



Guidelines for Attorneys in Massachusetts: Representing Sexual Assault Survivors with Intellectual and Developmental Disabilities

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the Massachusetts Disabled Persons Protection Commission.*

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Introduction

The Victim Rights Law Center (VRLC), established in 2003, provides civil legal services to victims of rape and sexual assault. VRLC attorneys have served as national trainers and technical assistance providers for over a dozen years, allowing our team to identify various trends throughout the country. Over the years, VRLC attorneys have become acutely aware of the increased need for—and the complexity of—representing sexual assault victims with Intellectual and/or Developmental Disabilities (I/DD).¹ These complexities can be addressed with proper guidance, training, and allotting extra time to appropriately meet the needs of these survivors.

These Guidelines are a framework for attorneys representing victims with I/DD. The Guidelines aim to address the needs of survivors with I/DD, and to encourage attorneys to use the skills they already possess to serve all survivors. While these Guidelines are admittedly only a starting point, they are intended to help attorneys understand the basic needs of clients with I/DD. Ultimately, the best way to determine the needs of a client is communicating with the client directly.

Above all, we must understand that victims with I/DD are no different than other victims: each individual has their own story, their own experience, and their own obstacles to overcome in accessing justice and stabilizing their lives post-assault. As attorneys, we can use our strengths to ensure that each client's experience is heard and communicated in a way that is comfortable

¹ It is important to note that all disabilities are not encompassed in the abbreviation I/DD. For example, there are developmental disabilities not related to intellectual functioning: people who have an acquired or traumatic brain injury (ABI/TBI) that surfaced after age 18, do not have I/DD. Nevertheless, due to the limitations of this document and the expansive issues that arise from representing people with disabilities, these are the terms that are used throughout the document. All lawyers who work with victims should always seek input from the client as to how they identify their disability when representing individuals with disabilities.

for the client. We should investigate a person’s comprehension and abilities by communicating with them, not by judging or assuming anything about their individual capabilities.

Accommodating victims with I/DD requires individualized planning and should be the result of an interactive process at a pace that allows the victim to engage in a meaningful way. These Guidelines are intended to help attorneys empathize with the obstacles that come with being both a victim and a person with I/DD and providing legal representation through that is trauma-informed and accessible.

Please note that the terms “victim,” “survivor,” and “client” are used interchangeably in these Guidelines. The Victim Rights Law Center subscribes to a survivor-empowerment model and tends to use the word “survivor;” however, we encourage using whatever term the person prefers. To determine which term(s) the individual wants to use, simply ask them. It is important to recognize that survivors of all gender identities, sexual orientations, races, ethnicities, and economic levels need specialized and compassionate legal representation to stabilize—and sometimes even rebuild—their lives following sexual violence. Sexual violence is most often committed by someone the victim knows, and this is especially true in the case of survivors with I/DD. The Guidelines highlight the need for informed representation given that many survivors with I/DD rely on family, guardians, and support people to accomplish everyday activities.

I. Legal Framework for Sexual Assault Victims with I/DD

Persons with I/DD are at high risk of abuse and assault, including sexual abuse and rape. Rates of sexual abuse, assault, and rape are higher among individuals with disabilities.² As

² M. Mitra, V. Mouradian, M.F. Fox & C. Pratt, Prevalence and survivor-perpetrator characteristics of lifetime and past-year sexual violence victimization against men with disabilities (2015); S. B. Plummer, & P. Findlay, Women with disabilities’ experiences with physical and sexual abuse (2012).

compared with people who have other kinds of disabilities, people with I/DD are more likely to be sexually abused or assaulted.³ These individuals are particularly vulnerable for a variety of reasons: persons with I/DD may be dependent upon caregivers for assistance with activities of daily living (ADLs) such as driving, bathing, dressing, and personal hygiene; persons with I/DD are less likely to be provided with general sexuality education or education on healthy relationships; persons with I/DD are sometimes unable to process what is happening in an abusive situation; persons with I/DD may be socially isolated; and many people with I/DD have been taught to be compliant with caregivers and/or service providers.

Attorneys representing survivors with I/DD should consider the following:

- Sexual violence has significant and long-lasting impacts on all survivors, including survivors with I/DD.⁴ To help recover from these traumas, survivors with I/DD need and deserve the crucial, specialized legal representation offered by trauma-informed attorneys;⁵
- Survivors with I/DD have the same responses to trauma as those in the general population;⁶
- Survivors with I/DD face greater health risks from traumatic experiences due to additional barriers to recovery;⁷

³ J. Beadle-Brown, J. Mansell, P. Cambridge, A. Milne & B. Whelton, *Adult protection of people with intellectual disabilities: Incidence, nature and responses* (2010); A.G. McEachern, *Sexual abuse of individuals with disabilities: Prevention strategies for clinical practice* (2012).

⁴ C.E. Antaki, E. Richardson, E. Stokoe & S. Willott, *Dealing with the distress of people with intellectual disabilities reporting sexual assault and rape* (2015); C. Friedman, C. Arnold, A. Owen & L. Sandman, 'Remember our voices are our tools:' *Sexual self-advocacy as defined by people with intellectual and developmental disabilities* (2014).

⁵ Survivors with I/DD should also be directed to other available resources, as needed. See Appendix 1, *Sexual Assault Resources for Survivors with Disabilities*.

⁶ M. Charlton et al., *Facts on Traumatic Stress and Children with Developmental Disabilities* (2004).

⁷ *Id.*

- Survivors with I/DD may benefit from therapeutic intervention. If they do not receive treatment, they may be less likely to recover spontaneously from trauma than a person without I/DD;⁸
- Survivors with I/DD may need extra time to ensure effective communication and comprehension; and
- Survivors with I/DD need to be empowered just like any survivor. Further, when appropriate, their families and/or other caregivers should also be able to access all potential supports to help the survivor. This includes but is not limited to: rape crisis center services, medical attention (preferably at a SANE-designated hospital),⁹ individual and/or group support services, and assistance with Victim Compensation applications.

II. Commonly Used Terms

Terms or acronyms used in these Guidelines are described as follows:

Developmental Disability (DD) – A severe, chronic disability that is attributable to a mental or physical impairment resulting from intellectual disability, autism, Smith-Magenis syndrome, or Prader Willi syndrome; is manifested before the individual attains age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more areas of major life activity; and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of a lifelong or

⁸ S. Mansell et al., *Clinical Findings Among Sexually Abused Children With and Without Developmental Disabilities* (1998).

⁹ SANE = Sexual Assault Nurse Examiner. In Massachusetts, SANEs can respond to hospital emergency departments at specific hospitals that are “SANE Designated” by the Massachusetts Dept. of Public Health. Additional hospitals are designated by MDPH as teleSANE sites; these sites can access a certified Massachusetts SANE 24/7 via a video link.

extended duration and is individually planned and coordinated; as delineated and more specifically defined in the statute and regulations of the Department of Developmental Services at M.G.L. c. 123B and 115 CMR 2.01.

Intellectual Disability (ID) – A disability characterized by significant limitations in both intellectual functioning and adaptive behavior beginning before 18 years of age, as expressed in conceptual, social, and practical adaptive skills as delineated and more specifically defined in the statute and regulations of the Department of Developmental Services at M.G.L. c. 123B and 115 CMR 2.01, and consistent with the most recent definition provided by the American Association on Intellectual and Developmental Disabilities.

