



Advocacy &  
Legal Representation  
in Child Abuse &  
Neglect Cases

## A Commitment to Advocacy & Legal Representation

The State of New Mexico is committed to ensuring quality advocacy and legal representation for children and families involved in abuse and neglect cases in the State's courts. The importance of good legal representation is recognized by many organizations concerned with the child welfare system, including the Children's Bureau of the Administration for Children and Families (U.S. Department of Health and Human Services), the National Council of Juvenile and Family Court Judges, and the American Bar Association Center on Children and the Law.



To ensure legal representation in abuse and neglect cases, the New Mexico Children's Code provides for the appointment of attorneys as follows:

Guardian ad Litem (GAL)	The Guardian ad Litem (GAL) serves as the <i>advocate in the case</i> for children under age 14, and represents and protects the best interests of the child. For over 20 years, the Children's Code has required that persons serving as GALs be attorneys. In many other states, GALs are not attorneys. An <i>attorney</i> GAL brings critical information about child and family law to that role.
Youth Attorney	New Mexico took another leap forward in 2005, when the State Legislature amended the Children's Code to require that children age 14 or older be represented by a Youth Attorney, rather than a GAL. The court appoints a Youth Attorney to represent the young person and his/her expressed wishes. In this way, the young person has a more direct role in his or her case.
Respondent's Attorney	The New Mexico Children's Code also ensures that <i>respondents</i> (parents or other guardians or custodians charged with abuse or neglect) have legal representation. If a respondent cannot afford an attorney, one will be appointed by the court.

## Quality of Advocacy & Representation

New Mexico's commitment to advocacy and legal representation goes beyond simply making sure GALs or attorneys are appointed. In 2003, the Court Improvement Project of the New Mexico Supreme Court developed **performance standards** in order to ensure that the advocacy and representation provided to children and families is of a consistent professional quality. These performance standards were adopted by the Supreme Court and are now included in contracts for attorneys appointed by the court in child abuse and neglect cases.

These performance standards require the GAL to represent the child's best interests and the Youth Attorney and Respondent Attorney to represent the client's expressed wishes. In order to provide quality representation, consistent with the performance standards, all court-appointed GALs, Youth Attorneys, and Respondent Attorneys are expected to:



- abide by the Code of Professional Responsibility and all other applicable laws,
- follow the confidentiality requirements of the New Mexico Children's Code,
- gather and review information about the case,
- meet with the child or client before each court hearing and related events, and be available to the child or client by phone or in person,
- counsel the child or client about the case, the rights of the all the people involved in the case, and what to expect in the legal process,
- actively participate in all court hearings and related events, including presenting evidence and witnesses, filing motions, and making objections,
- work to avoid continuances and reduce delays,
- request services for the child or client as needed,
- participate in annual training in relevant areas of law.

There are other specific expectations and responsibilities for GALs, Youth Attorneys, and Respondent Attorneys. They are summarized on the next few pages of this booklet.

## The Role of the GAL

The GAL is responsible for representing the child's *best interests*. In order to do that, the GAL must determine the best interests objectively, looking at the child's age, maturity, culture and ethnicity, attachment to family members, and sense of belonging and identity. If the child's best interests are different from the child's own wishes, the GAL must inform the court of those differences. In addition, the GAL has other responsibilities in terms of his or her contact with the child, performance in court, and involvement in case planning and other aspects of the case. The GAL:

- counsels the child in a way he or she can understand about the court process and the meaning of the court orders;
  - meets with the child and the child's caregiver before hearings and meetings;
  - contacts the child frequently, including whenever there is a placement change or any type of emergency;
  - advocates for the child in terms of school issues, mental health concerns, and other services needed;
  - observes the child with his/her parents and in his/her foster home.
- Contact with the Child
- actively participates in all hearings and related events;
  - reports to the court on the child's adjustment to his/her placement, the child and parent interactions, the respondents' and CYFD's compliance with the treatment plan, etc.;
  - prepares the child to testify when appropriate, ensuring that testifying will cause minimal harm to the child;
  - continues representation until the case is dismissed.
- Court Performance
- consults with the CYFD worker, service providers, and the child's CASA;
  - attends staffings, Citizen Review Board (CRB) reviews, mediation, etc.;
  - monitors implementation of court orders and the treatment plan.
- Involvement in Case

