

NEW MEXICO	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE
<p>1. General Duties: <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>	<p>- A. A child subject to the provisions of the Children's Code [32A-1-1 NMSA 1978] is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.</p> <p>...</p> <p>C. At the inception of an abuse and neglect proceeding, the court shall appoint a guardian ad litem for a child under fourteen years of age. If the child is fourteen years of age or older, the court shall appoint an attorney for the child. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed as guardian ad litem of or attorney for the child. Only an attorney with appropriate experience shall be appointed as guardian ad litem of or attorney for the child.</p> <p>D. When reasonable and appropriate, the court shall appoint a guardian ad litem or attorney who is knowledgeable about the child's particular cultural background.</p> <p>E. When a child reaches fourteen years of age, the child's guardian ad litem shall continue as the child's attorney; provided that the court shall appoint a different attorney for the child if:</p> <ol style="list-style-type: none"> (1) the child requests a different attorney; (2) the guardian ad litem requests to be removed; or (3) the court determines that the appointment of a different attorney is appropriate. <p>F. The court shall assure that the child's guardian ad litem zealously represents the child's best interest and that the child's attorney zealously represents the child.</p> <p>G. A person afforded rights under the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition under the Children's Code. Children's Code 32A-4-10.</p> <p>- A. Duty of guardian <i>ad litem</i>. If a child in an abuse or neglect proceeding is represented by a guardian <i>ad litem</i> at the time the child reaches the age of fourteen (14) years of age, the guardian <i>ad litem</i> shall either:</p> <ol style="list-style-type: none"> (1) file a notice of continued representation as attorney for the child; or (2) file a motion to request the court appoint an attorney for the child. <p>B. Advice of rights. At the first appearance of a child in an abuse or neglect proceeding after the child's fourteenth (14th) birthday, the court shall inquire as to whether the child is represented by an attorney. If the child is not represented by an attorney, the court shall appoint an attorney. N.M. Sup. Ct. R. 10-313.</p> <p>- "Guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding; provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as a guardian ad litem. Children's Code 32A-1-4(J).</p> <p>- A. A guardian ad litem shall zealously represent the child's best interests in the proceeding for which the</p>

guardian ad litem has been appointed and in any subsequent appeals.

B. Unless excused by a court, a guardian ad litem appointed to represent a child's best interests shall continue the representation in any subsequent appeals.

C. Any party may petition the court for an order to remove a guardian ad litem on the grounds that the guardian ad litem has a conflict of interest or is unwilling or unable to zealously represent the child's best interests.

D. After consultation with the child, a guardian ad litem shall convey the child's declared position to the court at every hearing.

...

G. In the event of a change of venue, the originating guardian ad litem shall remain on the case until a new guardian ad litem is appointed by the court in the new venue and the new guardian ad litem has communicated with and received all pertinent information from the former guardian ad litem.

H. A guardian ad litem shall receive notices, pleadings or other documents required to be provided to or served upon a party. A guardian ad litem may file motions and other pleadings and take other actions consistent with the guardian ad litem's powers and duties.

I. A guardian ad litem shall not serve concurrently as both the child's delinquency attorney and guardian ad litem. [Children's Code 32A-1-7.](#)

- A. An attorney shall represent a child in a proceeding for which the attorney has been retained or appointed. The attorney shall provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client, in accordance with the rules of professional conduct.

B. Unless excused by a court, an attorney appointed to represent a child shall represent the child in any subsequent appeals. [Children's Code 32A-1-7.1.](#)

- A. Initial appointment.

(1) In the same or related abuse and neglect proceedings, the court may appoint the same attorney to represent the best interests of the children in a sibling group who are under the age of fourteen (14) as guardian *ad litem*, pursuant to Section [32A-1-7](#) NMSA 1978, and to represent the children in the sibling group who are fourteen (14) years of age or older as attorney, pursuant to Section [32A-1-7.1](#) NMSA 1978.

