something came up quickly. Seventy-five miles in metro Atlanta traffic was my limit.

In any event, a CAC has to determine where to look in terms of practicing lawyers. There are two choices: attorneys who practice in the civil arena and attorneys who practice in the criminal arena.

We can take the criminal arena first, and quickly discard that option. There are two types of lawyers who practice in criminal law: prosecutors, who work for the State, and criminal defense lawyers. The prosecutor is the State's lawyer, not yours. He or she supports your cause, appreciates your work, but cannot nor will not be filing any motions or briefs on behalf of the CAC because that is not his or her client.

As to the criminal defense lawyer, I want to make an initial important point. If we did not have criminal defense lawyers in the United States, then our constitutional system would fail. We who work in the CAC world do not go around bashing criminal defense lawyers. We respect them and their work.

We also do not hire them to be our lawyers at CACs because of the potential for an inherent and impassable conflict between their work and that of the CAC. There are a number of reasons why but imagine the scenario in which your CAC's executive director explains to a new non-offending caregiver that the CAC has an excellent lawyer, but the CAC's lawyer is a criminal defense attorney who may practice in the area of child molestation defense or be associated with other lawyers or bar associations who have lawyers who do. It would be reasonable to assume that this new non-offending caregiver would not appreciate nor be comfortable with this representation. It must also be noted, however, there are former child abuse prosecutors and former public defenders who are now in private practice outside of the criminal defense areas.

With the criminal law attorneys eliminated as a choice, we turn to the civil arena. There are so many civil practice areas that it can be confusing. A good practice is to focus on attorneys who have civil trial practices, meaning they are often in the courtroom trying cases, and before that they are taking lots of depositions, and in between they are filing motions and having hearings on those motions. That means they are used to the courtroom. Practice areas that show promise are personal injury lawyers and those who work in corporate and business cases. Granted, any of these lawyers are going to have to dig in and learn the law and legal issues that impact CACs, but that is the case with any lawyer in any practice area. The benefit of ***these*** *lawyers is they are already trial lawyers and experienced in matters related to the courtroom. For example, civil attorneys who file child abuse litigation are adept at getting documents as well as protecting confidential data on their clients.*

Next, understand, truly, that most lawyers want to do good, be part of the community, and serve. That sounds like the people who already work at your CAC. The difference is that most lawyers have no clue about what CACs are or the work that CACs do. Therefore, it is up to the CAC to not just educate them but be creative about it. This is what works.

Schedule a separate meeting with each of the prospective lawyers, about an hour. Provide the lawyers with your CAC literature and annual report ahead of time and tell them to read it. On the day of the meeting, have your board president, lead detective, a dynamite prosecutor, the SANE or medical doctor, the forensic interviewer, the mental health clinician, and the family advocate there. They will one by one welcome the attorney and introduce themselves and what they do—five minutes each. Then they will leave the executive director and the prospective attorney alone to talk at the end.

If the executive director thinks the lawyer candidate is "the one," then he or she will tell the attorney this community is incredibly fortunate to have a CAC and these professionals affiliated with it to respond compassionately and authoritatively to children who have alleged all forms of neglect and abuse. "This is the CAC that was designed specifically for your community where you and your family live, and you would not want to know what it was like for children who alleged abuse before our CAC was established. But I'll tell you anyway. You have met all of the people who are critical components of how this CAC is able to operate. They do it out of a sense of professionalism, purpose, and community. They do it for far less money than their contemporaries in private practice life. The only missing piece is the legal piece, and that means you. We would like you to start immediately, on a pro bono or low-bono basis."

Ultimately, the relationship between the CAC attorney and the CAC must be grounded in open and reciprocal communication. The CAC attorney must fully explain the reasons they are recommending a specific legal response to a legal issue involving the CAC. In return, the CAC must explain to the attorney its lodestar consideration in all instances: protecting and respecting the best interests of the child and ensuring that any legal response takes this in full consideration.

The CACs across the country have an incredible story to tell, and so much left to do. Once a service-oriented lawyer hears about it, and hears about the need, and knows they can fill that void, they will sign up. Good luck!

P.S.—Do not pay lawyers their full fee. They should *want* to do some of the work pro bono, and the rest "low" bono.

Conclusion

A common vision that all children's advocacy centers (CACs) in the United States should hold is to have access to a competent and qualified attorney to represent their interests when their CAC is brought into civil and criminal litigations as a third party. As of this writing, the many CACs across the country lack legal counsel to serve their legal interests as a matter of routine and regular practice.

