

ARKANSAS

<p>Structure, organization, and delivery of Child Representation State-by-state, county-by-county, etc.</p>	<p>The Attorney Ad Litem Program is operated and monitored through the Juvenile Division of the Administrative Office of the Courts.</p> <p>There are two types of positions for a dependency-neglect attorney ad litem (AAL): (1) full-time state employment, or (2) part-time contractor. http://arjdc.org/</p> <p>(a) There is hereby created a Division of Dependency-Neglect Representation within the Administrative Office of the Courts that will be staffed by a court-appointed special advocate coordinator and an attorney coordinator.</p> <p>(b) (1) The Director of the Administrative Office of the Courts is authorized to employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings.</p> <p>(2) (A) Before employing or entering into a contract or contracts, the office shall consult with the judge or judges of the circuit court designated to hear dependency-neglect cases in their district plan under Supreme Court Administrative Order Number 14, originally issued April 6, 2001, in each judicial district in accordance with the provisions of 19-11-1001 et seq. (B) Those obtaining employment or contracts through the office as described in subdivision (b)(3) of this section will be designated as the providers for representation of children in dependency-neglect cases in each judicial district.</p> <p>(3) (A) The office shall advertise employment and contract opportunities.</p> <p>...</p> <p>(B) In its administration of the system, therefore, the office is charged with the authority and responsibility to establish and maintain a system that:</p> <p>(i) Equitably serves all areas of the state;</p> <p>(ii) Provides quality representation;</p> <p>(iii) Makes prudent use of state resources; and</p> <p>(iv) Works with those systems now in place to provide an appropriate level of representation of children and courts in dependency-neglect cases. ARK. CODE ANN. § 9-27-401.</p>
<p>Funding Child Representation</p>	<p>(b)(3)(B) The distribution of funds among the judicial districts shall be based on a formula developed by the office and approved by the Juvenile Judges Committee of the Arkansas Judicial Council. ARK. CODE ANN. § 9-27-401.</p>
<p>1. General Duties: Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</p>	<p>“Attorney ad litem” means an attorney appointed to represent the best interest of a juvenile. ARK. CODE ANN. § 9-27-303(7).</p> <p>“Court-appointed special advocate” means a volunteer appointed by the court to provide services to juveniles in dependency-neglect proceedings. ARK. CODE ANN. § 9-27-303(13).</p> <p>(1) The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Supreme Court to represent the best interest of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier.</p> <p>(2) The court may appoint an attorney ad litem to represent the best interest of a juvenile involved in any case before the court and shall consider the juvenile's best interest in determining whether to appoint an attorney ad litem.</p> <p>...</p>

	<p>(5)(A) An attorney ad litem shall represent the best interest of the juvenile.</p> <p>(B) If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his or her determination of the juvenile's best interest. ARK. CODE ANN. § 9-27-316(f).</p> <p>(d) At any time during the course of a case, the department, the attorney ad litem, or the court can request a hearing on whether or not reunification services should be terminated pursuant to § 9-27-327(a)(2). ARK. CODE ANN. § 9-27-337(d).</p> <p>(b) The following individuals are mandated reporters under this chapter:</p> <p>(31) An attorney ad litem in the course of his or her duties as an attorney ad litem ARK. CODE ANN. § 12-18-402(b)(31).</p> <p>(b) Infants or Incompetent Persons. Whenever an infant or incompetent person has a guardian, the guardian must sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed guardian, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent. No judgment shall be rendered against an infant or incompetent until after a defense by a guardian or guardian ad litem, who shall be appointed by the court upon application of any interested party and who shall promptly respond to the claim against the infant or incompetent as provided by these Rules. ARK. R. CIV. P. 17(b).</p>
<p>2. Out of Court - Actions to be Taken: Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</p>	<p>Section 2. Standards of practice for attorneys ad litem in dependency-neglect cases. a. An attorney ad litem shall conduct personally or in conjunction with a trained Court Appointed Special Advocate (CASA) volunteer an independent investigation consisting of review of all relevant documents and records including but not limited to: police reports, DCFS records, medical records, school records, and court records. The ad litem shall interview the child, and in conjunction with a trained CASA volunteer, when one has been appointed, shall interview the parents, foster parents, caseworker, service providers, school personnel and others having relevant knowledge to assist in representation. Continuing investigation and regular contact with the child are mandatory.</p> <p>b. An attorney ad litem shall determine the best interest of a child by considering such factors as the child's age and sense of time, level of maturity, culture and ethnicity, degree of attachment to family members including siblings; as well as continuity, consistency, and the child's sense of belonging and identity.</p> <p>...</p> <p>e. An attorney ad litem shall advocate for specific and appropriate services for the child and the child's family.</p> <p>f. An attorney ad litem shall monitor implementation of case plans and court orders.</p> <p>g. An attorney ad litem shall file appropriate pleadings on behalf of the child.</p> <p>h. An attorney ad litem shall review the progress of the child's case and shall advocate for timely hearings.</p> <p>i. An attorney ad litem shall request orders that are clear, specific, and, where appropriate, include a time line for assessment, services, placement, treatment and evaluation of the child and the child's family.</p> <p>j. Attorney-client or any other privilege shall not prevent the ad litem from sharing all information relevant to the best interest of the child with the court.</p> <p>k. An attorney ad litem, functioning as an arm of the court, is afforded immunity against ordinary negligence for actions taken in furtherance of his or her appointment.</p> <p>...</p> <p>m. An attorney ad litem shall identify any potential or actual conflict of interest that would impair his or her ability to</p>