Massachusetts Department of Developmental Services (DDS) – DDS is the state agency that manages and oversees a comprehensive system of specialized services and supports such as day supports, employment supports, residential supports, family supports, respite, and transportation to give eligible individuals with I/DD or acquired brain injury (ABI) and or traumatic brain injury (TBI) opportunities to live with dignity and respect, and to pursue a way of life they choose. DDS also provides a variety of services to individuals with developmental disabilities including individuals with autism spectrum disorder, Smith-Magenis, or Prader Willi syndromes who are not also diagnosed with an intellectual disability. In addition, DDS residentially supports individuals who are part of the Acquired Brain Injury and Moving Forward Plan Medicaid Waivers.¹⁰ DDS also conducts investigations of abuse or neglect upon referral from the Disabled Persons Protection Commission.

¹⁰ Formerly known as Money Follows the Person.

Massachusetts Disabled Persons Protection Commission (DPPC) – DPPC is the independent state agency responsible for the investigation and remediation of instances of abuse committed against adults with disabilities between the ages of 18 and 59 from the abusive acts or omissions of their caregivers through investigation, oversight, public awareness, and prevention.

Massachusetts Department of Mental Health (DMH) - The Department of Mental Health, as the State Mental Health Authority, provides access to services and supports to meet the mental health needs of individuals of all ages; enabling them to live, work, and participate in their communities. In some instances, a person with I/DD may receive mental health services. DMH will also conduct investigations of abuse or neglect upon referral from the Disabled Persons Protection Commission (DPPC).

Investigator – An employee of the Commonwealth of Massachusetts who investigates complaints of abuse or neglect against persons with disabilities, including persons with I/DD. The Investigators investigate the allegations and generate a report with findings and, if necessary, protective service recommendations. Investigators conducting abuse investigations on behalf of DPPC may be employees of DDS, DMH, Massachusetts Rehabilitation Commission (MRC) or DPPC.

Investigative Report – A report generated by an Investigator that includes conclusions regarding the alleged abuse and recommendations for protective services.

DDS Individual Service Plan (ISP) – DDS is required by regulation to complete an ISP for all individuals receiving services from DDS. It is a process where an individual’s vision and goals are identified, and objectives are written to achieve the goals with the individual. This ISP

document guides all staff who support the individual to know what the focus of their work together will be.

DPPC Navigators (Navigator)¹¹ – an employee from DPPC who works directly with the survivor to help ensure meaningful access to multi-disciplinary trauma services. The Navigator educates the survivor about trauma services, recommends specific service options to the survivor (such as legal, medical, counseling, or benefits), and helps the survivor access any service options that the survivor wants to pursue. This can include setting up meetings for clients, making calls to providers on behalf of the client, and generally ensuring completion of appropriate warm referrals. The DPPC Navigators employ a self-empowerment model in all of their work with survivors.

DDS Service Coordinators – Service Coordinators coordinate and facilitate the development of the ISP for individuals whom they serve. They arrange and organize support services in response to individuals' needs. Service Coordinators monitor the ISP process and an individual's services and support. Service Coordinators monitor the safety and well-being of individuals and provide advocacy in human, civil, and legal rights. They also maintain communication and outreach with community services and other state agencies and coordinate referrals as needed. Service Coordinators maintain regular and consistent contact with individuals, service providers and families. They arrange for and provide crisis intervention for individuals as needed, assessing needs and making recommendations for follow-up planning. They also facilitate team meetings and monitor that the recommendations are executed.

¹¹ See Appendix 2 for Navigator Brochure.

Support Person(s) – Assist persons with disabilities in meeting their daily needs. Support persons perform a variety of roles to assist individuals with I/DD in meeting their specific physical, emotional, and communication needs and interests. Support persons may include family members, friends, guardians, significant others, residential staff, DDS service coordinators, day program staff, and/or other care providers.

III. Communicating with Your Client¹²

The goal of communicating with survivors with I/DD during legal representation is to communicate as you would with any survivor while accommodating any disability-related needs. The tips that follow should be adapted to the abilities, needs, and preferences of the individual survivor.

A. Assessing an Individual’s Communication Skills and Needs

Every person with I/DD is unique, and there will be broad differences in their ability to process or communicate. Unless a communication barrier is obvious or a survivor or support person states that there is a barrier, it is best not to assume one exists. Even when a communication challenge exists, the exact barrier and the best way to address it will vary. Ask the survivor directly if there are ways to help the survivor understand, communicate, or express feelings. Ask questions such as:

- Can you tell me how you prefer to communicate?
- What is the best way to share information with you?

¹² This section is largely adapted from the e-toolkit “Communicating Effectively” on the website Health Care for Adults with Intellectual and Developmental Disabilities: Toolkit for Primary Care Providers, and we thank the authors for its use here (<http://vkc.mc.vanderbilt.edu/etoolkit/general-issues/communicating-effectively/>).

- Is there anything I can do that would help you access my services?
- Is there anything I should know about how you communicate?
- Can you tell me some things that would be helpful to you when we talk?

Before starting a substantive dialogue with a survivor with I/DD about sexual trauma, take time to gently assess communication abilities. Talk about what the survivor would like to talk about for a few minutes and inquire about what the survivor would like to gain from services. This may help create a trusting rapport while also providing insight into the survivor's level of communication and understanding.

Most importantly, throughout conversations with a survivor with I/DD but especially when first working with them, check in regularly to ensure that the survivor understands, even if the survivor has not asked any specific questions. Demonstrate a clear willingness to go at the client's pace. Feel free to repeat or explain something in a different way. During important conversations, such as discussions about informed consent for services, ask the survivor to state in their own words what they understand. Do not assume comprehension from a lack of questions. Always confirm comprehension. Depending on the topic, visuals such as diagrams may be helpful in explaining legal timelines or the layout of a courtroom.

B. General Tips when Communicating with Survivors with I/DD

- Show the survivor the same respect that you show to all survivors.
- It is generally best practice to use respectful and person-first language such as “person with a disability” instead of “disabled person.”¹³ However, as with all survivors, it is

¹³ Person-first language should be used because it is respectful; it focuses on the person first, not the disability; it recognizes that the disability is part of, but not all of, the person.

important to listen to how they describe themselves, as some survivors may prefer to identify in another way, e.g., as a “deaf person” rather than “a person with deafness.”

- Connect with the client about how they choose to be referred to regarding the sexual violence. For some individuals, referring to a survivor as a “victim” can be triggering.
- Do not assume a survivor is incapable of understanding or communicating.
- Meet in a quiet area that is free of distractions.
- Depending on your client, allow for additional time or for multiple installments of smaller increments of time to exchange information.
 - If you are aware of communication challenges when scheduling the appointment, be sure to schedule extra time so the appointment does not feel rushed. For example, extend a standard intake or support session from 60 to 120 minutes.
 - But for other clients, this may be too long, and you may need to break up the session so as not to overwhelm or inundate the client with too much information.
- Provide frequent breaks. Let the survivor know they can request a break at any time.
- Be aware that many people have stronger receptive (understanding) communication skills than expressive (talking) skills; and
- Communicate with the survivor one-on-one with no support person if possible.