This is a huge void in the CAC model, and it should not be underestimated. It is inevitable that a CAC's involvement with children who are suspected victims of child abuse will involve the CAC in legal matters. Many of these allegations will be addressed in the justice system, whether it is criminal or civil. A thorough understanding of the myriad legal issues that can and routinely do arise cannot be fully appreciated and understood by laypeople. That is why the field must strive to have uniform legal counsel for all CACs in the United States.

Properly responding to legal matters should be seen as a large part of advocacy for the children a CAC serves. Additionally, an attorney for the CAC will provide legal services that serve the best interest of the agency itself.

The hope here is that readers have gained a solid understanding of some of the legal issues facing your CAC.

Appendix A

Sample Statutory Language Protecting Materials Related to Child Sexual Abuse (CSA)

O.C.G.A. § 49-5-40. Definitions; confidentiality of records; restricted access to records (effective January 1, 2022).

a. As used in this article, the term:

1. "Abused" means subjected to child abuse.
2. "Child" means an individual under 18 years of age.
3. "Child abuse" means:
   - A. Physical injury or death inflicted upon a child by a parent, guardian, legal custodian, or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child;
   - B. Neglect or exploitation of a child by a parent, guardian, legal custodian, or caretaker thereof;
   - C. Sexual abuse of a child;
   - D. Sexual exploitation of a child; or
   - E. Emotional abuse of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be abused.

4. "Child advocacy center" means an entity which is operated for the purposes of investigating known or suspected child abuse and treating a child or a family that is the subject of a report of child abuse and which:
   - A. Has been created and supported through one or more intracommunity compacts between such center and:
     - i. One or more law enforcement agencies within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation;
     - ii. The office of the district attorney, Attorney General, or United States Attorney;
     - iii. A legally mandated public or private child protective agency within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation;
     - iv. A mental health board within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation; or
     - v. A community health service board within this state; any other state; the United States, including its territories, possessions, and dominions; or a foreign nation; and
   - B. Has been approved by a protocol committee established under Chapter 15 of Title 19.

5. "Court" means a judge of any court of record or an administrative law judge of the Office of State Administrative Hearings.

6. "Emotional abuse" shall have the same meaning as set forth in Code Section 15-11-2.

7. "Legal custodian" shall have the same meaning as set forth in Code Section 15-11-2.

8. "Near fatality" means an act that places a child in serious or critical condition as certified by a physician.

9. "Record" shall include documents, books, maps, drawings, computer based or generated information, data, data fields, digital images, photographs, video images, audio recordings, and video recordings.

10. "Sexual abuse" means an individual's employing, using, persuading, inducing, enticing, or coercing any child who is not that individual's spouse to engage in any act which involves:

    A. Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between individuals of the same or opposite sex;

    B. Bestiality;

    C. Masturbation;

    D. Lewd exhibition of the genitals or pubic area of any individual;

    E. Flagellation or torture by or upon an individual who is nude;

    F. Condition of being fettered, bound, or otherwise physically restrained on the part of an individual who is nude;

    G. Physical contact in an act of apparent sexual stimulation or gratification with any individual's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

    H. Defecation or urination for the purpose of sexual stimulation; or

    I. Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

11. "Sexual exploitation" means conduct by any individual who allows, permits, encourages, or requires any child to engage in:

    A. Trafficking of persons for labor or sexual servitude, in violation of Code Section 16-5-46;

    B. Sexual servitude, as defined in Code Section 16-5-46;

    C. Obscene depiction of a minor, in violation of Code Section 16-11-40.1;

    D. Nude or sexually explicit electronic transmission, in violation of Code Section 16-11-90; or

    E. Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, in violation of Code Section 16-12-100.

b. Each and every record concerning reports of child abuse and child controlled substance or marijuana abuse which is in the custody of the department, other state or local agency, or child advocacy center is declared to be confidential, and access thereto is prohibited except as provided in Code Sections 49-5-41 and 49-5-41.1.

c. Each and every record concerning child abuse or neglect which is received by the department from the child abuse and neglect registry of any other state shall not be disclosed or

used outside the department for any other purpose other than conducting background checks to be used in foster care and adoptive placements.

