

**PERFORMANCE STANDARDS
FOR COURT-APPOINTED ATTORNEYS
IN CHILD ABUSE & NEGLECT CASES**

These standards are not intended to substitute for, or impede the exercise of, an attorney's professional judgment or discretion. However, if an attorney elects not to perform a particular task specified in the standards, that decision should be the result of purposeful consideration in the context of the facts of a specific case rather than a random or blanket decision by the attorney.

**ADOPTED BY NEW MEXICO SUPREME COURT ORDER NO. 11-8500,
EFFECTIVE MAY 23, 2011
REVIEWED FEBRUARY 2016**

PERFORMANCE STANDARDS YOUTH ATTORNEY (YA)

1. PRACTICE STANDARDS

- The YA zealously represents the expressed interests of the youth;
- The YA represents and protects the youth's expressed cultural needs;
- The YA represents the youth in accordance with the Rules of Professional Conduct, Rules 16-100 through 16-805 NMRA (2008), and all other applicable laws; and
- The YA represents the youth in accordance with the confidentiality requirements of the New Mexico Children's Code, Section 32A-4-33 NMSA (2009).

2. TRAINING STANDARDS

- The YA participates in at least ten (10) hours of relevant annual training.

3. CONTACT AND CONTINUITY OF COUNSEL STANDARDS

After consultation with the youth/client:

- The YA contacts the youth in advance of custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews, permanency hearings, and other court proceedings to ascertain the need for witnesses or other evidence to be presented; the YA contacts the youth prior to mandatory pre-adjudicatory and pre-permanency meetings scheduled in accordance with the provisions of the Children's Code;
- The YA counsels the youth, in a manner understandable to the client, on the subject matter of the litigation, the rights of the custodial and non-custodial parent, the court system, the proceedings, the YA's role, and what to expect in the legal process;
- The YA ensures the youth has proper notice of every hearing, and advises that the youth has a right to be present at every hearing
- The YA explains court orders and their consequences to the youth;
- The YA is accessible to the youth through office hours, telephone/voice mail, fax, or email;
- The YA attends treatment team meetings, administrative hearings, Citizen Review Board meetings, and other conferences and staffings concerning the youth, whenever appropriate;
- The YA discusses with the youth the nature of an appeal. If the appeal has merit, the YA takes all necessary steps to perfect the appeal and seeks appropriate temporary orders or extraordinary writs to protect the interests of the child during the pendency of appeal;
- Whenever an appeal is taken, the YA enters an appearance and YA representation continues through any appellate proceedings unless representation is otherwise arranged;
- If there is no appeal, YA representation continues through dismissal unless removed or relieved by the court;

- At cessation of representation, the YA discusses the end of the legal representation and determines what contacts, if any, he/she and the youth will continue to have.

4. STANDARDS FOR GATHERING AND REVIEWING INFORMATION

After consultation with the youth/client:

- The YA is responsible for gathering and reviewing information, including:
 - Interviews with the youth, foster parents and other caretakers, caseworkers, and service providers; and interviews as appropriate with the parents, school personnel, neighbors, relatives, clergy, law enforcement, and others;
 - Contact with lawyers for other parties and the CASA;
 - Review of the youth's, respondent's, and family's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case, including placement records, as available;
 - Review of the court files of the youth, respondent, and family; and case-related records of the social service agency and other service providers; and
 - Review of photographs, videos, or audiotapes and other evidence.
- The YA obtains the necessary authority for the release of information; and
- The YA personally observes the youth's interaction with parents, or with whomever the youth may be reunited, when reunification is anticipated, as needed.