	<p>represent a client. The attorney shall notify the court as soon as practical of such conflict to allow the court to appoint another attorney for the client or for the client to retain counsel prior to the next hearing. Sup. Ct. Admin. Order 15.1, Section 2.</p> <p>Each attorney ad litem shall: File written motions, responses, or objections at all stages of the proceedings when necessary to protect the best interest of the juvenile ... An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and records of the Department of Human Services to the extent permitted by federal law. ARK. CODE ANN. § 9-27-316(f)(3)(A) & (4).</p> <p>Foster care placements. The foster child, the child's attorney ad litem, and a court-appointed special advocate, if appointed, shall be notified so that they may attend and participate in the staffing and planning for the child's placement. ARK. CODE ANN. § 9-28-410(b)(2).</p> <p>(b)(1) This section does not prevent the Department of Human Services or the attorney ad litem from filing at any time prior to the permanency planning hearing a: (A) Petition to terminate parental rights; (B) Petition for guardianship; or (C) Petition for permanent custody. (2) A permanency planning hearing is not required prior to any of these actions. ARK. CODE ANN. § 9-27-338(b).</p>
<p>3. In Court – Active Participation in Hearings: Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</p>	<p>Each attorney ad litem shall: (A) File written motions, responses, or objections at all stages of the proceedings when necessary to protect the best interest of the juvenile; (B) Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and (C) Present witnesses and exhibits when necessary to protect the juvenile's best interest.... ARK. CODE ANN. § 9-27-316(f)(3).</p> <p>(c) An attorney shall make earnest efforts to attend all case staffings and court-ordered mediation conferences and to meet with his or her client prior to every hearing. An attorney ad litem shall appear at all hearings to represent the best interest of the child. All relevant facts should be presented to the court and if the child's wishes differ from the ad litem's determination of the child's best interest, the ad litem shall communicate the child's wishes to the court. (d) An attorney ad litem shall explain the court proceedings and the role of the ad litem in terms that the child can understand. Sup. Ct. Admin. Order 15.1, Section 2(c) & (d).</p> <p>Safeguards for child victims testifying in judicial and administrative proceedings. In order to facilitate testimony that is fair and accurate, the following safeguards should be followed: (1) The prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of the Chief Counsel attorney shall inform the child about the nature of the judicial proceeding or administrative proceeding; (2) The prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of Chief Counsel attorney shall</p>