O.C.G.A. § 49-5-41. Persons and agencies permitted access to records (current as of July 2021).

a. Notwithstanding Code Section 49-5-40, the following persons or agencies shall have reasonable access to such records concerning reports of child abuse:

1. Any federal, state, or local governmental entity, tribal entity, or any agency of any such entity that has a need for information contained in such records in order to carry out its legal responsibilities to protect children from child abuse and neglect;

2. A grand jury by subpoena upon its determination that access to such records is necessary in the conduct of its official business;

3. A prosecuting attorney in this state or any other state or political subdivision thereof, or for the United States, who may seek such access in connection with official duty;

4. Any adult who makes a report of suspected child abuse as required by Code Section 19-7-5, but such access shall include only notification regarding the child concerning whom the report was made, shall disclose only whether the investigation by the department or governmental child protective agency of the reported abuse is ongoing or completed and, if completed, whether child abuse was confirmed or unconfirmed, and shall only be disclosed if requested by the person making the report;

5.

A. Any entity that receives from a school employee a report of suspected child abuse as required by Code Section 19-7-5.

B. Within 24 hours of receiving such report, such entity shall acknowledge, in writing, the receipt of such report to the reporting individual. Within five days of completing the investigation of the suspected child abuse, such entity shall disclose, in writing, to the school counselor for the school such child was attending at the time of the reported child abuse whether the suspected child abuse was confirmed or unconfirmed. If a school does not have a school counselor, such disclosure shall be made to the principal.

C. As used in this paragraph, the term:

i. "Entity" means a child welfare agency providing protective services as designated by the department or, in the absence of such agency, a law enforcement agency or prosecuting attorney.

ii. "School" shall have the same meaning as set forth in Code Section 19-7-5;

6. Any adult requesting information regarding investigations by the department or a governmental child protective agency regarding the findings or information about the case of child abuse or neglect involving a fatality or near fatality; provided, however, that the following may be redacted from such records:

A. Any record of law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records;

i. Any part of a record of the department or a governmental child protective agency that includes information provided by law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records;

B. Medical and mental health records made confidential by other provisions of law;

C. Privileged communications of an attorney;

D. The identifying information of a person who reported suspected child abuse;

E. Information that may cause mental or physical harm to the sibling or other child living in the household of the child being investigated;

F. The name of a child who is the subject of reported child abuse or neglect;

G. The name of any parent or other person legally responsible for the child who is the subject of reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect; and

H. The name of any member of the household of the child who is the subject of reported child abuse or neglect, provided that such person is not under investigation for the reported child abuse or neglect;

7. The State Personnel Board, by administrative subpoena, upon a finding by an administrative law judge appointed by the chief state administrative law judge pursuant to Article 2 of Chapter 13 of Title 50, that access to such records may be necessary for a determination of an issue involving departmental personnel and that issue involves the conduct of such personnel in child related employment activities, provided that only those parts of the record relevant to the child related employment activities shall be disclosed. The name of any complainant or client shall not be identified or entered into the record;

8. A child advocacy center that has a need for information contained in such records in order to carry out its legal responsibilities to protect children from child abuse or neglect;

9. Police or any other law enforcement agency of this state or any other state or any medical examiner or coroner investigating a report of known or suspected child abuse or any review committee or protocol committee created pursuant to Chapter 15 of Title 19, it being found by the General Assembly that the disclosure of such information is necessary in order for such entities to carry out their legal responsibilities to protect children from child abuse and neglect, which protective actions include bringing criminal actions for such child abuse or neglect, and that such disclosure is therefore permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4);

10. The Governor, the Attorney General, the Lieutenant Governor, or the Speaker of the House of Representatives when such officer makes a written request to the commissioner which specifies the name of the child for whom such access is sought and which describes such officer's need to have access to such records in order to determine whether the laws of this state are being complied with to protect children from child abuse and neglect and whether such laws need to be changed to enhance such protection, for which purposes the General Assembly finds such disclosure is permissible and encouraged under the 1992 amendments to

Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4);

11. A court, by subpoena that is filed contemporaneously with a motion seeking records and requesting an in camera inspection of such records, may make such records available to a party seeking such records when:

A. Such motion is filed;

B. Such motion is served:

i. On all parties to the action;

ii. On the department or other entity that has possession of such records, as applicable; and

iii. In matters other than a dependency proceeding or a civil proceeding wherein there is no related pending criminal investigation or prosecution of criminal or unlawful activity, on the prosecuting attorney, as applicable; and

C. After an in camera inspection of such records, the court finds that access to such records appears reasonably calculated to lead to the discovery of admissible evidence; and

12. The Administrative Office of the Courts to facilitate data sharing, collection, and analysis of the timeliness, permanency, and safety outcomes of children who have been the subject of dependency actions and actions to terminate parental rights brought pursuant to Articles 3 and 4 of Chapter 11 of Title 15. The Administrative Office of the Courts shall enter into such agreements with the Division of Family and Children Services as may be required to ensure compliance with the federal Health Insurance Portability and Accountability Act (HIPAA), P.L. 104-191, as amended, and federal regulations governing disclosure of protected health information.

b.