## The Role of the Youth Attorney

The Youth Attorney is responsible for representing the *expressed wishes* of the client (the child age 14 or older) and for representing and protecting the client's expressed cultural needs. Any actions taken by the Youth Attorney are taken after consultation with the client. The Youth Attorney counsels the client that the Judge must make decisions based on the best interest of the child, and the Judge must be convinced that what the young person wants is in his or her best interest. In addition, the Youth Attorney has other responsibilities in terms of his or her contact with the client, performance in court, and involvement in case planning and other aspects of the case. The Youth Attorney:

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| Contact<br>with the Client | <ul style="list-style-type: none"><li>• counsels the client in a way he or she can understand about the court process and the meaning of the court orders;</li><li>• observes the client's interaction with his/her parents or with whomever the client may be reunited.</li></ul>   |
| Court<br>Performance       | <ul style="list-style-type: none"><li>• actively participates in all hearings and related events;</li><li>• reports to the court the client's compliance with the court orders and treatment plans;</li><li>• reports to the court on the reasonableness of CYFD's efforts;</li><li>• communicates to the court the client's position on the treatment plan, the client's placement, and the client's goals;</li><li>• prepares the client to testify, familiarizing the client with court procedures and what to expect in the courtroom;</li><li>• continues representation until the case is dismissed.</li></ul> |
| Involvement<br>in Case     | <ul style="list-style-type: none"><li>• consults with the CYFD worker, service providers, and the youth's CASA;</li><li>• attends staffings, administrative hearings, mediation, etc.;</li><li>• determines the appropriateness of the client and the attorney attending CRB reviews; if neither attend the review, provides written information to the Board.</li><li>• monitors implementation of court orders and the treatment plan.</li></ul>   |

## The Role of the Respondent Attorney

The Respondent Attorney is responsible for representing the *expressed wishes* of the client (the respondent) and for representing and protecting the client's expressed cultural needs. Any actions taken by the Respondent Attorney are taken after consultation with the client.

In addition, the Respondent Attorney has other responsibilities in terms of his or her contact with the client, performance in court, and involvement in case planning and other aspects of the case. The Respondent Attorney:

### Contact with the Client

- counsels the client in a way he or she can understand about the court process and the meaning of the court orders;
- observes the child's interaction with his/her parents.

### Court Performance

- actively participates in all hearings and related events;
- reports to the court the client's compliance with the court orders and treatment plans;
- reports to the court on the reasonableness of CYFD efforts;
- communicates to the court the client's position on the treatment plan, the child's placement, and the client's goals;
- prepares the client to testify, familiarizing the client with court procedures and what to expect in the courtroom;
- continues representation until the case is dismissed, or, in the event of an appeal, through the filing of a docketing statement.

### Involvement in Case

- consults with the CYFD worker, service providers, and the child's CASA;
- attends staffings, administrative hearings, mediation, etc.;
- determines the appropriateness of the client and the attorney attending CRB reviews; if neither attend the review, provides written information to the Board.
- monitors implementation of court orders and the treatment plan.

## Other Advocates for Children and Families in Child Abuse and Neglect Cases

### The Court Appointed Special Advocate (CASA)

In many Judicial Districts in New Mexico, the Judge may appoint a **Court Appointed Special Advocate (CASA)** to the case. The CASA is a trained volunteer who meets with the child and the family, as well as others involved in this case. The CASA prepares a report to the court about how the child is doing and makes recommendations about what is believed to be in the child's best interest.



### The Citizen Review Board (CRB)

The **Citizen Review Board (CRB)** is a group of trained volunteers from the community. If an abuse or neglect case stays in court long enough to reach the Permanency Hearing, the CRB will meet to review the case and make recommendations to the Judge. Everyone involved with the case, including the parents and all attorneys, will be invited to talk to the CRB at that review or to send in written comments. Input from foster parents, service providers, and school staff is also invited. In addition to reviewing individual cases, the CRB collects data about children in foster care to inform policy decisions about the child abuse/neglect system.



**What do I do if I have a concern about an attorney’s performance in an abuse/neglect case?**

Call the Court Administrator in your Judicial District, or contact the State Bar of New Mexico’s Client-Attorney Assistance Program at 505-797-6068 (or email [caap@nmbar.org](mailto:caap@nmbar.org)).

**What do I do if I am interested in serving as a GAL, Child’s Attorney, or Respondent Attorney in abuse/neglect cases?**

Call the Court Administrator in your Judicial District, or call the Administrative Office of the Courts at 505-827-4800.



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For further information about the New Mexico Court Improvement Project,  
contact the Administrative Office of the Courts, 505-827-4800.