

## Mission Possible: Responses to Difficult Client Positions

### 10 Tips for Lawyers, Judges and Mental Health Professionals \*

The following are tips for professionals to help clients move from unreasonable to reasonable positions. The key is to employ child-focussed and family-focussed creative solutions.

1. ***Start by thinking “Big Picture”.*** What type of approach do you want to take in your practice - Directive, facilitative, rights-based, client-driven or some combination? What are your ethical obligations, and to whom? Be prepared to change your game-plan – change your message or change your approach. It is generally best for the client to hear the strengths and weaknesses from their lawyer first, rather than from a judge.
2. ***Explore What and Why Questions:*** What does the client want (their stated position)? Why do they want what they want (their interests)? Is the position child-focussed? Reasonable? Are they influenced by family members, friends, new partners? If the client is being unreasonable, you may wish to consider the following options: (a) help the client to focus on children’s best interests; (b) problem-solve to meet the interests not the position; (c) provide reality checks; (d) coach the client to separate anger and emotions from the issues and solutions; (e) play devil’s advocate and ask the client to stand in the other party’s shoes; (f) consider mediation; and (g) question if you need to make a request to get off the record, or if you need to find another professional to assist.
3. ***In the Child Protection Context, Consider the Above Tips, and:*** Identify who is taking an unreasonable position (Worker? Supervisor? Parent? Counsel? Kin?). Consider what the Society is striving to achieve and query whether there are other ways to do so. Engage the decision-makers, kith/kin and community supports. Be realistic and practical. Be knowledgeable about other areas of the law / practical matters that affect the family.
4. ***Three Steps to Successful Advocacy and Dispute Resolution:*** (a) When “hearing” the client help them to re-frame what they want into what their children and their family need; (b) Educate clients to improve their own behaviour, communication and temper their expectations. Modelling a good working relationship with other professionals can be an effective teaching tool; and (c) Consider shorter and longer-term solutions, creative solutions and “win win” scenarios.
5. ***How do We Measure Success?:*** The result falls within the range of reasonable resolutions and meets the children’s needs and interests. The parties move on with tools and strategies to decrease conflict, and improve communication and co-parenting. The family’s finances and responsibilities are allocated to best meet everyone’s needs.

6. ***Children's Best Interests:*** A range of resolutions will often meet the children's best interests – work with clients to fall within the range. Frame discussions and arguments around the children's best interests. Does the client's position accord with best interests? Weigh competing variables and problem-solve around them (ex. dinner vs. overnight).
7. ***Children's Views and Preferences:*** It may be helpful to remind clients – (a) Children have a voice *not* a choice; (b) Weight increases with age and maturity; (c) Promoting alignment is often harmful, as is alleging alienation without recognizing the role that both parents may play in the conflict; and, (d) High conflict can cause significant challenges for children – for many children it is more important that the parents resolve the conflict than whether they spend X overnights with each parent in a 14-day schedule.
8. ***Explain the Factors that Affect Parenting Time Schedules:*** At an early stage in the process educate the clients about: Age and stage of development; Impact of special needs; Proximity; The pros, cons, feasibility and likelihood of a 50/50 or 60/40 schedule, as well as the impact on child support; and, The impact on the children of the frequency, duration, transitions and interactions between parents.
9. ***The Utility of Social Science Research and Educational Materials:*** Identify what is good vs. bad research and choose well-respected publications. These materials can be helpful to persuade parents, opposing counsel and judges of any particular matter affecting the children. Consider that courses of action change over time. Free materials are available at: [www.afccontario.ca](http://www.afccontario.ca) and [www.afccnet.org](http://www.afccnet.org).
10. ***Family "Justice" May or May Not Be 50/50.*** What is in the best interests of the children and the family is not necessarily what is equal. In some instances a 50/50 solution (parenting time, decision-making, finances) that is used as a means of "resolving the case" may cause future conflict and may have short/medium/long-term consequences for the children and parents.

\* Justice Andrea Himel, Superior Court of Justice, Family Branch (Newmarket)