	<p>explain:</p> <p>(A) The oath that will be administered to the child; and</p> <p>(B) That the judge will determine whether the child is competent to testify;</p> <p>(3) The prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of Chief Counsel attorney shall explain to the child that if the child does not understand a question while testifying in the judicial proceeding or administrative proceeding, the child has a right to say that he or she does not understand the question;</p> <p>(4) The prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion to have the child testify at a time of day when the child is most alert and best able to understand questions posed in court;</p> <p>(5) If it is in the child's best interests, the prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion for the child to have a comfort item when testifying in a judicial or administrative proceeding;</p> <p>(6) If it is in the child's best interests, the prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney may file a motion for the child to have a support person present when the child testifies in a judicial proceeding or an administrative proceeding; and</p> <p>(7) The prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney shall consider the effect upon the child when the child is subjected to argumentative or harassing questions and shall make the proper objections when appropriate to ensure that the child is not subjected to argumentative or harassing questioning. ARK. CODE ANN. § 16-43-1202.</p>
<p>4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders</p>	<p>(a) A case plan shall be developed in all dependency-neglect cases or any case involving an out-of-home placement. The Department of Human Services shall be responsible for developing case plans in all dependency neglect cases, and in family in need of services or delinquency cases when custody is transferred to the department, pursuant to § 9-27-328. The case plan shall be:</p> <p>...</p> <p>(3) Signed by and distributed to all parties, and distributed to the juvenile's attorney ad litem, court-appointed special advocate, and foster parents, if available; and</p> <p>(4)(A) Subject to modification based on changing circumstances.</p> <p>(B) All parties to the case plan shall be notified of any substantive change to the case plan.</p> <p>(C) A substantive change to a case plan includes, but is not limited to, such changes as the placement of the juvenile, the visitation rights of any party, or the goal of the plan. ARK. CODE ANN. § 9-27-402(a).</p> <p>An attorney ad litem shall monitor implementation of case plans and court orders....</p> <p>An attorney ad litem shall request orders that are clear, specific, and, where appropriate, include a time line for assessment, services, placement, treatment and evaluation of the child and the child's family... Sup. Ct. Admin. Order 15, Section 2(f) & (i).</p>
<p>5. Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>Except as provided in Rule 6-9 of the Rules of the Supreme Court and Court of Appeals, appeals in juvenile cases shall be made in the same time and manner provided for appeals from circuit court.</p> <p>...</p> <p>(2) Pending an appeal from any case involving a juvenile out-of-home placement, the circuit court retains jurisdiction to conduct further hearings.</p> <p>(3) In juvenile cases where an out-of-home placement has been ordered, orders resulting from the hearings set below are final appealable orders:</p> <p>(A) Adjudication and disposition hearings;</p>

	<p>(B) Review and permanency planning hearings if the court directs entry of a final judgment as to one or more of the issues or parties and upon express determination supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R. Civ. P. Rule 54(b); and</p> <p>(C) Termination of parental rights. ARK. R. APP. P. 2(c).</p> <p><i>There is no explicit legal authority or requirement regarding the role of the attorney ad litem in appellate advocacy.</i></p>
<p>6. Cessation of Representation: Contacts post representation, if any</p>	<p><i>No explicit legal authority or requirement.</i></p>
<p>7. General Representation Rules: Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</p>	<p>(a) There is hereby created a Division of Dependency-Neglect Representation within the Administrative Office of the Courts that will be staffed by a court-appointed special advocate coordinator and an attorney coordinator.</p> <p>(b)(1) The Director of the Administrative Office of the Courts is authorized to employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency neglect proceedings.</p> <p>...</p> <p>(3) (A) The office shall advertise employment and contract opportunities.</p> <p>(B) The distribution of funds among the judicial districts shall be based on a formula developed by the office and approved by the Juvenile Judges Committee of the Arkansas Judicial Council.</p> <p>(4) The Supreme Court shall adopt standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases.</p> <p>...</p> <p>(5)(B) In its administration of the system, therefore, the office is charged with the authority and responsibility to establish and maintain a system that:</p> <p>(i) Equitably serves all areas of the state;</p> <p>(ii) Provides quality representation;</p> <p>(iii) Makes prudent use of state resources; and</p> <p>(iv) Works with those systems now in place to provide an appropriate level of representation of children and courts in dependency-neglect cases. ARK. CODE ANN. § 9-27-401.</p>
<p>8. Lawyer Training: Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</p>	<p>a. An attorney ad litem shall be licensed and in good standing with the Arkansas Supreme Court.</p> <p>b. (1) Prior to appointment, an attorney shall have initial education to include approved legal education of not less than 10 hours in the two years prior to the date an attorney qualifies as a court-appointed attorney for children or indigent parents in dependency-neglect cases. Initial training must include:</p> <p>Child development;</p> <p>Dynamics of abuse and neglect;</p> <p>Attorney roles & responsibilities, including ethical considerations;</p> <p>Relevant state law, federal law, case law, and rules;</p> <p>Family dynamics, which may include but is not limited to, the following topics: substance abuse, domestic violence and mental health issues; and Division of Children and Family Services (DCFS) policies and procedures.</p>