1. Notwithstanding Code Section 49-5-40, the juvenile court in the county in which are located any department or county board records concerning reports of child abuse, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this subsection. When those records are located in more than one county, the application may be made to the juvenile court of any one such county. A copy of any application authorized by this subsection shall be served on the nearest office of the department. In cases where the location of the records is unknown to the applicant, the application may be made to the Juvenile Court of Fulton County.

2. The juvenile court to which an application is made pursuant to paragraph (1) of this subsection shall not grant the application unless:

A. The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

B. The applicant carries the burden of showing the legitimacy of the research project; and

C. Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse or treating a child or family which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless

the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.

c. The department or a county or other state or local agency may permit access to records concerning reports of child abuse and may release information from such records to the following persons or agencies when deemed appropriate by such department:

1. A physician who has before him or her a child whom he or she reasonably suspects may be abused;

2. A licensed child-placing agency, a licensed child-caring institution of this state which is assisting the department by locating or providing foster or adoptive homes for children in the custody of the department, a licensed adoption agency of this or any other state which is placing a child for adoption, or an investigator appointed by a court of competent jurisdiction of this state to investigate a pending petition for adoption;

3. A person legally authorized to place a child in protective custody when such person has before him or her a child he or she reasonably suspects may be abused and such person requires the information in the record or report in order to determine whether to place the child in protective custody;

4. An agency or person having the legal custody, responsibility, or authorization to care for, treat, or supervise the child who is the subject of a report or record;

5. An agency, facility, or person having responsibility or authorization to assist in making a judicial determination for the child who is the subject of the report or record of child abuse, including, but not limited to, members of officially recognized citizen review panels, court appointed guardians ad litem, certified court appointed special advocate (CASA) volunteers who are appointed by a judge of a juvenile court to act as advocates for the best interest of a child in a juvenile proceeding, and members of a protocol committee, as such term is defined in Code Section 19-15-1;

6. A legally mandated public child protective agency or law enforcement agency of another state bound by similar confidentiality provisions and requirements when, during or following the department's investigation of a report of child abuse, the alleged abuser has left this state;

7. A child welfare agency, as defined in Code Section 49-5-12, or a school where the department has investigated allegations of child abuse made against any employee of such agency or school and any child remains at risk from exposure to that employee, except that such access or release shall protect the identity of:

A. Any person reporting the child abuse; and

B. Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

8. An employee of a school or employee of a child welfare agency, as defined in Code Section 49-5-12, against whom allegations of child abuse have been made, when the department has been unable to determine the extent of the employee's involvement in alleged child abuse against any child in the care of that school or agency. In those instances, upon receiving a request and signed release from the employee, the department may report its findings to the employer, except that such access or release shall protect the identity of:

A. Any person reporting the child abuse; and

B. Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

9. Any person who has an ongoing relationship with the child named in the record or report of child abuse any part of which is to be disclosed to such person but only if that person is required to report suspected abuse of that child pursuant to subsection (b) of Code Section 19-7-5, as that subsection existed on January 1, 1990;

10. Any school principal or any school guidance counselor, school social worker, or school psychologist who is certified under Chapter 2 of Title 20 and who is counseling a student as a part of such counseling person's school employment duties, but those records shall remain confidential and information obtained therefrom by that counseling person may not be disclosed to any person, except that student, not authorized under this code section to obtain those records, and such unauthorized disclosure shall be punishable as a misdemeanor;

10.1. Any school official of a school that a child who was the subject of a report of suspected child abuse made pursuant to Code Section 19-7-5 attends in which there is an ongoing investigation of the reported abuse. Any such ongoing investigation shall include contact with such school to obtain any relevant information from school personnel regarding the report of suspected child abuse;

11. The Department of Early Care and Learning or the Department of Education;

12. An individual, at the time such individual is leaving foster care by reason of having attained the age of majority, but such access shall be limited to providing such individual with a free copy of his or her health and education records, including the most recent information available; or