5. CASE PLANNING STANDARDS

After consultation with the youth/client:

- The YA consults with the social worker, and health care, mental health care, and other professionals involved with the youth's service plan;
- The YA requests services (by court order if necessary) to meet the youth's needs, to protect the youth's interests, and to ensure a comprehensive service plan. These services may include but are not limited to:
 - Screening and diagnostic services
 - Family preservation or reunification services;
 - Home-based services;
 - Sibling and family visitation;
 - Child Support;
 - Domestic violence prevention, intervention and treatment;
 - Medical and mental health care;
 - Drug and alcohol treatment;
 - Parenting education;
 - Semi-independent and independent living services;
 - Long-term foster care;
 - Termination of parental rights action;
 - Adoption related services;

- Education;
 - Recreational or social services;
 - Housing;
 - Special education and related services; and
 - Supplemental security income (SSI) to help support needed services.
- The YA determines the appropriateness of the youth and/or the YA attending local Citizen Review Board hearings concerning the youth; if neither the youth nor YA attend, the YA forwards to the board a letter stating the youth's status during the period since the last review and an assessment of CYFD's permanency and treatment plans;
 - The YA monitors implementation of the case plan;
 - The YA communicates with the Court-Appointed Special Advocate (CASA); and
 - The YA communicates to the Court the youth's position on the service plans for the youth and respondent; issues about the youth's placement; and the youth's goals.

6. COURT PERFORMANCE STANDARDS

After consultation with the youth/client:

- The YA participates in custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews, permanency hearings, other court proceedings, and mandatory pre-adjudicatory and pre-permanency meetings scheduled in accordance with the provisions of the Children's Code;
- The YA reports to the court on the youths' compliance with prior court orders and treatment plans;
- The YA presents evidence of the reasonableness or unreasonableness of the Department's efforts and on alternative efforts that could have been made;
- The YA participates in mediation;
- The YA stays informed of the youth and family's involvement with family group decision making, family drug court, and other court sanctioned programs;
- The YA files petitions, motions, and responses and makes objections as necessary to represent the youth. If appropriate, the YA files briefs in support of evidentiary issues. During all hearings, the YA preserves legal issues for appeal, as appropriate. Relief requested may include but is not limited to:
 - Obtaining necessary services;
 - A mental or physical examination of a party or the youth;
 - A parenting, custody, or visitation evaluation;
 - An increase, decrease, or termination of contact or visitation;
 - Requesting, restraining, or enjoining a change of placement;
 - Contempt for non-compliance with a court order;
 - Termination of the parent-child relationship;
 - Child support;

- A protective order concerning the youth's privileged communication or tangible property; and
 - Dismissal of petitions or motions.
- The YA presents and cross examines witnesses, offers exhibits, and provides independent evidence as necessary;
- The YA prepares the youth to testify; the YA familiarizes the youth with court procedures, and what to expect during direct and cross-examination;
- The YA requests orders that are clear, specific, and, where appropriate, include a time line for assessment, services, and evaluation;
- The YA reviews all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices;
- The YA monitors the implementation of the court's orders and reports any noncompliance;
- If appropriate, the YA makes a closing argument and provides proposed findings of fact and conclusions of law. The YA ensures that a written order is entered;
- The YA works diligently to avoid continuances and reduce delays in court proceedings.

PERFORMANCE STANDARDS GUARDIAN-AD-LITEM (GAL)

1. PRACTICE STANDARDS

- The GAL zealously represents the child's best interests with respect to matters arising pursuant to the provisions of the New Mexico Children's Code, NMSA 32A-1-1 et. seq.;
- The GAL determines the best interests of the child through an objective evaluation that takes into account such factors as age, sense of time, level of maturity, culture and ethnicity, degree of attachment to family members including siblings, as well as continuity, consistency, and sense of belonging and identity;
- The GAL represents and protects the child's cultural needs;
- In the event that the child's best interests are different than the child's expressed wishes, the GAL informs the court of these differences;
- The GAL represents the child's best interests in accordance with the Rules of Professional Conduct, Rules 16-100 – 805 NMRA(2008), and all other applicable laws; and
- The GAL represents the child's best interests in accordance with the confidentiality requirements of the New Mexico Children's Code, Section 32A-4-33 NMSA (2009).