Nevertheless, if a client requests assistance from their support person, this can and should be accommodated. Even if a client is receiving communication assistance from a support person, continue to direct your attention, eye contact, and communication directly and consistently to the survivor you are representing.

C. Techniques to Enhance Communication

1. *Establish Rapport*

- Treat adult survivors as adults—not as children;
- Speak directly with the survivor, not to their support person;
- As you would with all survivors, show warmth and a positive regard;
- Ask simple introductory questions: for example, “Let’s start with one another’s names. I am ...”;
- Explain the process in clear, simple terms;
- If the survivor uses a communication technique or device, determine how the survivor communicates using the device: “How do you say Yes? No?” “Would you like to show me how to use this book/machine?”;
- Allow for preferences that might increase the survivor’s sense of comfort or security, such as carrying a favorite item, or standing rather than sitting;
- For individuals with autism or related diagnoses, respect avoidance of eye contact if that is preferred by the client; and
- Focus on the survivor’s abilities rather than disabilities.

2. *Choose Appropriate Language*

- Use plain language, short sentences, and simple words;
- Avoid acronyms and jargon;
- Use concrete, simple language as opposed to abstract language. For example, instead of saying “The courtroom can prove very intimidating to the plaintiff, so let’s discuss the situation in advance to familiarize you with the layout.” Say something such as “Let’s talk about what you will see in the courtroom”;

- Ask one question at a time and keep questions short. When possible, ask open-ended questions such as “Can you tell me how you are feeling?” To simplify and clarify, ask “Who”, “What”, and/or “Where” questions. “When” or “How” questions may be more difficult for some individuals to understand and answer. Questions such as “What are you afraid of?”, “Who are you afraid of?”, “Where do you feel afraid?”, or “Where do you feel safe?” are a good start. It is okay to ask questions other ways, remembering to use plain and simple language;
- Patiently wait for responses and repeat questions when necessary;
- Check for understanding, explain meanings of words, and use pictures, visuals, symbols, or actions as needed;
- If a survivor has difficulty understanding, patiently repeat the statement or question using different and simple words; and
- To make the concept of time more concrete, it may be helpful to use examples from daily and familiar routines (e.g., breakfast time, after dark, bedtime, holidays, birthdays; beginning or end of school or workday).

3. *Listen*

- Allow enough time for the survivor to finish what they are communicating. Try not to finish their sentence for them or cut them off when speaking;
- Let the survivor know when you do or do not understand something they say;
- Confirm what you are hearing and understanding by repeating it back and asking the survivor if that is correct; and
- Check/validate your perceptions. Differences in muscle tone and control for some individuals may complicate nonverbal cues- facial expressions or body language.

4. *Use Clear Verbal Communication*

- Explain ahead of time what the survivor can expect: “When you come in for your appointment, we will...”; “During this meeting, we are going to...”;
- Explain written information and offer to help fill out paperwork, if appropriate.
- Tell and, if possible, show what you are going to do and briefly explain why: “I am going to show you this form. The form tells you about keeping our talks private”;
- Speak slowly, though be aware not to “talk down” to the survivor;
- Pause frequently and check for understanding; and
- Rephrase using simple language and repeat questions as necessary.

5. *Communicate Without Words When Necessary*

- As needed, use visual aids (such as those provided in the Appendix) to explain legal concepts;
- Act or demonstrate using simple diagrams or gestures; and
- Use pictures or point to familiar objects (e.g., “It looks like...”) when communicating. If the survivor uses a communication book, find signs in the book to use.

6. *The Meaning of “No”*

The basics of communication begin with clarity. Sometimes a client with I/DD will be asked a “yes or no” question and will answer the question without understanding. As the attorney, you need the question being asked and the implications of the answer to be understood by the client. Therefore, it is critical for you to craft multiple ways of asking one question.

Reiterate to your client that their answer is the only correct answer and that you are there to help clarify the question if they necessary.

A social worker interviewed for these guidelines noted that a client with I/DD may reflexively reply “no” because the client does not understand the question or because the client is answering how they think they should answer. This type of nuanced empowerment is important to understand. In working with clients with I/DD, the answer “no” could mean many different things. For example, “No” could mean: I don’t have time, I don’t understand, I can’t get there, and/or I’m confused.

IV. Common Legal Terms

When representing a client with I/DD, you may need to adjust and simplify your vocabulary to effectively facilitate understanding. Individuals with cognitive disabilities may experience difficulties with memory, problem solving, attention, reading, linguistics, and/or verbal comprehension. Please consider this non-exhaustive list of terms commonly used during legal representation to help attorneys simplify the explanation of legal concepts for survivors with I/DD. Please adjust the definitions accordingly.

1. **Lawyer** – A person who is trained about the law (rules we all must follow) so they can help people. You and your lawyer have a special relationship that is very private. Your lawyer is not allowed to tell other people about many of the things you tell them, unless you say that it is okay.
2. **Safety** – Feeling safe is a very important feeling. Feeling safe means that you are not worried about someone hurting you. You may feel safe or not feel safe in different

places (like your home or your friend's home). Different people can make you feel safe or not safe (maybe a parent or a good friend). When you feel safe, you might feel happy because you are not worried.

3. **Privilege** – An attorney-client privilege is a special legal rule. It means that you can tell your lawyer anything and they cannot tell anyone else unless you say it's okay. But, if you tell the lawyer you want to hurt yourself or hurt someone else, your lawyer may need to tell someone to get you help and support.¹⁴
4. **Confidentiality or Privacy**– when you tell a person something and you do not want them to tell anyone else.
5. **Deposition** – this is an interview between a lawyer and a person. An interview is a lot of questions about many different subjects. Some questions will be very easy to answer, like “What is your name?”, but other questions might be hard to answer, and you might want to take time to think about your answer. You should not feel bad if you do not understand a question or if you do not know or do not remember the answer. You can say that. A deposition is a legal interview that is audio recorded. There may be other people in the room listening to the interview. Always remember to tell the truth in these interviews.
6. **Judge** – this is the person in court who decides things about a court case. They wear a black robe and sit behind a big desk. They are in charge of the courtroom they are in. When a judge wants to talk with you, they will ask you to answer their questions. It is

¹⁴ Massachusetts Rules of Professional Conduct Rule 1.6: Confidentiality of information: <https://www.mass.gov/supreme-judicial-court-rules/rules-of-professional-conduct-rule-16-confidentiality-of-information>

important you answer the judge's questions with the truth. You should always ask for help if you do not understand a question the judge has asked.

7. **Restraining Order** – A restraining order is a paper that tells a person or people to stay away from you. A restraining order comes from the judge in a court. This order can be used when you are afraid of someone or if someone has hurt you, and you want them to stay away from you.¹⁵ You can ask for this order at any time.
8. **Affidavit** – this is a written story about what happened to you. Your lawyer can help you write this, if you need help. You sign the bottom of the paper to tell the judge that you understand the words on the paper and that those words are the truth.
9. **Plaintiff** – this is a legal name for the person who sues another person. This person starts the legal case against the other person.
10. **Defendant** – this is a person in court who is being sued.
11. **Records**- these are papers that include information about who you are and what services you have received. Sometimes these papers have important information in them. You may not want this information to be shared with many people; that is considered private information. The information may be so private that you and your lawyer may not want anyone else to see the information. You and your lawyer can decide to have your lawyer go to court and ask the judge to keep the information private, even if another lawyer wants to look at it.
12. **District Attorney** – this is a lawyer who works to keep us safe from crime. This lawyer works for the state. They are not your lawyer, but they may be able to help you. If you want the person who hurt you to stop hurting you; if you want the person

¹⁵ See Appendix 3 for Sample Restraining Orders (M.G.L. ch. 209A and M.G.L. ch. 258E) and Basic Timeline of Process.

who hurt you to get in trouble for hurting you; or if you want the person who hurt you to go to jail, this lawyer may be able to help.

