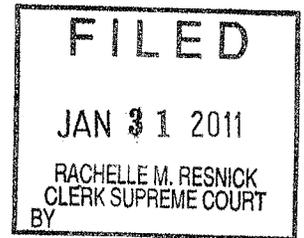


IN THE SUPREME COURT OF THE STATE OF ARIZONA



In the Matter of:)
)
DUTIES AND RESPONSIBILITIES OF) Administrative Order
APPOINTED COUNSEL AND) No. 2011 - 16
GUARDIANS AD LITEM FOR CHILD)
REPRESENTATION IN DEPENDENCY)
CASES)
_____)

The judicial branch, along with child welfare stakeholders, attorneys, and community partners, have long recognized the need to promote practice standards for attorneys and guardians ad litem representing children in the child welfare system. They also recognize the need to support the 2003 Child Abuse and Prevention Treatment Act (CAPTA) reauthorization that promotes higher quality representation for children in care and bars the appointment of untrained or poorly trained court-appointed representatives for children.

On February 26, 2010, the Committee on Juvenile Courts (COJC) referred draft attorney standards for child representation to the Court Improvement Advisory Committee. The Court Improvement Advisory Committee created an Ad Hoc workgroup, the Attorney Standards for Child Representation Committee (“Committee”). The Committee developed proposed standards and presented them to the COJC on September 17, 2010. The COJC voted to “approve the attorney standard[s] as presented, that an Administrative Order from the Chief Justice be requested, and to distribute them for comment” (COJC minutes, September 17, 2010). From September 27, 2010 until close of business November 8, 2010, the standards were distributed for comment. The proposed standards were presented to the Arizona Judicial Council (AJC) on December 7, 2010. The AJC approved the attorney standards as presented.

On January 10, 2011, the Honorable Sarah R. Simmons, Presiding Juvenile Court Judge, Pima County Juvenile Court, Chair of the Committee on Juvenile Courts, and Chair of the Attorney Standards for Child Representation Committee, filed a “Petition to Add Rule 40.1, Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem” and requested a modified comment period.

Due to the Supreme Court’s schedule for the consideration of rules, the earliest this rule could be adopted and effective is September 2011. The adoption of these standards by Administrative Order will allow the standards to be in place and provide affected parties an opportunity to assess their impact and make comments within the rule-making process.

Therefore, pursuant to Article VI, Section 3 of the Arizona Constitution,

IT IS ORDERED adopting the attached Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem, which shall become effective February 1, 2011. This Order is applicable to all appointed counsel and guardians ad litem on and after the effective date.

IT IS FURTHER ORDERED that any attorney currently appointed to represent a child in any dependency matter in the State is exempt from the introductory six (6) hours of court approved training. All attorneys handling dependency matters, including those currently assigned cases, shall comply with the continuing training requirements outlined in the Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem.

Dated this 31st day of January, 2011.

REBECCA WHITE BERCH
Chief Justice

Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem

A. Attorneys appointed for children shall make clear to children and their caregivers whether their appointment is as a guardian ad litem or as an attorney and the ethical obligations associated with their role.

B. Attorneys and guardians ad litem shall inform the child, in an age and developmentally appropriate manner, about the nature of the proceedings, the attorney's role, that the child has the right to attend hearings and speak to the judge, the consequences of the child's participation or lack of participation, the possible outcomes of each hearing, and other legal rights with regards to the dependency proceeding and the outcomes of each substantive hearing.

C. Attorneys and guardians ad litem shall participate in discovery and file pleadings when appropriate and attorneys must develop the child's position for each hearing. The duties of the attorney and guardian ad litem may include identifying appropriate family and professional resources for the child, as well as subpoenaing witnesses, and the attorney and guardian ad litem shall inquire of the child regarding potential placements and communicate this information to Child Protective Services as appropriate.

D. The attorney and guardian ad litem shall meet in person with the child before the preliminary protective hearing, if possible, or within fourteen (14) days after the preliminary protective hearing. Thereafter, the attorney and guardian ad litem for the child shall meet in person with the child and have meaningful communication before every substantive hearing. Substantive hearings include all preliminary protective hearings, all periodic review hearings, permanency hearings, any hearings involving placement, visitation or services, or any hearing to adjudicate dependency, guardianship or termination. If the child is under the age of 5 or is not able to communicate effectively, meetings should include observations within each placement home. At each substantive hearing the attorney or guardian ad litem shall inform the court as to the child's position concerning pending issues and, if the child is not present, an explanation for the child's absence. In all cases, attorneys and guardians ad litem for children should also communicate with placements, and if practicable, observe the placement.

Upon a showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.

E. Attorneys and guardians ad litem shall also maintain contact with caretakers, case managers, service providers, childcare providers, CASAs, relatives and any other significant person in the child's life as appropriate in order to meet the obligations of informed representation of the child.

F. To the extent possible, attorneys and guardians ad litem should attend or provide input to Child Protective Services staffings, Foster Care Review Board reviews and Child and Family Team meetings.

G. Attorneys and guardians ad litem may use appropriately trained support staff to assist in the performance of the duties listed herein unless otherwise required by law. The support staff performing these duties must adhere to these standards.

H. Attorneys and guardians ad litem shall promptly identify any potential and actual conflicts of interest that would impair their ability to represent a child. Either the attorney or the guardian ad litem shall, if necessary, move to withdraw or to seek the appointment of an additional attorney or guardian ad litem if they deem such action necessary.

I. Attorneys and guardians ad litem shall be knowledgeable of the child welfare and public systems and community-based service providers and organizations serving children (e.g. behavioral health, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, permanency services, and juvenile justice). Attorneys and guardians ad litem shall be knowledgeable about how these services are accessed and shall advocate for such services as appropriate for the child.

J. Attorneys and guardians ad litem shall be familiar with the substantive juvenile law. Attorneys and guardians ad litem shall stay abreast of changes and developments in relevant federal and state laws and regulations, Rules of Procedure for the Juvenile Court, court decisions and federal and state laws concerning education and advocacy for children in schools. Attorneys and guardians ad litem shall complete an introductory six (6) hours of court approved training prior to their first appointment unless otherwise determined by the presiding judge of the juvenile court in which the attorney or guardian is practicing for good cause shown and an additional two (2) hours within the first year of practice in juvenile court. All attorneys and guardians ad litem shall complete at least eight (8) hours each year of ongoing continuing education and training. Education and training shall be on juvenile law and related topics, such as child and adolescent development, (including infant/toddler mental health), effects of substance abuse by parents and by and upon children, behavioral health, impact on children of parental incarceration, education, Indian Child Welfare Act, parent and child immigration status issues, the need for timely permanency, the effects of the trauma of parental domestic violence upon children and other issues concerning abuse and/or neglect of children. Some or all of this training and continuing education may qualify as mandatory Continuing Legal Education under State Bar of Arizona requirements.

Attorneys shall provide the judge with an affidavit of completion of the six (6) hour court approved training requirement prior to or upon their first appointment as attorney or guardian ad litem for a child after the adoption of these standards unless a waiver of this requirement has been obtained from the presiding judge of the juvenile court in which the appointment is to be made. The affidavit of completion shall include a list of courses including the name of the training, the date of the training, the training provider, and the number of hours for each course.

All attorneys shall file annually an affidavit with the presiding judge certifying their compliance with this section. Such affidavit shall be filed concurrently with the affidavit of compliance with State Bar MCLE and shall include a list of courses including the name of the training, the date of the training, the training provider and the number of hours for each course.