2. TRAINING STANDARDS

- The GAL participates in at least ten (10) hours of relevant annual training. (*see Attachment*)

3. CONTACT AND CONTINUITY OF COUNSEL STANDARDS

- The GAL meets with the child and the child's caregiver in advance of custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews, permanency hearings, and other court proceedings to ascertain the need for witnesses or other evidence to be presented; the GAL also meets with the child and the child's caregiver prior to mandatory pre-adjudicatory and pre-permanency meetings scheduled in accordance with the provisions of the Children's Code;
- The GAL counsels the child, in a developmentally appropriate manner, concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the GAL's role, and what to expect in the legal process;
- The GAL facilitates the child's participation in court hearings, especially if the child is 12 or older, unless it is determined to not be in the child's best interest;
- The GAL explains court orders and their consequences to the child;
- The GAL contacts the child prior to and after any change in the child's placement, whenever possible;

- The GAL contacts the child in the event of an emergency or significant event impacting the child;
- The GAL is accessible to the child through office hours, telephone/voice mail, fax, or email;
- The GAL attends treatment team meetings, administrative hearings, citizen review board meetings, school case conferences and staffings concerning the child whenever possible;
- As appropriate, the GAL pursues issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment; for example: school/education issues, especially a child with disabilities; and mental health proceedings;
- In the event of a change of venue, the originating GAL remains on the case until a new GAL is appointed by the court in the new venue and the new GAL has communicated with the former GAL;
- The GAL discusses with the child, as developmentally appropriate, the nature of an appeal. If the appeal has merit, the GAL takes all necessary steps to perfect the appeal and seeks appropriate temporary orders or extraordinary writs to protect the interests of the child during the pendency of appeal;
- Whenever an appeal is taken, the GAL enters an appearance and GAL representation continues through any appellate proceedings unless representation is otherwise arranged;
- If there is no appeal, GAL representation continues through dismissal unless removed or relieved by the court;
- At cessation of representation, the GAL discusses the end of the legal representation and determines what contacts, if any, he/she and the child will continue to have.

4. STANDARDS FOR GATHERING AND REVIEWING INFORMATION

- The GAL is responsible for gathering and reviewing information, including:
 - Interviews with the child, foster parents and other caretakers, caseworkers, and service providers; and interviews as appropriate with the parents, school personnel, neighbors, relatives, clergy, law enforcement, and others;
 - Contact with lawyers for other parties and the CASA;
 - Review of the child's, respondent's, and family's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case, as available;
 - Review of the court files of the child, respondent, and family; and case-related records of the social service agency and other service providers; and
 - Review of photographs, videos, or audiotapes and other evidence;
- The GAL obtains the necessary authority for the release of information;
- The GAL personally observes the child's interaction with parents, or with whomever the child may be reunited, when reunification is anticipated; and
- The GAL personally observes every residence at which the child is placed promptly after the child is placed at the residence to determine and facilitate the safety and well-being of the child.

5. CASE PLANNING STANDARDS

- The GAL consults with the social worker, and health care, mental health care, and other professionals involved with the child's care;
- The GAL requests services (by court order if necessary) to meet the child's needs, to protect the child's interests, and to ensure a comprehensive service plan. These services may include but are not limited to:
 - Screening and diagnostic services
 - Family preservation or reunification services;
 - Home-based services;
 - Sibling and family visitation;
 - Child Support;
 - Domestic violence prevention, intervention and treatment;
 - Medical and mental health care;
 - Drug and alcohol treatment;
 - Parenting education;
 - Semi-independent and independent living services;
 - Long-term foster care;
 - Termination of parental rights action;
 - Adoption related services;
 - Education;
 - Recreational or social services;
 - Housing.
 - Special education and related services; and
 - Supplemental security income (SSI) to help support needed services.
- The GAL attends local Citizen Review Board hearings concerning the child and, if unable to attend the hearings, forwards to the board a letter stating the child's status during the period since the last review and an assessment of CYFD's permanency and treatment plans;
- The GAL communicates with the Court-Appointed Special Advocate (CASA); and
- The GAL monitors implementation of the case plan.

