

NEW YORK	Legal Authority
<p><b>1. <i>General Duties:</i></b> <i>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.</i></p>	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE
	<p>The court shall appoint a law guardian to represent a child who has been allegedly abused or neglected upon the earliest occurrence of any of the following: (i) the court receiving notice... of the emergency removal of the child; (ii) an application for an order for removal of the child prior to the filing of a petition...or (iii) the filing of a petition alleging abuse or neglect. McKinney's Fam. Ct. Act § 1016.</p> <p>"law guardian" refers to an attorney admitted to practice law in the state of New York and designed...to represent minors. McKinney's Fam. Ct. Act § 242.</p> <p>"Attorney for the child" means a law guardian appointed by the family court pursuant to section 249 of the Family Court Act, or by the supreme court or a surrogate's court in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto. <a href="#">N.Y. R. Ct. §7.2(a)</a>.</p> <p>Whenever a law guardian has been appointed by the family court...to represent a child in a proceeding under this article, such appointment shall continue without further court order or appointment during (i) an order of disposition issued by the court...directing supervision, protection or suspending judgment, or any extension thereof; (ii) an adjournment in contemplation of dismissal...or any extension thereof; or (iii) the pendency of the foster care placement ordered.... All notices and reports required by law shall be provided to such law guardian. Such appointment shall terminate upon the expiration of such order, unless another appointment of a law guardian has been made by the court or unless such law guardian makes application to the court to be relieved of his or her appointment. Upon approval of such application to be relieved, the court shall immediately appoint another law guardian to whom all notices and reports required by law shall be provided. McKinney's Fam. Ct. Act § 1016.</p> <p>Nothing in this section shall be construed to limit the authority of the court to remove a law guardian from his or her assignment McKinney's Fam. Ct. Act § 1016.</p> <p>In a proceeding under article..., ten [child protective proceedings] or ten-A [permanency hearings for children placed out of their homes] of this act ...or in any proceeding under section three hundred fifty-eight-a [dependent children in foster care], three hundred eighty-three-c [guardianship and custody of children in foster care], three hundred eighty-four [guardianship and custody of children not in foster care] or three hundred eighty-four-b [guardianship and custody of destitute or dependent children] of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act [financially needy person, which may be a child], the family court shall appoint a law guardian to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. McKinney's Fam. Ct. Act § 249(a).</p> <p>The chief administrator of the courts...shall promulgate court rules for attorneys for children....Appointments of attorneys for children under section two hundred forty-nine of this part shall be in conformity with the rules. McKinney's Fam. Ct. Act § 249-b(b).</p> <p>The office of court administration may enter into an agreement with a legal aid society for the society to provide law guardians for the family court or appeals in proceedings originating in the family court in a county having a legal aid society. McKinney's Fam. Ct. Act § 243(a).</p>

	<p>In other types of proceedings [other than juvenile delinquency and person in need of supervision proceedings], where the child is the subject, the attorney for the child must zealously advocate the child's position.</p> <p>(1) In ascertaining the child's position, the attorney for the child must consult with and advise the child to the extent of and in a manner consistent with the child's capacities, and have a thorough knowledge of the child's circumstances.</p> <p>(2) If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.</p> <p>(3) When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position. <a href="#">N.Y. R. Ct §7.2(d)</a>.</p> <p>The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation. <a href="#">N.Y. R. Ct §7.2(b)</a>.</p>
<p><b>2. Out of Court - Actions to be Taken:</b> <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate</i></p>	<p>In addition to all other duties and responsibilities necessary to the representation of a child who is the subject of a proceeding under this article, a law guardian shall upon receipt of a report from a child protective agency...review the information contained therein and make a determination as to whether there is reasonable cause to suspect that the child is at risk of further abuse or neglect or that there has been a substantive violation of a court order. Where the law guardian makes such a determination, the law guardian shall apply to the court for appropriate relief....Nothing contained in this section shall relieve a child protective agency or social services official of its duties pursuant to this act or the social services law. McKinney's Fam. Ct. Act § 1075.</p>
<p><b>3. In Court - Active Participation in Hearings:</b> <i>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.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>