(2) Except as provided in Subparagraph (3) below, an attorney must decline to represent one or more siblings in the same or related abuse and neglect proceedings, and the court must appoint a separate attorney to represent the sibling or siblings, if, at the outset of the proceedings, a concurrent conflict of interest exists. Such conflict of interest exists if the representation of one child will be directly adverse to another child or there is a significant risk that the representation of one or more of the children will be materially limited by the attorney's responsibilities to another client, a former client or a third person, or by a personal interest of the attorney.

(3) Notwithstanding the existence of a concurrent conflict of interest, an attorney may represent a child if each of

	<p>the following conditions is met:</p> <ul style="list-style-type: none"> (a) the attorney reasonably believes that the attorney will be able to provide competent and diligent representation to each affected sibling; (b) the representation is not prohibited by law; (c) the representation does not involve the assertion of a claim by one sibling against another sibling represented by the same attorney in the same proceeding; (d) the representation does not involve cases in which there exists either evidence or an allegation that one of the siblings has abused or is likely to abuse another of the siblings; and (e) any sibling age fourteen (14) or over who is to be represented by the attorney gives informed consent, confirmed in writing, pursuant to Rule 16-107 NMRA, and the attorney determines that the representation does not adversely affect the representation of the best interests of any of the younger siblings. N.M. Sup. Ct. R. 10-313.1. <p>- "Court-appointed special advocate" or "CASA" means a person appointed as a CASA, pursuant to the provisions of the Children's Court Rules [10-101 NMRA], who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court. Children's Code 32A-1-4(D).</p>
<p>2. Out of Court - Actions to be Taken: <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements.</i></p>	<ul style="list-style-type: none"> - A. All records or information concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be confidential and closed to the public. B. The records described in Subsection A of this section shall be disclosed only to the parties and: <ul style="list-style-type: none"> ... (2) court-appointed special advocates; (3) the child's guardian ad litem; (4) the attorney representing the child in an abuse or neglect action, a delinquency action or any other action under the Children's Code [32A-1-1 NMSA 1978]... Children's Code 32A-4-33. - The Youth Attorney is responsible for representing the <i>expressed wishes</i> 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:

- counsels the client in a way he or she can understand about the court process and the meaning of the court orders;
- observes the client's interaction with his/her parents or with whomever the client may be reunited;
- ...
- reports to the court the client's compliance with the court orders and treatment plans;
- reports to the court on the reasonableness of CYFD's efforts;
- ...
- 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;
- consults with the CYFD worker, service providers, and the youth'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; and
- monitors implementation of court orders and the treatment plan. [*Advocacy & Legal Representation in Child Abuse & Neglect Cases*](#), written by the New Mexico Supreme Court Improvement Project Task Force.

- 3. CONTACT AND CONTINUITY OF COUNSEL STANDARDS

After consultation with the youth/client:

- 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 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;
- [Performance Standards for Court-Appointed Attorneys in Child Abuse & Neglect Cases](#), adopted by the New Mexico Supreme Court.

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.

[Performance Standards for Court-Appointed Attorneys in Child Abuse & Neglect Cases](#), adopted by the New

Mexico Supreme Court.

- 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.
- 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;
- consults with the CYFD worker, service providers, and the child's CASA;
- attends staffings, Citizen Review Board (CRB) reviews, mediation, etc.; and
- monitors implementation of court orders and the treatment plan.

[Advocacy & Legal Representation in Child Abuse & Neglect Cases](#), written by the New Mexico Supreme Court Improvement Project Task Force.

- E. Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall:

- (1) meet with and interview the child prior to custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews and any other hearings scheduled in accordance with the provisions of the Children's Code;
- (2) communicate with health care, mental health care and other professionals involved with the child's case;
- (3) review medical and psychological reports relating to the child and the respondents;
- (4) contact the child prior to any proposed change in the child's placement;
- (5) contact the child after changes in the child's placement;
- (6) attend local substitute care review board hearings concerning the child and if unable to attend the hearings, forward to the board a letter setting forth the child's status during the period since the last local substitute care

- review board review and include an assessment of the department's permanency and treatment plans;
- (7) report to the court on the child's adjustment to placement, the department's and respondent's compliance with prior court orders and treatment plans and the child's degree of participation during visitations; and
 - (8) represent and protect the cultural needs of the child.