13. **Retainer Agreement** – an important document that explains the relationship between you and your lawyer. It says what the lawyer will help you with. If you have a guardian, then your guardian must also sign this document. Signing this document shows that you and/or your guardian understand what is included in the document and how the lawyer will try to help you.

V. **Determining Individual Accommodation Needs**

Inquiring about necessary accommodations should be a standard part of every intake with a sexual assault survivor and, indeed, every client. Each survivor will present a unique range of needs. The attorney should ask every survivor scheduling an intake or initial appointment what accommodations or assistance they may need to access legal services. It is essential to document all accommodation requests to ensure appropriate meeting preparation.¹⁶

When I meet someone with a disability, I will be open, creative, respectful, and ready to learn. I will treat everyone with a disability as a unique person.

Practice Tip: People with I/DD have reported that being asked whether they need accommodations can be a difficult question to answer. One person recommended giving examples and using simple language, such as “Is there something we can do to make it easier for you to talk to me? Here are some of the things we can do if you think it would help. Some people

¹⁶ See Appendix 7 for Sample Accommodation Request Form.

that come to our offices need more time in sessions, so we make the sessions longer. Some people need help with talking and understanding. Others need service dogs, or an object to hold that makes them feel more comfortable.” Consider the varying needs of serving individuals with I/DD and develop appropriate responses and policies to best support survivors.

Be Familiar with Common Types of Accommodations

Federal law, including the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, requires human service providers such as rape crisis centers to make reasonable accommodations to provide equal access to all services, including ensuring effective communication with survivors with disabilities.¹⁷ For example, as of July 2017, the Massachusetts Department of Public Health, which funds comprehensive rape crisis centers across the state, does not have a mandatory limit on the number of sessions survivors can receive. Rape crisis centers are free to accommodate the needs of survivors with I/DD by offering additional sessions. As attorneys representing sexual assault survivors with I/DD, consider the reasonable accommodations you can currently provide and any adjustments needed for additional accommodations to provide equal access to legal services for all sexual assault survivors. Some common types of accommodations needed by survivors with I/DD may be:

- Communication accommodations, including access to auxiliary aids and services such as sign language interpreters, Braille, large print, tape-recorded materials, simplified language documents, pictorial guides, or Computer Assisted Real Time text (CART);
- Additional time for explanation of legal terms and concepts;

¹⁷ Paceley, Shirley and Mary Suggs. Counseling Survivors with Disabilities (PowerPoint presentation). September 11, 2013 (http://cacnd.com/images/C-3_PACELEY_SUGGS_Counseling_Survivors_with_Disabilities.pdf).

- Additional time for coordination with the survivor’s support person(s);
- The presence of support person(s) during meetings;
- More in-person communication (less phone, email, or text); and
- Off-site meetings in private locations to accommodate transportation, medical, and mobility challenges.

Communication¹⁸

Communicating successfully with clients is an essential part of being an effective lawyer. When serving a client with I/DD, you may have to adjust how you would typically communicate or relate information in order to effectively facilitate the client’s understanding. Individuals with I/DD often experience functional difficulties with memory, problem-solving, attention and/or reading, linguistic, and verbal comprehension. Accommodating a person with I/DD requires the attorney to make individualized planning and should be the result of an interactive process with the survivor you are representing.

Above all, don’t wait. Have conversations at the beginning of representation with your client about their preferences for communicating and sharing information to ensure informed consent throughout your representation. Although arguably not required under Title III, it is nonetheless good practice to give “primary consideration” to your client’s choice of accommodation, as the survivor is in a better position to know what will or will not work under their particular circumstances.

¹⁸ This excerpt was taken from the July 2013, Disabilities/Diversity Special Issue of Law Practice Today, (https://www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/july13/serving-clients-with-disabilities.html).

Accommodations a lawyer might provide to address challenges presented by a client's I/DD include:

- Memorializing conversations and agreements in writing;
- Creating and sharing lists of action items;
- Avoiding legalese – presenting information in a clear, concise, concrete, and simple manner;
- Repeating information as necessary, using different wording or a different communication approach;
- Allowing time for information to be fully understood and processed;
- Breaking down information or activities into small steps and presenting tasks sequentially; and
- Using pictures or simple photographs to identify people, rooms, tasks, or directions.

When accommodations are necessary, implement them respectfully, treating the client as a competent individual. Lawyers should assume a client with I/DD is legally competent.

Questions, comments, or concerns concerning competency should be directed to the client.

Strategies for Communication

There is no “one-size fits all” approach for effectively communicating with and representing individuals with I/DD. Each individual will differ in terms of ability, life circumstances, and legal needs. The following are therefore suggestions for strategies that may work in some instances:

- Maintain eye contact, if it's comfortable for the client and respect preference for limited eye contact if not;

- Use short, concise, and directive sentences;
- Use a quiet room for meetings;
- Be flexible in meeting times and locations and be cognizant of transportation issues your client may have;
- If a client makes a request to include a support person in meetings to help facilitate communication, be respectful but also cautious of any implications this may have on the attorney-client privilege;
- Ask the client to please repeat what has been said and/or, if applicable, take notes;
- Outline expectations clearly and establish timelines for tasks;
- Keep discussions goal directed;
- Prepare agendas with the client for meetings;
- Do not ask the client to make important decisions abruptly or to make multiple decisions at once; and
- Establish a structure for communication and contact, keeping in mind limitations your client may have due to their income and functional restrictions. When necessary, set boundaries with your client by asking them to call only at designated times (e.g. set a weekly or monthly check-in call) or to communicate with you in writing, if necessary.

VI. Persons/Agencies Working with Sexual Assault Survivors

When representing a sexual assault survivor with I/DD, there is often more than one person (or often a team of people) working with that survivor to make sure their various needs are met. The client might have a person who sets up meetings for them or arranges transportation for them to attend meetings. This will largely depend on the needs of the client. As a lawyer, you

will receive the case after this team is put into place, so it is not your responsibility to determine who these support people are for the client. But be aware that you will be collaborating with this team to ensure your client can attend meetings or court dates.