13. Local and state law enforcement agencies of this state, the Department of Community Supervision, probation officers serving pursuant to Article 6 of Chapter 8 of Title 42, the Department of Corrections, and the Department of Juvenile Justice when such entities, officers, or departments are providing supervision or services to individuals and families to whom the department is also providing services. Such access or release of records shall not be provided when prohibited by federal law or regulation. Access to such records may be provided electronically.

d. Notwithstanding any other provision of law, any child-caring agency, child-placing agency, or identified foster parent shall have reasonable access to nonidentifying information from the placement or child protective services record compiled by any state department or agency having custody of a child with respect to any child who has been placed in the care or custody of such agency or foster parent or for whom foster care is being sought, excluding all documents obtained from outside sources which cannot be redisclosed under state or federal law. A department or agency shall respond to a request for access to a child's record within 14 days of receipt of such written request. Any child-caring agency, child-placing agency, or identified foster parent who is granted access to a child's record shall be subject to the penalties imposed by Code Section 49-5-44 for unauthorized access to or use of such records. Such record shall include reports of abuse of such child and the social history of the child and the child's family, the medical history of such child, including psychological or psychiatric evaluations, or educational records as allowed by state or federal law and any plan of care or placement plan developed by the department, provided that no identifying information is

disclosed regarding such child. Notwithstanding the provisions of this subsection, a foster parent, as an agent of the department, shall have access to a child's medical and educational records in the same manner and to the same extent as the department itself and to the fullest extent allowable by law to ensure the proper care and education of a child entrusted to the foster parent's care.

e.

1. Except as provided in paragraph (2) of this subsection and notwithstanding any other provisions of law, child abuse and dependency records shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50 if the records are applicable to a child who at the time of his or her fatality or near fatality was:

A. In the custody of a state department or agency or in the care of a foster parent;

B. A child as defined in paragraph (3) of Code Section 15-11-741; or

C. The subject of an investigation, report, referral, or complaint under Code Section 15-11-743.

2. The following may be redacted from such records:

A. Medical and mental health records made confidential by other provisions of law;

B. Privileged communications of an attorney;

C. The identifying information of a person who reported suspected child abuse;

D. The name of a child who suffered a near fatality;

E. The name of any sibling of the child who suffered the fatality or near fatality;

F. Any record of law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records; or

G. Any part of a record of the department or a governmental child protective agency that includes information provided by law enforcement or prosecution agencies in any pending investigation or prosecution of criminal activity contained within the child abuse, neglect, or dependency records.

3. Upon the release of documents pursuant to this subsection, the department may comment publicly on the case.

d. Notwithstanding Code Section 49-5-40, a child who alleges that he or she was abused shall be permitted access to records concerning a report of child abuse allegedly committed against him or her which are in the custody of a child advocacy center, the department, or other state or local agency when he or she reaches 18 years of age; provided, however, that prior to such child reaching 18 years of age, if the requestor is not the subject of such records, such records shall be made available to such child's parent or legal guardian or a deceased child's duly appointed representative when the requestor or his or her attorney submits a sworn affidavit to the applicable child advocacy center, the department, or other state or local agency that attests that such information is relevant to a pending or proposed civil action relating to damages sustained by such child; and provided, further, that such records concerning a report of child abuse shall still be subject to confidentiality pursuant to paragraph (4) of subsection (a) of Code Section 50-18-72. Such records concerning a report of child abuse shall not be subject to release under paragraph (11) of subsection (a) of this Code section or subsection (g) of this Code section.

g.

1. A subpoena authorized under paragraph (11) of subsection (a) of this Code section shall be served on the prosecuting attorney who has jurisdiction over a pending investigation or prosecution of criminal or unlawful activity, if such information is known to the individual seeking such access or disclosure.

2. A prosecuting attorney may intervene in an action involving a motion filed under paragraph (11) of subsection (a) of this Code section.

3.

A. When a court issues an order pursuant to paragraph (11) of subsection (a) of this Code section, the court shall issue a protective order to ensure the confidentiality of such records. Such protective order may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense and may include one or more of the following:

i. That the records not be reproduced except as authorized by court order;

ii. That the records be viewed or disclosed only on specified terms and conditions;

iii. That the records be sealed and only opened by court order;

iv. That the order be applicable to all parties, their counsel, and any agent or representative of a party; or

v. That records released pursuant to such order be returned to the court upon completion of the matter that caused the production of such records.