	<p>Additional initial legal education may include, but is not limited to: Grief and attachment; Custody and visitation; Resources and services; and Trial and appellate advocacy.</p> <p>(2) The Administrative Office of the Courts (AOC) shall design and conduct programs for the initial 10 hours of legal education, either alone or in collaboration with other agencies or entities.</p> <p>(3) Following completion of the initial 10 hours of legal education, continuing legal education (CLE) shall include at least 4 hours per year related to representation in dependency-neglect cases which may include, but is not limited to, the subject categories listed in (b)(1). The 4 hours of CLE may be in any one of the specified categories in (b)(1) or in any combination thereof.</p> <p>(4) Both the initial 10 hours of education and the 4 hours of CLE shall be certified in accordance with the rules and regulations promulgated by the Continuing Legal Education Board. All educational hours shall be calculated with reference to the CLE reporting period of July 1 through June 30, as utilized for general CLE credit by the Continuing Legal Education Board. The CLE hours for attorneys may not be carried over from one CLE year to the next.</p> <p>(5) An attorney who is qualified for court appointment in dependency-neglect cases but who fails to acquire 4 hours of CLE required by June 30 of any year shall be subject to the pertinent compliance dates of Rule 5(D) of the Arkansas Rules and Regulations for Minimum Continuing Legal Education. In accordance with Rule 5(D), attorneys who sign an acknowledgment deficiency by August 31, and obtain their 4 hours by December 1 shall remain qualified. However, such attorneys shall not be subject to the provisions of Section 5 of the Regulations for Minimum Continuing Legal Education.</p> <p>(6) When an attorney is seeking to complete the 4-hour CLE requirement between June 30 and December 1 for the previous CLE year, he or she may remain as attorney on any pending cases for which appointment was made when the attorney was in compliance with the educational requirements. However, that attorney shall not accept appointment to any new cases until he or she is in full compliance with the CLE requirements.</p> <p>(7) An attorney who fails to complete 4 hours of CLE by December 1 is no longer qualified for court appointment in dependency-neglect cases. His or her name shall be removed from the list of qualified attorneys that is maintained and distributed to the trial courts by the AOC. Such attorney can become qualified again only by completing 10 hours of CLE in the categories required for initial qualification.</p> <p>(8) Attorneys in compliance with the educational qualifications as an attorney ad litem for dependency-neglect cases as of July 1, 2001 shall be deemed to have met the initial educational qualifications to represent parents in dependency-neglect cases. Sup. Ct. Admin. Order 15.1, Section 1(a) & (b).</p> <p>An attorney ad litem shall participate in 10 hours of initial legal education prior to appointment and shall participate in 4 hours of CLE each year thereafter. Sup. Ct. Admin. Order 15.1, Section 2(l).</p> <p>(4) The Supreme Court shall adopt standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases. ARK. CODE ANN. § 9-27-401(b)(4).</p>
<p>9. Lawyer Compensation: Adequate and timely compensation, reimbursement</p>	<p>Compensation</p> <p>1. Contractors</p> <p>a. Contractors are paid a flat rate of \$800 per case, per year, calculated on an average caseload for the prior 12 month</p>

<p>provided for expenses.</p>	<p>period. The funding formula is developed and approved by the Juvenile Judges' Committee of the Arkansas Judicial Council.</p> <p>b. Caseloads may fluctuate by 25% without a change in the contract value. If, for three consecutive months, the caseload remains at a number greater than 25% above or below the caseload average upon which the contract was calculated, the contract may, at the discretion of A.O.C., be recalculated to reflect the new average caseload if state funding allows.</p> <p>...</p> <p>2. Full-time Employees</p> <p>d. Contractors may be reimbursed for mileage at the official state rate (31¢ per mile in 2003) up to a maximum of \$1,000 per year for travel directly relating to their contractual duties. In some cases, the number of counties served may be considered.</p> <p>[Caveat: AOC works with the Department of Finance and Administration ["DFA"] to make contract recommendations and help facilitate contract construction. The General Assembly must approve most contracts before they can be authorized by DFA]</p> <p>2. Full-time employees</p> <p>a. Salaries for full-time employees are negotiated between the AOC and the employee utilizing the funding formula developed and approved by the Juvenile Judges' Committee of the Arkansas Judicial Council. Attorney ad Litem Policies and Procedures.</p>
<p>10. Caseload Levels: Caseloads are of a manageable size.</p>	<p>A full-time attorney shall not have more than 75 dependency-neglect cases, and a part-time attorney shall not have more than 25 dependency-neglect cases. Any deviations from this standard must be approved by the Administrative Office of the Courts which shall consider the following, including but not limited to: the number of counties and geographic area in a judicial district, the experience and expertise of the attorney ad litem, area resources, the availability of CASA volunteers, the attorney's legal practice commitments and the proportion of the attorney's practice dedicated to representing children in dependency-neglect cases, the availability of qualified attorneys in the geographic area, and the availability of funding. An attorney who is within 5 cases of reaching the maximum caseload shall notify the Administrative Office of the Courts and the Juvenile Division Judge.</p> <p>An attorney shall not accept appointment of any case for which he or she cannot devote the requisite amount of time to comply with the above Standards of Practice and the Model Rules of Professional Conduct. Sup. Ct. Admin. Order 15.1 Section 2, (n) & (o).</p>