Additionally, this survivor may be the victim in a case being investigated by or on behalf of the DPPC. An abuse investigation process begins when DPPC receives a call alleging abuse or neglect on their 24-hour abuse reporting hotline. A report of abuse is screened in for investigation if the allegation meets DPPC's jurisdictional criteria. The cases that DPPC investigates are limited to instances of caregiver abuse when the victim is a person with a disability (as defined by M.G.L. c. 19C) between the ages of 18-59; DPPC does not have jurisdiction over abuse that occurs by someone other than the caregiver.¹⁹ The intake staff will get initial information about the allegation from the reporter, and DPPC will do a safety assessment. All DPPC intake reports are reviewed by the State Police Detective Unit (SPDU) assigned to the DPPC and those suggesting evidence of a crime are forwarded by the SPDU to the appropriate District Attorney or law enforcement office for possible investigation/prosecution. Intakes alleging sexual assault are forwarded by DPPC Intake staff to the DPPC's Sexual Assault Response Unit (SARU) and to a sexual assault liaison at DDS who will ensure that appropriate measures are taken to assist the client. In sexual assault cases, a DPPC SARU Navigator will also work with the survivor to ensure access to desired trauma services, Victim Compensation, etc.

¹⁹ If the alleged abuser is not a caregiver, then the allegation falls outside the DPPC's jurisdiction. In these cases, DPPC refers callers to other resources as appropriate.

Guardianship in Massachusetts

There are two types of guardianship in Massachusetts: plenary and limited. It is extremely important to know that not many people with I/DD and most clients of DDS do **not** have a guardian. The majority of people with I/DD are presumed competent.²⁰

A. Plenary Guardianship

A plenary guardianship, also known as a full guardianship, removes from an incapacitated person all personal decision-making responsibility and authority with the exception of basic human rights, such as privacy, equal treatment under the law, and religious expression in the manner of one's choice.²¹ This could include the right to access services such as a medical evaluation and/or a forensic exam using the Sexual Assault Nurse Examiner (SANE) Evidence Collection Kit following an assault.²²

In 2009, the definition of "best interests" expanded: A Guardian acts in the Incapacitated Person's best interests and with consideration of the Incapacitated Person's expressed desires and personal values. A Guardian acts only as necessitated by the Incapacitated Person's limitations, encouraging him/her to participate in decisions to the extent possible, act on his/her own behalf, and develop or regain capacity.²³

²⁰ Best practice is to use the terminology "presumed competent." We need to reinforce for people that there is no such thing as 'being your own guardian,' a term that still labels people as different from people with I/DD. In the law, if one is not adjudicated incapacitated, then one is "presumed competent."

²¹ Definition of "incapacitated person" in Massachusetts: <https://www.mass.gov/service-details/find-out-if-you-can-become-a-legal-guardian-of-an-incapacitated-person>.

²² This is fact specific. Consent to conduct a medical exam following a sexual assault and/or to complete any step(s) of the SANE Evidence Collection Kit follows the same protocols as other medical care, which requires a guardian's consent. Collecting non-intrusive evidence (clothing, bedding, etc.) is done as a matter of course and is not included in the consent requirement.

²³ An open line of communication is essential. If an attorney is working with a guardian, the attorney should ask the guardian if anyone has explained to them the role of a guardian.

There are some decisions related to sexuality and sexual health that are considered so intrusive or private that guardians must petition the court for official substituted judgment. For example: sterilization, abortion, contraceptive implants or removal, and whether to get married or divorced (because a person with a guardian cannot sign legal contracts). If the guardian of the client is also the parent of the client, issues often arise when the line is blurred between the guardian's legal role and parental concern. Issues may also come up when the person with I/DD and their guardian disagree about a relationship.²⁴

Guardianship does not allow a guardian to prevent a person from learning more about their sexuality, sexual health, or self-protection. However, there is a need for more education and advocacy to ensure that people with I/DD are offered the support they need to make personal decisions.

B. Limited Guardianship

A limited guardianship is the preferred form of guardianship in Massachusetts. Due to increasing recognition of the importance of self-determination and empowerment of persons with disabilities, courts are now required to tailor guardianships to allow an individual to retain as much decision-making authority in as many areas as possible. A limited guardianship recognizes that an individual may lack the ability to make some types of decisions, yet they still have the ability to make decisions in many other areas of their life. The court tailors the guardianship to preserve the individual's rights and liberties to the fullest extent possible and limits the guardian's decision-making powers to areas where the

²⁴ Lots of work is needed here within the service system, to ensure the team is clear about the responsibility to advocate for a person's right to privacy, even when the guardian insists on having more information than is necessary to prevent undue risk or harm.

individual is judged unable to make effective decisions. If your client has a limited guardian, ensure that you review the guardianship paperwork to determine the client's ability to consent to services or sign legal paperwork.

Additional Considerations:

Although an adult who is not under guardianship is presumed competent, there may be instances where the client has diminished capacity. Because we encourage survivor-empowerment, it can be very challenging for an attorney to figure out how to proceed, especially if you are new to this specialization. SJC Disciplinary Rule 1.14 and the attendant Comments, provides some insight on how to proceed.

SJC Disciplinary Rule 1.14 – Client under a Disability

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity that prevents the client from making an adequately considered decision regarding a specific issue that is part of the representation, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action in connection with the representation, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) Confidential information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal confidential information about the client, but only to the extent reasonably necessary to protect the client's interests.

VII. Specific Practical Guidance for Attorneys²⁵

New Client Process

Service providers who support clients with I/DD have commented repeatedly that the intake phase of the legal representation must be slow and methodical. Each aspect of the representation should be taken step by step. Although every client has different abilities, it is likely that the information you seek will not present itself in the first meeting, and it may not be until the third meeting that you start tackling the difficult legal issues. Therefore, before you have the initial meeting, know that you will not likely collect all the information at once. You might need more than one appointment to obtain answers to your questions, collect relevant documents, and establish a solid rapport with the client. Taking your time at each step will enhance the representation, help your client with self-empowerment, and help your client to understand all their options, any risks, to actively engage in their case.

A. Scheduling a Meeting

1. Scheduling a meeting with a client is something that many attorneys take for granted.

When representing a survivor with I/DD, you must consider accommodations from the very beginning, even before you attempt your first contact. Questions for service providers such as, “Is this person comfortable using the phone?”, “Where can I best access the client and help them feel comfortable?”, and “How long will we need for this

²⁵ See generally 42 U.S.C. Ch. 126 EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES.

meeting?” should be considered. Survivors with I/DD may have specific schedules or time restrictions. Flexibility is critical.

2. In order to schedule any appointments, you must first determine if the client schedules and keeps track of their own appointments. If not, then you must identify the person who helps schedule appointments. Is it the DPPC Navigator? DDS Service Coordinator? A support person? Take into consideration each logistical element, including, but not limited to phone ability; e-mailing ability; transportation to and from appointments; keeping appointments; and gathering documents. A support person or someone on the client’s team should be able to assist with scheduling.

B. Intake

1. The purpose of a client intake is to introduce yourself to the potential client and obtain some initial information to determine eligibility for your services and the potential legal needs of the client. You must consider the intersecting concerns of a survivor with I/DD to provide appropriate and helpful legal representation. Without first establishing a rapport with a client who is a sexual assault survivor, there is potential to retraumatize a victim. Take your time and first determine the logistics of the initial client interaction and meeting. Remember your goal is to establish a solid rapport with a person with I/DD but also someone who has experienced the trauma as a survivor of sexual violence. When moving forward, if the client finds it helpful, you may use a visual aid to help explain:
 - i. Who you are.
 - ii. What an attorney does.
 - iii. What your role is as an attorney.
 - iv. Why you are calling/meeting.