B. Any person who fails to obey a protective order issued under this subsection shall be punished as contempt by the court.

Appendix B

Sample Protective Order Regarding Child Sexual Abuse (CSA) Materials

The following is one example of a protective order that can prevent records related to allegations of child abuse and neglect, such as forensic interview materials or mental health records, from being disclosed contrary to the law and the rights and interests of those who are the subject of the records.

Note that the following example can be one requested by the attorney for a CAC. It is imperative to understand that the prosecutor, in a criminal case, can and will request protective orders on behalf of the State. It is equally imperative to know that protective orders can be requested in both criminal *and* civil cases. What does this mean? It means that in the *civil* cases the prosecutor's offices will not be involved except in rare circumstances. Therefore, a protective order in a civil case (family law case, personal injury case, etc.) must be sought by someone *other than* the prosecutor's office. The CAC attorney is the prime candidate.

How does this occur in a *civil* case? Suppose the attorney for a party in a divorce case, we will suppose the father in this hypothetical, serves a subpoena on the CAC for materials in its possession. We know from Section 4 of this *Guidebook* how to respond with our Motion to Quash if required, and it will not be re-stated here. Ultimately, the court will determine whether any of the records will be ordered to be produced pursuant to the Motion to Quash *after* hearing arguments on the motion.

Thus, for purposes of this Appendix B, let us suppose the court ordered some or even all of the records to be produced in the civil case. If so, there is one more thing for the attorney for the CAC to request: a sensible and responsible *protective order*. Why? Because a protective order will ensure the confidentiality of the records beyond the reach of the particular litigation. If puts requirements and legal burdens on the parties—and the parties' attorneys—to ensure that the records are not passed around like a Frisbee outside of the litigation, and wind up on the internet or in the hands of people who have no business possessing them.

Before setting forth such a protective order, please note that the CAC attorney can *still* request a protective order in a criminal case, even though the prosecutor is involved. Often, the prosecutor will take the lead role to ensure it happens; it should be our position to monitor that and make sure, and if it does not happen, or if it happens but does not fully protect the child, then then CAC attorney can communicate with the prosecutor with added protections, or even submit his or her own protective order for the court's review.

With that, here is an example of a protective order in a civil case:

IN THE SUPERIOR COURT OF YOUR COUNTY

STATE OF _____

NAME OF PLAINTIFF, Plaintiff, vs. NAME OF DEFENDANT, Defendant.	CIVIL ACTION FILE NO.: 21EV0077777

ORDER PROTECTING RECORDS AND MATERIALS

The above-styled matter came before the Court on non-party ABC Children's Advocacy Center's (hereinafter "the CAC's") Motion to Quash, or in the alternative, Motion for *In Camera* Inspection. Both parties filed briefs in response to the CAC's motion. The Court has considered the entire record and the applicable authority, and it is ordered that the CAC's motion is GRANTED as follows:

The Court orders that the [itemize the materials TO BE produced] materials are relevant to the issues before the Court and must be produced by the CAC. The Court further orders that the [itemize materials NOT TO BE produced] are beyond the scope of the issues in the case, and will not be produced by the CAC.

It is further ORDERED that

1. the CAC shall file the materials to be produced under seal [in the manner instructed by the Court—allow the Court to set the terms] in unredacted forms.
2. The Court directs the clerk of court to seal any motions, orders, or pleadings in the case which contain, in full or in part, the records to be produced by the CAC until further Order of the Court.

3. The records to be produced by the CAC shall not be reproduced except as authorized by court order.
4. The records to be produced by the CAC shall be viewed or disclosed only on specified terms and conditions, as follows: [the Court sets forth the specified terms and conditions].
5. The Court directs the parties and their counsel to refrain from disseminating the records to be released by the CAC except for the purposes necessary to prosecute or defend their respective clients.
6. This Order shall be applicable to all parties, their counsel, and any agent or representative of a party.
7. This Order shall be applicable to any retained or consulting expert hired by either party.
8. The records released pursuant to this Order shall be returned to the Court upon completion of the above-styled matter.
9. Any person who fails to obey this Protective Order shall appear before a hearing for consideration of contempt of court.

SO ORDERED THIS ____ day of _____, 202___.

_____
JUDGE, SUPERIOR COURT OF _____ COUNTY

Order Presented By:

_____
CAC lawyer name,
State bar number,
Address
Phone
Email

National Children's Advocacy Center