4. <b>Post-Hearing:</b> Review courts order, communicate order to child, and monitor implementation of orders.	No explicit legal authority or requirement.
5. <b>Appellate Advocacy:</b> Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.	<p>- The appellate division of the supreme court for the judicial department in which a county is located may, upon determining that a county panel designated pursuant to subdivision (c) of this section is not sufficient to afford appropriate law guardian services, enter into an agreement, subject to regulations as may be promulgated by the administrative board of the courts, with any qualified attorney or attorneys to serve as law guardian or as law guardians for the family court or appeals in proceedings originating in the family court in that county. McKinney's Fam. Ct. Act § 243(b).</p> <p>- The appellate division of the supreme court for the judicial department in which a county is located may designate a panel of law guardians for the family court and appeals in proceedings originating in the family court in that county, subject to the approval of the administrative board of the courts. For this purpose, it may invite a bar association to recommend qualified persons for consideration by the said appellate division in making its designation, subject to standards as may be promulgated by such administrative board. McKinney's Fam. Ct. Act § 243(c).</p> <p>In making an appointment of a law guardian pursuant to this section, the court shall, to the extent practicable and appropriate, appoint the same law guardian who has previously represented the child. McKinney's Fam. Ct. Act § 249(b).</p> <p>Whenever a law guardian has been appointed by the family court pursuant to section two hundred forty-nine of this act to represent a child in a proceeding described therein, the appointment shall continue without further court order or appointment where (i) the law guardian on behalf of the child files a notice of appeal, or (ii) where a party to the original proceeding files a notice of appeal. The law guardian may be relieved of his representation upon application to the court to which the appeal is taken for termination of the appointment. Upon approval of such application the court shall appoint another law guardian. McKinney's Fam. Ct. Act § 1120(b).</p> <p>An appellate court may appoint a law guardian to represent a child in an appeal in a proceeding originating in the family court where a law guardian was not representing the child at the time of the entry of the order appealed from or at the time of the filing of the motion for permission to appeal and when independent legal representation is not available to such child. McKinney's Fam. Ct. Act § 1120(c)).</p>
6. <b>Cessation of Representation:</b> Contacts post representation, if any.	No explicit legal authority or requirement.
	<b>Organizational and Administrative Supports Provided the Representative</b>
7. <b>General Representation</b>	Uniform legally binding rules as to duties of child's representative are limited.

<p><b>Rules:</b> <i>Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court.</i></p>	<p>Some administrative structure is in place and is independent of the trial court.</p> <p>The appellate division of the supreme court for the judicial department in which a county is located may, upon determining that a county panel designated pursuant to subdivision (c) of this section is not sufficient to afford appropriate law guardian services, enter into an agreement, subject to regulations as may be promulgated by the administrative board of the courts, with any qualified attorney or attorneys to serve as law guardian or as law guardians for the family court or appeals in proceedings originating in the family court in that county. McKinney's Fam. Ct. Act § 243(b).</p>
<p><b>8. Lawyer Training:</b> <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>The chief administrator of the courts...shall promulgate court rules for attorneys for children. Such court rules shall...</p> <p>(2) provide for the development of training programs with the input of and in consultation with the state office for the prevention of domestic violence. Such training programs must include the dynamics of domestic violence and its effect on victims and on children, and the relationship between such dynamics and the issues considered by the court, including, but not limited to, custody, visitation and child support. Such training programs along with the providers of such training must be approved by the office of court administration following consultation with and input from the state office for the prevention of domestic violence; and</p> <p>(3) require that all attorneys for children, including new and veteran attorneys, receive initial and ongoing training as provided for in this section. McKinney's Fam. Ct. Act § 249-b(a)(2), (3).</p>
<p><b>9. Lawyer Compensation:</b> <i>Adequate and timely compensation, reimbursement provided expenses.</i></p>	<p>A law guardian shall be entitled to compensation pursuant to applicable provisions of law for services rendered up to and including disposition of the petition. The law guardian shall, by separate application, be entitled to compensation for services rendered subsequent to the disposition of the petition. McKinney's Fam. Ct. Act § 1016.</p> <p>Law guardians appointed or continuing to represent a person under this section shall be compensated and shall receive reimbursement for expenses reasonably incurred in the same manner provided by section thirty-five of the judiciary law. McKinney's Fam. Ct. Act § 1120(e).</p> <p>If the office of court administration proceeds pursuant to subdivision (a) of section two hundred forty-three of this chapter [<i>see Background/Qualifications, above</i>], the agreement shall provide that the society shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the providing of law guardians by the respective legal aid society, approved by the said administrative board, and the office of court administration may require such reports as it deems necessary from the society. McKinney's Fam. Ct. Act § 245(a).</p> <p>If an appellate division proceeds pursuant to subdivision (b) of such section two hundred forty-three [<i>see Background/Qualifications, above</i>], the agreement may provide that the attorney or attorneys shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the providing of law guardians by the respective attorney or attorneys, and the appellate division may require such reports as it deems necessary from the attorney or attorneys. McKinney's Fam. Ct. Act § 245(b).</p> <p>(c) If an appellate division proceeds pursuant to subdivision (c) of such section two hundred forty-three [<i>see Background/Qualifications, above</i>], law guardians shall be compensated and allowed expenses and disbursements in the same</p>