- v. Options of how the client would like to handle communication.
2. Keep it simple. This conversation can cover the logistics of the first client meeting by addressing basic questions such as:
 - i. Where will we meet?
 - ii. Who will attend?
 - iii. What day of the week and date will we meet?
 - iv. What time will we meet?
 - v. How long will the meeting take?
 - vi. Is there anything specific I can provide during the meeting that will help you communicate and share with me?

C. First Client Meeting Considerations

1. Tailor your intake process and the first meeting to each individual client. Continuing to be mindful of the attorney-client privilege, you can use the client's team to help you schedule the meeting.
2. It is important to conduct the initial meeting with the client, and if they request the involvement of a specific support person, it is okay to include the support person of their choice. However, the presence of a third person could have an impact on the privileged communication your client has with you. Therefore, you can ask the client if there is something specific that the support person would do and offer that as an alternative to having the support person present in the meeting. A client with I/DD may request that the support person remain in the meeting for the entire time. Explain any impact this may have on attorney-client privilege. If they still want the person to remain in the room, honor this request.

3. Depending on your client's needs, you may want to limit your initial meetings to approximately 30 minutes. In that time frame, you will want to spend approximately 10 minutes reviewing the case and what has happened, approximately 10 minutes ensuring the client understands the basics, and approximately 10 minutes discussing the next steps.
4. For the first few meetings and until you establish a rapport with your client, it is a good idea to block out more time for before and after the meeting.

D. The Meeting - Options, Empowerment, and Understanding

Take care in simplifying concepts for your client. Keeping in mind the empowerment model (the attorney presents options and the survivor makes decisions for their own life), take each issue (legal and non-legal) step by step and try not to jump ahead. For folks with I/DD, time is a tough concept sometimes. If you say an action will happen in 2 years, they may not be able to conceptualize what that means, and they could potentially ruminate on it immediately.

For example, during the creation of these guidelines, a social worker described the following experience she had with a client with I/DD:

The client was pregnant, and when the client went to see the obstetrician, the doctor explained the entire pregnancy, all nine months, all at once, to the client. The doctor did not take a step by step, week by week, or month by month, approach to explain the basics of the pregnancy itself, and this left the client very confused and anxious about the pregnancy.

Additional Tips:

1. Empower your client to be a self-advocate.
2. Because the client is their own best advocate, encourage the client to choose the next steps and be fully involved and informed in the decision-making process.
3. Check in frequently to ensure that the client understands the conversation. Asking yes or no questions is not particularly helpful. Engage the client in the conversation by asking open-ended questions and read their cues to determine if they understand. To check understanding, ask questions such as:
 - i. How does this help you?
 - ii. Are there any parts that you want me to talk about again?
 - iii. I have this flyer on resources. Would that be helpful to go over?
4. Create and maintain a timeline or handouts available for the client to use. What has happened in the past, what is happening in the present, and what may happen in the future is a lot of information for someone to process.
5. Present options and support client empowerment. This is key to having a successful attorney-client relationship.
6. Be mindful of information you include on handouts you provide to your client if others will have access to the handouts. Privacy for sexual assault survivors is a priority.

E. Second Client Meeting and Beyond

While you are in the first meeting, it would be best to schedule your second meeting. This way, the client and their support person, if present, can make a note of it. Establish the best way to contact the client and/or support person between meetings. Discuss the basics of the next

meeting: who will attend the meeting, why there is another meeting, what are the goals, when the date and time of the meeting will be, and where the meeting will take place.

F. Retainer Agreements

Depending on your client's abilities and their guardianship status (if applicable), the Retainer Agreement can be signed by your client or by your client and their guardian. Assume your client can and will sign the Retainer Agreement. This contract between you and your client forms the basis for your representation and you must clearly explain each section of the Agreement, so your client fully understands their rights and obligations. Consider a simplified retainer agreement.²⁶

G. Court

Going to court is often anxiety provoking for sexual assault survivors. This may be the first time they see the abuser after the assault(s), or it may be the first time they confront the abuser. Therefore, it is critical that your client understands not just what is going to happen on the day of court, but also the basics about court in general.²⁷ To prepare your client to be in a courtroom, if possible, visit the court prior to the hearing date. Before the visit, or if you cannot visit before the date of the hearing, you should describe the layout of the courtroom and the people and their roles of who will be in the courtroom, such as the judge, the opposing lawyer, the court officer, and the court reporter. Be clear with your client regarding what the judge will expect of them and encourage your client to attend and bring a support person if they choose.

²⁶ See Appendix 4 for Sample, Simplified Retainer Agreement.

²⁷ See Appendix 5 for Sample Visual Aid of Courtroom Layout.

Substantively, it is important to manage your client's expectations for what will happen in court. Ask your client questions about what they want to see happen and explain to them why that may or may not happen.

On the day of court, meet your client early at the courthouse so they can get a feel for the room and the process. Review what you previously discussed and the people who will be in the courtroom. No matter what the outcome, be sure that your client is offered access to support before and after the court date.

VII. Privacy and Privilege

Many individuals with I/DD have very little privacy and very little expectation of privacy. Their lives are intertwined with family members, support people, social workers, and case teams that share information freely with one another—usually to coordinate an individual's daily activities. State agencies and state service providers consider this shared information confidential and agents of these entities are mandated reporters. However, this level of sharing can pose a significant challenge for maintaining the attorney-client privilege. The privilege is claimed by the client and/or the client's guardian. The attorney, at the time of the communication, is presumed to have authority to claim the privilege but **only on behalf of the client**. Furthermore, lawyers in Massachusetts are not mandated reporters. But what happens when you meet with your client, and, after the meeting, your client tells their support person everything? What happens when your client feels more comfortable speaking with you in the presence of their support person?

Presence of an Additional Person, Not an Interpreter

If a survivor with I/DD requests that an additional person be present during the meeting, you should work with the survivor to:

- Ensure the survivor's informed consent to the presence of that specific support person;
- Inform the survivor of possible privacy implications; and
- Determine how the survivor would like the support person to assist in their access to legal representation.

As the attorney, it is your obligation to explain to the survivor how an additional person in the meeting might negatively impact the attorney-client privilege. It is possible that the client will ask for a support person or a personal attendant to be present during the meeting. Although the court has carved out **an exception for interpreters**, as of the publication date of these guidelines, we are not aware of any case law in Massachusetts that permits the presence of an emotional support person without waiving the attorney-client privilege. Alternatively, given the sanctity of the attorney-client privilege, you could limit the participants and/or the amount in which they are participating in the meeting. For example, include the support person in on the factual parts of the conversation, but not while you are providing legal advice and strategy. Additionally, **if the survivor is requesting the presence of a support person who is an employee of an agency** (such as a DDS service coordinator, residential staff, or other support staff), the survivor should be aware that the support person's professional duties to their employer may necessitate the employee sharing information within the employee's agency and/or they may be a mandatory reporter. This information about the presence of agency

employees should be shared with the survivor to ensure that the survivor is fully aware of potential implications of the agency employee's presence.

Additional Considerations:

1. Is there a guardian who is requesting to be present during the meeting? If so, what type of guardian are they? If the guardian has plenary guardianship, then the attorney-client privilege will not likely be waived. If, however, the guardian has limited guardianship, then it is possible that the guardianship is narrow enough that the attorney-client privilege would be waived if they are present during the meeting.
2. If the client insists on having a third-party present, consider applying the doctrine of "common interest" to protect the attorney-client privilege.
3. If the client insists on having a third-party present, consider researching the idea that the presence of a third-party is an accommodation under ADA in order to maintain the privilege.

