

A photograph of four potted plants arranged in a row against a light gray background. From left to right: a small cactus in a light blue metal bucket, a white ceramic pot (partially obscured), an aloe vera plant in a white ceramic pot, and a succulent in a light blue metal bucket.

Dependency Training for Crossroads Attorneys

Kellye Rodriguez, Esq.

**A very special thank you to HCBA Trial Lawyers and
Litigation Section for sponsoring this event.**



Today's Topics

**I. Introduction
to Dependency
Law and
Crossroads for
Florida Kids**

**II. Ethical
Issues When
Representing
Children and
Teens**

**III. Mental
Health and
Representing
Teens**

**IV. Caregivers
and
Placements
for Teens**





I. Introduction to Dependency Law and Crossroads for Florida Kids

What is dependency law?



- Area of Florida law dedicated to protecting children from abuse, abandonment, and neglect.
- A dependent child is one who is found to have been “abandoned, abused, or neglected by the child’s parent or parents or legal custodians” or is at “substantial risk of imminent abuse, abandonment, or neglect.”
Fla.Stat.§39.01(14)

What are the statutes and rules governing dependency law?

Statute

[Chapter 39](#)
[Florida Statutes](#)

Rules

[Florida Rules of](#)
[Juvenile Procedure](#)



Who are the parties in a dependency case?

Fla.Stat. § 39.001(58)

**Child/
Teen**

**State
Children's
Legal
Services
(CLS)**

**Guardian
ad Litem
Program**

Parents





Why is a Crossroads attorney being appointed?

- The child/teen is a party to the dependency proceeding.
- Sometimes an older child will have an extraordinary need or express wishes different from those of the state, the parents, and even the guardian ad litem program.

What is the difference between an attorney ad litem and a guardian ad litem?



The guardian ad litem program represents the child's "best interest." Fla. Stat. §39.402(8)(c). An attorney ad litem represents a child's expressed interests.

A close-up photograph of a person's hands holding a small succulent plant in a dark pot. The person is wearing a blue and white plaid shirt. In the background, there are several other succulent plants in a tray. The scene is brightly lit, suggesting an indoor or outdoor setting with natural light.

II. Ethical Issues When Representing Children and Teens



**Do clients who are minors
have attorney-client
privilege?**

• YES!

**Yes. Children/Minors are NOT exempt from
RULE 4-1.6 in the Rules of Professional Conduct.**

**The Rules go a step further and consider minors
in Rule 4-1.14.**

Can I financially assist my Crossroads client?

No

Rule of Professional Conduct RULE 4-1.8 (e) Financial Assistance to Client. A lawyer is prohibited from providing financial assistance to a client *in connection with pending or contemplated litigation*, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Otherwise, yes.

Often Crossroads attorneys will purchase shoes, clothing, personal care products, and meals for clients. It's on a case-by-case basis. There is no obligation, but it is always appreciated.

Always feel free to ask if a particular purchase is appropriate.

Can I meet privately with my AAL client?



Yes, in a safe place, preferably with staff. I recommend meeting client in his placement. If client does not have a placement, attorney can meet at the courthouse or at the case manager's office. Clients can meet in public, for example, at a fast-food restaurant. If client is in a detention facility, consider taking another attorney there for the initial visit. Safety for the attorney is paramount. Take any safety precautions necessary (e.g. wear a mask, wash hands, sit with back against the wall). Consider if the client has a history of violence. Be safe.

What if my client makes me feel uncomfortable?

- **Ask questions and listen.**
- **If you cannot answer a client's question, say that you will have to research that issue.**
- **Seek out guidance from another AAL.**
- **Build rapport in a genuine way.**
- **If you are not able to serve as a zealous advocate, another attorney can be appointed.**



Do I have to disclose if my client is going to run away?

- **No!**

If a client discloses to a lawyer an intention to run away, the lawyer is not obligated to disclose the information. However, if a juvenile client reveals the intention to run away and SPECIFICALLY TELLS the lawyer NOT TO DISCLOSE THE INFORMATION, the lawyer is specifically required to keep the client's confidence, even if the lawyer believes it is not in the client's best interest. Rule 4-1.6(c)(1); *RLR v. State*.

Do I have to disclose my client's location when he or she does run away?

The AAL asserted that R.L.R. disclosed his location to them in confidence, in connection with their ongoing representation of him in his dependency proceedings, and his disclosures to them were encompassed by the attorney-client privilege. The lower court entered the order requiring the AAL to disclose the information, but stayed rendition of the order so that the AAL could appeal the issue. The Third DCA reversed saying “We are mindful of the lower court's, DCF's and the GAL's commitment to the safety and well-being of children within DCF's care; there is no exception, however, statutory or otherwise, to the attorney-client privilege under the facts presented in this case.” [*RLR v. State*](#), 116 So. 3d 570, 572 (Fla. 3d DCA 2013)

Still No!



Do I have to disclose if my client wants to harm him or herself?

Yes!