6. COURT PERFORMANCE STANDARDS

- The GAL participates in custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews, permanency hearings, other court proceedings, and mandatory pre-adjudicatory and pre-permanency meetings scheduled in accordance with the provisions of the Children's Code;
- The GAL reports to the court on the child's adjustment to placement, the Department's and the respondents' compliance with prior court orders and treatment plans, and the child/parent interaction during visitation;
- The GAL participates in mediation;

- The GAL stays informed of the child and family’s involvement with family group decision making, family drug court, and other court sanctioned programs;
- The GAL files petitions, motions, and responses and make objections as necessary to represent the child’s best interests. If appropriate, the GAL files briefs in support of evidentiary issues. During all hearings, the GAL preserves legal issues for appeal, as appropriate. Relief requested may include but is not limited to:
 - Obtaining necessary services;
 - A mental or physical examination of a party or the child;
 - A parenting, custody, or visitation evaluation;
 - An increase, decrease, or termination of contact or visitation;
 - Requesting, restraining, or enjoining a change of placement;
 - Contempt for non-compliance with a court order;
 - Termination of the parent-child relationship;
 - Child support;
 - A protective order concerning the child’s privileged communication or tangible property; and
 - Dismissal of petitions or motions.
- The GAL presents and cross examines witnesses, offers exhibits, and provides independent evidence as necessary;
- The GAL prepares the child to testify, when appropriate. The GAL familiarizes the child with the courtroom, court procedures, and what to expect during direct and cross-examination. The GAL makes an effort to ensure (including making objections) that testifying will cause minimum harm to the child;
- The GAL requests orders that are clear, specific, and, where appropriate, include a time line for assessment, evaluation, services, placement, treatment, and evaluation of the child and family;
- The GAL reviews all written orders to ensure that they conform with the court’s verbal orders and statutorily required findings and notices;
- The GAL monitors the implementation of the court’s orders and reports any noncompliance;
- If appropriate, the GAL makes a closing argument and provides proposed findings of fact and conclusions of law. The GAL ensures that a written order is entered; and
- The GAL works diligently to avoid continuances and reduce delays in court proceedings.

PERFORMANCE STANDARDS RESPONDENT ATTORNEY (RA)

1. PRACTICE STANDARDS

- The RA zealously represents the expressed interests of the respondent;
- The RA represents and protects the respondent's expressed cultural needs;
- The RA represents the respondent in accordance with the Rules of Professional Conduct, Rules 16-100 – 805 NMRA(2008), and all other applicable laws;
- The RA represents the respondent in accordance with the confidentiality requirements of the New Mexico Children's Code, Section 32A-4-33 NMSA(2009).

2. TRAINING STANDARDS

- The RA participates in at least ten (10) hours of relevant annual training. (*see Attachment*)

3. CONTACT AND CONTINUITY OF COUNSEL STANDARDS

After consultation with the respondent/client:

- The RA meets with the respondent in advance of custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews, permanency hearings, and other court proceedings to ascertain the need for witnesses or other evidence to be presented; the RA also meets with the respondent prior to mandatory pre-adjudicatory and pre-permanency meetings scheduled in accordance with the provisions of the Children's Code;
- The RA counsels the respondents, in a manner understandable to the client, on the subject matter of the litigation, the rights of the custodial and non-custodial parent, the court system, the proceedings, the RA's role, and what to expect in the legal process;
- The RA explains court orders and their consequences to the respondent;
- The RA is accessible to the respondent through office hours, telephone/voice mail, fax, or email;
- The RA attends treatment team meetings, administrative hearings, Citizen Review Board meetings, and other conferences and staffings concerning the respondent or the respondent's child, whenever possible;
- The RA informs the client of the right to appeal and discuss the nature of an appeal; if the client chooses to appeal, the RA continues representation through the filing of the docketing statement and requests the appointment of an appellate attorney;
- If there is no appeal, the RA continues representation through dismissal, unless removed or relieved by the court; and
- In the event of a change of venue, the originating RA remains on the case until a new RA is appointed by the court in the new venue and the new RA has communicated with the former RA.