What are some ways that you, as an attorney, can prevent the privileged information from being shared with a support person?

1. First and foremost, you can explain to your client and to their support person that it is positive for the client to seek support, but they can do this without disclosing all the information and risking damaging the attorney-client privilege.
2. You can speak with their support person and preemptively explain the attorney-client privilege. Ask the support person to act solely to support the client instead of seeking details of the meeting. For example, instead of the support person asking the client "What did you talk with the attorney about today?" they can ask "How are you feeling?" or "How did the meeting go?"

3. During meetings with your client, consider creating a list of topics that your client can freely share with others. This could include such things such as what the meeting room looked like, any snacks or beverages they had during the meeting, the comfort object they brought to the meeting, etc. This list is best created in collaboration with the client; that way, the client fully understands what they can share about their meetings with their lawyers without breaking the attorney-client privilege.
4. During the meeting, practice “not sharing meeting details with others.” Ask the client to pretend that you are a staff member at their work, and pretend that the staff member asks, “What did the lawyer tell you?” Have the client practice an answer that is comfortable for them, such as “That is private, but I liked the way the lawyer treated me.”
5. In a criminal case, the defense attorney may not understand record keeping and the proper process to request victim records. Defense counsel may request records from various sources, agencies, and service providers. You can help your client by asking them if they would like you to preemptively send letters of non-disclosure/privilege to all their health care professionals.²⁸

Protection of Victims’ Records in a Criminal Case- *Commonwealth v. Dwyer*

During the course of a criminal case, the defense attorney will often seek a victim’s third-party records under *Commonwealth v. Dwyer*.²⁹ The request could ask for therapy records, hospital records, medical records, or even attorney records.³⁰ Nevertheless, every victim’s attorney should take the time to properly label documents “work product” or “attorney-client

²⁸ See Appendix 6 for Sample Dwyer Letter to Healthcare Provider.

²⁹ *Commonwealth v. Dwyer*, 448 Mass. 122 (2006).

³⁰ Subpoenaing attorney’s records has become more common in criminal cases.

privilege” and follow the protocol set forth in *Commonwealth v. Lampron* to best protect this privilege.

Also, in the course of a criminal complaint, DPPC or DDS might receive a records request for “any and all records regarding X person, date of birth X”. The DPPC intake form would have been sent to the Office of the District Attorney. After the full investigation into the allegation is complete, the Investigation Report may go to the Office of the District Attorney. If so, the defense counsel may get this report in discovery. Intake forms and Investigation Reports forwarded to the District Attorney may be redacted or unredacted, depending on the circumstances. DPPC maintains that DPPC’s records are privileged and confidential pursuant to M.G.L. c. 19C, 118 CMR, and the investigatory privilege laid out in Massachusetts Guide to Evidence, Section 515³¹. DPPC will only release records in response to a successful Rule 17 *Dwyer* motion.

VIII. Client Feedback

Representing sexual assault survivors with I/DD is very rewarding for lawyers. Because these survivors have such high rates of victimization, your representation can truly make an impact. But because communication may be a challenge, you should seek ongoing qualitative feedback from the client. This feedback is extremely important to maximizing your representation. You should check in with your client about your communication style.

³¹ Section 515. Investigatory privilege - Unless otherwise required by law, information given to governmental authorities in order to secure the enforcement of law is subject to disclosure only within the discretion of the governmental authority.

These questions can help you ensure a solid rapport and effective representation that accommodates the needs of a client with I/DD:

1. How did I do?
2. How could I do this better?
3. What did I do wrong?
4. What did I do right?
5. Could I do something differently?

IX. Conclusion

As an attorney, it is an honor to represent sexual assault survivors with I/DD. These guidelines are intended to increase your knowledge, skills, and comfort in helping survivors. Although these guidelines cannot provide you with exhaustive answers, we hope they do provide a foundation for your practice in representing survivors with I/DD. Thank you for your patience, compassion, and dedication to increasing access to justice for survivors.

Appendix 1

Sexual Assault Resources for Clients with I/DD in Massachusetts

Victim Rights Law Center (VRLC)

www.victimrights.org

617-399-6720

Massachusetts Department of Developmental Services (DDS)

<https://www.mass.gov/orgs/departement-of-developmental-services>

Massachusetts Disabled Persons Protection Commission (DPPC)

<https://www.mass.gov/orgs/disabled-persons-protection-commission>

Massachusetts Department of Mental Health (DMH)

<https://www.mass.gov/orgs/massachusetts-department-of-mental-health>

Massachusetts Commission for the Deaf and Hard of Hearing

<https://www.mass.gov/orgs/massachusetts-commission-for-the-deaf-and-hard-of-hearing>

Massachusetts Rehabilitation Commission (MRC)

<https://www.mass.gov/orgs/massachusetts-rehabilitation-commission>

Communication Toolkit

<http://masstapp.edc.org/communications-toolkit>

Courtroom Interpreter Services

<https://www.mass.gov/about-the-office-of-interpreter-services>

Guardianship Basics

<https://www.mass.gov/files/documents/2016/08/wq/court-required-duties-as-guardian-ip.pdf>

Appendix 2

SAMPLE RETAINER AGREEMENT

Client:

Address:

Telephone No:

Attorney:

Date:

You agree that ATTORNEY will help you and provide legal advice to you about these legal issues (black out those areas that are not relevant):

1. Obtaining protective/restraining order: _____
 2. Landlord/housing _____
 3. Education _____
 4. Employment _____
 5. Criminal issues/dealing with the DA's office: _____
 6. Privacy rights _____
 7. Immigration _____
 8. Victim Compensation: _____
 9. Other (please describe) _____
- _____
- _____

Scope and Limitation of Representation (How the attorney has agreed to help you)

You understand that ATTORNEY has agreed to represent you only as described above. ATTORNEY will not represent you on other issues.

Costs

You understand that these legal services are free.

Client's Responsibilities (Things you agree to do)

You agree to provide complete and honest information, including information that will help ATTORNEY in representing (helping) you. If ATTORNEY cannot find you or cannot contact you after trying many times, then ATTORNEY cannot adequately represent you and must stop representing you.

_____ **Initials**

Attorney’s Responsibilities (What the attorney has to do)

ATTORNEY will help you on the issue described above. ATTORNEY will keep you informed about the case. ATTORNEY will keep all information provided by you confidential (private) unless you say or sign something that says it is okay to share the information. ATTORNEY will not make agreements about the case without your permission.

Termination of Representation (How to stop getting help from the lawyer and when the lawyer can stop helping you)

If you do not want ATTORNEY to help you anymore, you can tell ATTORNEY and ATTORNEY will stop representing (helping) you. There are a few things that could happen that may mean that ATTORNEY would need to stop representing you, but ATTORNEY will help you find another lawyer. If ATTORNEY has to stop representing you, ATTORNEY must tell you why. ATTORNEY can choose to stop helping you if you commit a crime, if the attorney cannot contact you after many attempts, or for any other good reason.