“Rule 4-1.6 (b)(2) provides a mandatory exception to the confidentiality rule and requires a lawyer to reveal information to the extent the lawyer reasonably believes necessary to prevent a death or substantial bodily harm to another. Thus, if the client does not consent to disclosure, the lawyer may have a mandatory obligation to disclose the client’s intent if the lawyer reasonably believes that disclosure is necessary to prevent the client from taking his or her own life. The question whether the disclosure is necessary to prevent death or substantial bodily harm is fact specific, but such harm may be reasonably certain to occur “if it will be suffered immediately or if there is a present and substantial threat that the person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat.” Illinois Ethics Opinion 17-01 (discussing Illinois’ mandatory disclosure requirement, which is similar to Florida’s mandatory exception under the confidentiality rule).” [*What Are a Lawyer’s Obligation to a Suicidal Client?*](#)

See also <https://www.floridabar.org/the-florida-bar-news/think-a-client-is-contemplating-suicide-what-are-your-ethical-obligations/>



A close-up photograph of a person's hands holding a succulent plant. The person is wearing a blue and white plaid shirt. The succulent has thick, fleshy, light blue-green leaves. The background is blurred, showing more of the person and other plants.

III. Mental Health and Representing Teens

My client thinks he or she needs to be on psychotropic medications, how can I get an evaluation?

- In Florida, only a psychiatrist or a PA/ARNP working under the supervision of a psychiatrist can prescribe medication. A psychologist/therapist cannot prescribe.
- The Crossroads attorney should ask the case manager if a Comprehensive Behavioral Health Assessment (CBHA) has been completed. All children in foster care are required to have a CBHA. If the CBHA recommends a psychiatric evaluation, request a court-order that a psychiatric evaluation be done within 30 days.
- If a CBHA was not done or does not recommend a psychiatric evaluation, any party can file a Motion for a Psychiatric Evaluation.



My client is prescribed psychotropic medications. They need a refill, but the case manager is not answering the phone. What do I do?



Dial the case manager's number. The supervisor and assistant program director's phone numbers are always given in the voice mail greeting. The Crossroads attorney can contact the supervisor and program director. The Crossroads attorney can also contact the CLS attorney. The Crossroads attorney can also contact the prescribing physician who will be listed on the bottle of medication.

My client does not wish to continue taking the psychotropic medications that are prescribed?

- **Get as much information as possible regarding why. Side effects? Ineffective? Worried about stigma associated with medication?**
- **Has Pharmacogenomics testing been done?**
- **If these things to do not apply, the Crossroads attorney can file a motion to discontinue psychotropic medications.**

My client seems depressed. What can I do to help?



- Ask lots of questions. Take an interest. Do lots of listening.
- Ask if it is okay to discuss with case manager or caregiver what you discuss.
- Encourage therapy or medication.



My client does not wish to engage in therapy. What should I do?

- Listen first.
- Ask if another type of therapy seems more appealing? For example, art therapy, equine therapy.
- If there is something else like sports or church that the client does enjoy, see if that can be the outlet.
- If the client has to do community service pursuant to delinquency case, ask if therapy can count towards those service hours.

A close-up photograph of a person's hands holding a small succulent plant in a dark pot. The person is wearing a blue and white plaid shirt. The background is blurred, showing more succulents and a person with long blonde hair. A semi-transparent white box is overlaid on the center of the image, containing the text.

IV. Caregivers and Placements for Teens

My client is placed on a night-to-night basis. What does this mean?



Night-to-Night (N2N) is a practice when there are not available foster homes that accepts children in the evening, allows the teen to go to the home just to sleep and be out in the morning. It does not guarantee a spot from one day to the next.



How do I help a client who wants to live with a friend?

The AAL can request a home study on a relative or friend of the child. Most effective way is to send the proposed caregiver's name and telephone number to the CLS attorney and request a home study. The home study is not a guarantee of placement, it is simply the first step in the process of placing a client. Once a home study and backgrounds are approved, a Motion for Modification of Placement can be filed.

Do caregivers need to be background checked?



Yes, caregivers and any other adults in the home must be fingerprinted and have a state and national background check.

What would disqualify a proposed caregiver from placement?

Fla. Stat. §39.0138(3) “The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has been convicted of any felony that falls within any of the following categories:

- (a) Child abuse, abandonment, or neglect;
- (b) Domestic violence;
- (c) Child pornography or other felony in which a child was a victim of the offense; or
- (d) Homicide, sexual battery, or other felony involving violence, other than felony assault or felony battery when an adult was the victim of the assault or battery, or resisting arrest with violence.



What would disqualify a proposed caregiver from placement?

Fla. Stat. §39.0138(4) “The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has, within the previous 5 years, been convicted of a felony that falls within any of the following categories:

- (a) Assault;
- (b) Battery;
- (c) A drug-related offense; or
- (d) Resisting arrest with violence.”



What do I do if the proposed caregiver cannot pass a background check?

- Request a copy of the denied home study and ask what specifically about the backgrounds lead to the denial.
- If good cause can be shown that the placement would be appropriate and safe, file a Motion to Modify Placement.
- State the reason for the denial.
- State any mitigating factors or circumstances that would convince the Court to override the home study and place the teen in the home.

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V. Questions from Crossroads Attorneys

Sources Used in Today's Course

1. [ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings](#)
2. [ABA Standards of Practice for Lawyers Representing Child Welfare Agencies](#)
3. [Child Abuse Prevention and Treatment Act \(CAPTA\) 42 USC 5101 to 5115](#)
4. [Dependency Benchbook](#)
5. [Florida Guidelines of Practice for Lawyers Representing Children in Abuse and Neglect Cases](#)
6. [Florida Juvenile Law and Procedure](#)
7. [Florida Rules of Professional Conduct](#)
8. [*RLR v. State.*](#)
9. [Think a Client is Contemplating Suicide? Here Are Your Ethical Obligations.](#)
10. [What Are a Lawyer's Obligations to a Suicidal Client?](#)

**Thank you for attending
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