	amounts established by subdivision three of section thirty-five of the judiciary law. McKinney's Fam. Ct. Act § 245(c).
<p><b>10. <i>Caseload Levels:</i></b>  <i>Caseloads are of a manageable size.</i></p>	<p>The chief administrator of the courts...shall promulgate court rules for attorneys for children. Such court rules shall prescribe workload standards for attorneys for children, including maximum numbers of children who can be represented at any given time, in order to ensure that children receive effective assistance of counsel comporting with legal and ethical mandates, the complexity of the proceedings affecting each client to which the law guardian is assigned, and the nature of the court appearance likely to be required for each individual client. McKinney's Fam. Ct. Act § 249-b(a)(1).</p> <p>Subject to adjustment based on the factors set forth in subdivision (b) of this section, the number of children represented at any given time by an attorney appointed pursuant to section 249 of the Family Court Act shall not exceed 150. 22 N.Y. Comp. Codes R. &amp; Regs. Tit. 22, §127.5(a).</p> <p>For representation provided under an agreement pursuant to section 243(a) and (b) of the Family Court Act, the workload standards set forth in subdivision (a) of this section may be adjusted based on such factors as:</p> <ul style="list-style-type: none"> <li>(1) differences among categories of cases that comprise the workload of the office covered by the agreement;</li> <li>(2) the level of activity required at different phases of the proceeding;</li> <li>(3) the weighting of different categories and phases of cases;</li> <li>(4) availability and use of support staff;</li> <li>(5) the representation of multiple children in a case;</li> <li>(6) local court practice, including the duration of a case;</li> <li>(7) other relevant considerations. 22 N.Y. Comp. Codes R. &amp; Regs. Tit. 22, §127.5(b).</li> </ul> <p>The administrators of offices pursuant to such agreements shall be responsible for managing resources and for allocating cases among staff attorneys to promote the effective representation of children and to ensure that the average workload of the attorneys for children in the office complies with the standards set forth in subdivision (a) of this section as modified by subdivision (b) of this section. 22 N.Y. Comp. Codes R. &amp; Regs. Tit. 22, §127.5(c).</p> <p>For representation provided by a panel of attorneys for children pursuant to section 243 (c) of the Family Court Act, the Appellate Division may adjust the workload standards of subdivision (a) of this section to ensure the effective representation of children. 22 N.Y. Comp. Codes R. &amp; Regs. Tit. 22, §127.5(d).</p> <p>The Chief Administrator of the Courts, with respect to representation pursuant to section 243(a) of the Family Court Act, and the Appellate Divisions, with respect to representation pursuant to section 243(b) and (c) of the Family Court Act, shall annually, at the time of the preparation and submission of the judiciary budget, review the workload of such offices and panels, and shall take action to assure compliance with this rule. 22 N.Y. Comp. Codes R. &amp; Regs. Tit. 22, §127.5(e).</p>