Files and Documents

Once the representation is done, you can ask ATTORNEY to give you all the documents that were collected for you.

After about seven years, ATTORNEY will destroy the documents in your file.

Additional Provisions

This Agreement represents the complete understanding between you and ATTORNEY about the help given to you. If ATTORNEY changes anything about this Agreement, everyone must agree to the changes.

Once the legal issue is over, ATTORNEY will not provide more legal advice or representation.

You have received a copy of and read this agreement, and ATTORNEY has explained this agreement to you.

Client’s Name

ATTORNEY NAME

Client’s Signature

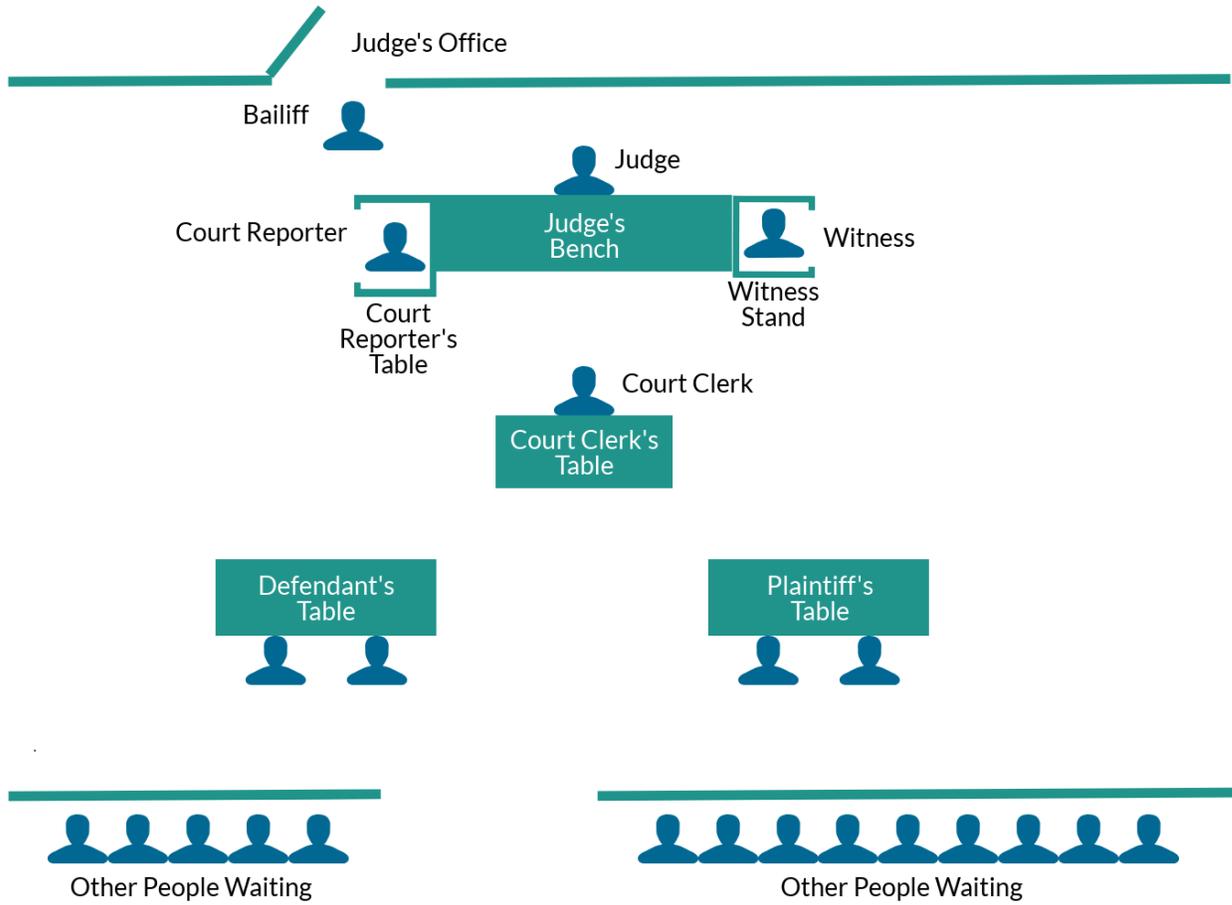
Attorney’s Signature

Date

Date

Appendix 3

SAMPLE COURTROOM DIAGRAM



Appendix 4

Sample Restraining Order Timeline

1. Schedule intake with potential client to establish eligibility for your services and eligibility for a restraining order, assess accessibility needs, potential guardianship and potential team members who support the client.
2. Meet with client to discuss safety concerns. Together fill out the affidavit, taking pains to include all the elements of the violation but being concise.
3. Take the Complaint and the Affidavit to file in court (maybe the same day) Wait with client to be heard by Judge.
4. Judge issues Temporary Restraining Order. (Conduct safety planning whether or not the Judge issues a Temporary Restraining Order).
5. Complaint gets served on Defendant by law enforcement.
6. Meet with client to prepare for “10-day hearing”. Prepare client to testify and to be cross-examined.
7. Ten days after the filing of the Complaint, return to court for “10-day hearing”. Present evidence and testimony in support of Restraining Order Complaint. Judge determines whether to vacate Order or to extend order (often up to 1 year).
8. Date for Restraining Order renewal will be included on the Order from the Judge.
9. Victim and attorney should make sure that police have a copy of Order.
10. Victim and attorney should make sure that work/landlord have a copy of Order.
11. Victim should always keep a copy of the Order handy in case the need arises to call 911.
12. Conduct safety planning throughout the process.

Appendix 5

Sample Accommodation Request Form: Meeting with My Lawyer Things that will help us when we meet

Please fill out this form. If needed, someone else can help with the writing.

Today's Date: _____

Information about you (Client):

Name: _____

Cell phone number: _____

Home phone number: _____

E-mail: _____

How you get to these appointments: _____

Other contact person (Name and Phone number): _____

You are here to talk about your legal needs. Please tell us what we can do (or you can do) that will be helpful for our meetings. Please use the back of this form to write more, if needed. Thank you.

Please sign your name on the line below.

Client: _____

Appendix 6

Sample Commonwealth v. Dwyer Letter to Health Care Provider

RECIPIENT
Medical Records
HOSPITAL
HOSPITAL ADDRESS

DATE

Re: Request to assert privacy rights as to CLIENT'S RECORDS

Dear RECIPIENT:

I am writing on behalf of my client, CLIENT, BIRTH DATE, who was a patient in your emergency room on DATES and is also accessing services at OTHER UNIT. As the result of being a victim of a crime, CLIENT is involved in a criminal case in which a party in these proceedings will likely be requesting copies of CLIENT'S private records.

As you are aware, these records are private as protected by the Health Insurance Privacy and Portability Act and by other statutory privileges. CLIENT intends to assert HER/HIS/THEIR privacy rights to protect these records from disclosure. Accordingly, if you receive a subpoena or similar request for the production of CLIENT'S records, please take all steps necessary to maintain the confidential nature of the records. CLIENT would appreciate notice of the request by telephone (IF APPROPRIATE) and by mail at OUR ADDRESS.

If you have any questions or concerns, please do not hesitate to contact me at (617)399-6720. I greatly appreciate your attention to this matter and your cooperation.

Warm Regards,

Attorney
Cc: CLIENT