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Betsy R. Ruslander
Director

MEMO

To: All Panel Attorneys
From: Betsy R. Ruslander
Re: Client Contact
Date: April 27, 2012

IMPORTANT NEW BILLING POLICY REGARDING CLIENT CONTACT

As you know, one of the primary responsibilities of an attorney for the child is to contact, interview, regularly meet and remain accessible to your client. This fundamental duty has long been expressed through the Statewide Advisory Committee on Counsel for Children's Summary of Responsibilities (attached), New York State Bar Association Representation Standards, training provided by the Office of Attorneys for Children, the Chief Judge's Rule §7.2 (also attached), and through decisions from our Court. In several recent cases, our Court expressed its disapproval of an attorney for the child failing to meet with their client by removing that attorney. This is a serious violation of the responsibilities and Representation Standards for attorneys representing children.

In order to stress the importance of this function, it is now required that, in the event the attorney for the child has not met with his or her client(s) or not indicated same on the voucher, i.e., there is no time billed under activity code B "Client Interview" or other indication of client contact on the voucher, the attorney must file an affirmation setting forth the reason(s). The voucher will be returned if the affirmation is required but missing. The reasons for not meeting your client are very few.

Please note two common excuses that are not acceptable reasons for not meeting with your client. One is that your client is very young. Very young, pre-verbal children, and babies are often the most vulnerable clients, making this contact perhaps even *more* important. While the child may not be able to speak to you, you have a duty to assess your client's condition and seeing them can often speak volumes. There is no basis to conclude that assessing a non-verbal client's condition will result in liability or subject you to being called as a fact witness. If, for no other reason, this could be privileged under attorney-client confidentiality and protected as work product under the CPLR.

(over)

The second common excuse is settlement and/or the desire not to delay a settlement. It is perfectly permissible, and preferred practice, that if you have not had an opportunity to see your client before the case settles, to request that the court put the stipulation on the record contingent upon you seeing your client within a short period of time from the settlement; and that the order not be signed until you do so.

It may be that it is sometimes more difficult or impossible to meet with your client, for example, if they reside far away. While it would be rare for authorization to be given for distant travel, arrangements could be made for alternative modes of contact. If you have such a situation, please feel free to contact our office to discuss your options; do not presume that you are relieved from your obligation to contact your client.

I hope that this new policy clarifies any confusion that may exist with respect to the significance of the attorney for the child's duty to contact the client and the importance that this office and the Court places on that duty.

As always, thank you for your commitment to the quality representation of children.