...

H. A guardian ad litem shall receive notices, pleadings or other documents required to be provided to or served upon a party. A guardian ad litem may file motions and other pleadings and take other actions consistent with the guardian ad litem's powers and duties. [Children's Code 32A-1-7.](#)

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.

[Performance Standards for Court-Appointed Attorneys in Child Abuse & Neglect Cases](#), adopted by the New Mexico Supreme Court.

- 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.

[Performance Standards for Court-Appointed Attorneys in Child Abuse & Neglect Cases](#), adopted by the New Mexico Supreme Court.

- A. **Information subject to disclosure.** Unless a shorter period of time is ordered by the court, not less than fifteen (15) days prior to any adjudicatory hearing or termination of parental rights hearing, the child's guardian *ad litem* or attorney shall disclose and make available to the parties:

(1) a statement of the child's declared position appertaining to the adjudication, disposition or termination of

parental rights;

(2) a statement of the guardian *ad litem's* position appertaining to the adjudication, disposition or termination of parental rights;

(3) any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are in the possession, custody or control of the child's guardian *ad litem* or attorney, and which the child's guardian *ad litem* or attorney intends to introduce in evidence at the adjudicatory hearing or termination of parental rights hearing or which were prepared by a witness whom the child's guardian *ad litem* or attorney intends to call at the adjudicatory hearing or termination of parental rights hearing;

(4) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, in the possession or control of the child's guardian *ad litem* or attorney, which the child's guardian *ad litem* or attorney intends to introduce in evidence at the adjudicatory hearing or termination of parental rights hearing or which were prepared by a witness whom the child's guardian *ad litem* or attorney intends to call at the adjudicatory hearing or termination of parental rights hearing; and

(5) a list of the names and addresses of the witnesses the child's guardian *ad litem* or attorney intends to call at the adjudicatory hearing or termination of parental rights hearing, together with any recorded or written statement made by any identified witness.

B. Examining, photographing or copying evidence. The parties may examine, photograph or copy any material disclosed pursuant to Paragraph A of this rule.

C. Information not subject to disclosure. Except as to scientific or medical reports, this rule does not authorize the discovery or inspection of:

(1) reports, memoranda or other internal defense documents made by the child's guardian *ad litem* or attorney in connection with the investigation or defense of the case;

(2) statements made by the child to the child's guardian *ad litem* unless such statements contradict prior statements made by the child in connection with any allegation of abuse or neglect; or

(3) statements made by the child to the child's attorney.

D. Certificate. The child's guardian *ad litem* or attorney shall file with the clerk of the court at least ten (10) days prior to the adjudicatory hearing or termination of parental rights hearing a certificate stating that all information required to be produced pursuant to Paragraph A of this rule has been produced, except as specified. The certificate shall contain an acknowledgment of the continuing duty to disclose additional information. If information specifically excepted from the certificate is furnished by the child's guardian *ad litem* or attorney after the filing of the certificate, a supplemental certificate shall be filed with the court setting forth the material furnished. A copy of the certificate and any supplemental certificate shall be served on the parties.

E. Failure to comply. If the child's guardian *ad litem* or attorney fails to comply with any of the provisions of this rule, the court may enter any order pursuant to Rule [10-137](#) NMRA or Rule [10-165](#) NMRA. [N.M. Sup. Ct. R. 10-333.](#)