After consultation with the respondent/client:

- The RA is responsible for gathering and reviewing information, including:
 - Interviews with the parents, caseworkers, and service providers; and interviews as appropriate with foster parents and other caretakers, school personnel, neighbors, relatives, clergy, law enforcement, and others;
 - Contact with lawyers for other parties and the CASA;
 - Review of the respondent's, child's, and family's social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case, as available;
 - Review of the court files of the respondent, child, and family, and case-related records of the social service agency and other service providers; and
 - Review of photographs, videos, or audiotapes and other evidence; and
- The RA obtains the necessary authority for the release of information.
- The RA personally observes the child's interaction with parents, or with whomever the child may be reunited, when reunification is anticipated, as needed;

5. CASE PLANNING STANDARDS

After consultation with the respondent/client:

- The RA consults with the social worker, and health care, mental health care, and other professionals involved with the respondent's service plan;
- The RA requests services (by court order if necessary) to meet the respondent's needs, to protect the respondent's interests, and to ensure a comprehensive service plan. These services may include but are not limited to:
 - Screening and diagnostic services
 - Family preservation or reunification services;
 - Family visitation;
 - Medical and mental health care;
 - Drug and alcohol treatment;
 - Domestic violence prevention, intervention, or treatment;
 - Home-based services;
 - Parenting education;
 - Inclusion of the respondent in IEP and other special education services as the responsible signatory, if appropriate;
 - Education and training;
 - Social security income (SSI) to help support needed services;
 - Recreational or social services; and
 - Housing.

- The RA determines the appropriateness of the respondent and/or the RA attending local Citizen Review Board hearings concerning the respondent; if neither the respondent nor RA attend, the RA forwards to the board a letter stating the respondent's status during the period since the last review and an assessment of CYFD's permanency and treatment plans; and
- The RA monitors implementation of the case plan;
- The RA communicates with the Court-Appointed Special Advocate (CASA); and
- The RA communicates to the Court the respondent's position on the service plans for the respondent and child; issues about the child's placement; and the respondent's goals.

6. COURT PERFORMANCE STANDARDS

After consultation with the respondent/client:

- The RA participates in custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews, permanency hearings, other court proceedings, and mandatory pre-adjudicatory and pre-permanency meetings scheduled in accordance with the provisions of the Children's Code;
- The RA reports to the court on the respondents' compliance with prior court orders and treatment plans;
- The RA presents evidence of the reasonableness or unreasonableness of the Department's efforts and on alternative efforts that could have been made;
- The RA participates in mediation;
- The RA stays informed of the child and family's involvement with family group decision making, family drug court, and other court sanctioned programs;
- The RA files petitions, motions, and responses and make objections as necessary to represent the respondent. If appropriate, the RA files briefs in support of evidentiary issues. During all hearings, the RA preserves legal issues for appeal, as appropriate. Relief requested may include but is not limited to:
 - Obtaining necessary services;
 - A mental or physical examination of a party;
 - A parenting, custody or visitation evaluation;
 - An increase or decrease of contact or visitation;
 - Contempt for non-compliance with a court order;
 - Dismissal of petitions or motions.
- The RA presents and cross examines witnesses, offers exhibits, and provides independent evidence as necessary;
- The RA prepares the respondent to testify; the RA familiarizes the respondent with court procedures, and what to expect during direct and cross-examination;
- The RA requests orders that are clear, specific, and, where appropriate, include a time line for assessment, services, and evaluation;

- The RA reviews all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices;
- The RA monitors the implementation of the court's orders and reports any noncompliance;
- If appropriate, the RA makes a closing argument and provides proposed findings of fact and conclusions of law. The RA ensures that a written order is entered;
- The RA works diligently to avoid continuances and reduce delays in court proceedings.

Attachment

RECOMMENDED TRAINING CONTENT

At a minimum, the requisite training programs, including mentoring, should address:

- Relevant federal and state laws and agency regulations;
- Relevant court decisions and court rules;
- Court process and key personnel in child and family related litigation;
- Applicable guidelines and standards for representation;
- Child development needs and abilities;
- Family dynamics and dysfunction including substance abuse and the use of kinship care;
- Accessing services such as family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of the agencies providing services, as well as provision and constraints related to agency payment for services; and
- Policy and procedure re: the multidisciplinary input required, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of effort made to safely maintain the child in his or her home.