	<p>- A. Prior to a child's reaching seventeen years of age, the department shall meet with the child, the child's attorney and others of the child's choosing, including biological family members, to develop a transition plan. The department shall assist the child in identifying and planning to meet the child's needs after the child's eighteenth birthday, including housing, education, employment or income, health and mental health, local opportunities for mentors and continuing support services.</p> <p>B. The department shall present the child's proposed transition plan to the court at the first hearing scheduled after the child's seventeenth birthday.</p> <p>C. The court shall order a transition plan for the child. The transition plan approved by the court shall be reviewed at every subsequent review and permanency hearing. Children's Code 32A-4-25.2.</p>
<p>3. In Court - Active Participation in Hearings: <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>- The Youth Attorney is responsible for representing the <i>expressed wishes</i> 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:</p> <p>...</p> <ul style="list-style-type: none"> • actively participates in all hearings and related events; <p>...</p> <ul style="list-style-type: none"> • communicates to the court the client's position on the treatment plan, the client's placement, and the client's goals <p>...</p> <p>Advocacy & Legal Representation in Child Abuse & Neglect Cases, written by the New Mexico Supreme Court Improvement Project Task Force.</p> <p>- 6. <u>COURT PERFORMANCE STANDARDS</u></p> <p><i>After consultation with the youth/client:</i></p> <ul style="list-style-type: none"> • 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 for Court-Appointed Attorneys in Child Abuse & Neglect Cases](#), adopted by the New Mexico Supreme Court.

- D. After consultation with the child, a guardian ad litem shall convey the child's declared position to the court at every hearing.

E. Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall:

...

(7) report to the court on the child's adjustment to placement, the department's and respondent's compliance with prior court orders and treatment plans and the child's degree of participation during visitations; and

(8) represent and protect the cultural needs of the child.

...

H. A guardian ad litem shall receive notices, pleadings or other documents required to be provided to or served upon a party. A guardian ad litem may file motions and other pleadings and take other actions consistent with the guardian ad litem's powers and duties...

[Children's Code 32A-1-7.](#)

- 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;

	<ul style="list-style-type: none"> ○ 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. <ul style="list-style-type: none"> • 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. <p><u>Performance Standards for Court-Appointed Attorneys in Child Abuse & Neglect Cases</u>, adopted by the New Mexico Supreme Court.</p>
<p>4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders.</p>	<p>- The GAL is responsible for representing the child’s <i>best interests</i>. 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:</p> <p>...</p>

	<ul style="list-style-type: none"> • monitors implementation of court orders and the treatment plan. Advocacy & Legal Representation in Child Abuse & Neglect Cases, written by the New Mexico Supreme Court Improvement Project Task Force. <p>- The Youth Attorney is responsible for representing the <i>expressed wishes</i> 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:</p> <p>...</p> <ul style="list-style-type: none"> • monitors implementation of court orders and the treatment plan. Advocacy & Legal Representation in Child Abuse & Neglect Cases, written by the New Mexico Supreme Court Improvement Project Task Force. <p>C. The children's court attorney shall give notice to all parties, including the child by and through the child's guardian ad litem or attorney, the child's CASA, a contractor administering the local substitute care review board and the child's foster parent or substitute care provider of the time, place and purpose of any judicial review hearing held pursuant to Subsection A or B of this section (requiring such hearings to occur within 60 days of disposition, within 60 days of each permanency hearing, within 60 days of a TPR and every six months thereafter).</p> <p>D. At any judicial review hearing . . . the department, the child's guardian ad litem or attorney and all parties given notice pursuant to Subsection C of this section shall have the opportunity to present evidence and to cross-examine witnesses. . .</p> <p>Children’s Code 32A-4-25.</p>
<p>5. <i>Appellate Advocacy:</i> <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p>- A. Any party may appeal from a judgment of the court to the court of appeals in the manner provided by law. . .</p> <p>D. A child who has filed notice of appeal shall be furnished a transcript of the proceedings, or as much of it as is requested, without cost upon the filing of an affidavit that the child or the person who is legally responsible for the care and support of the child is financially unable to purchase the transcript.</p> <p>Children’s Code 32A-1-17.</p> <p>- 3.</p> <ul style="list-style-type: none"> • 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;

	<ul style="list-style-type: none"> Whenever an appeal is taken, the YA enters an appearance and YA representation continues through any appellate proceedings unless representation is otherwise arranged. Performance Standards for Court-Appointed Attorneys in Child Abuse & Neglect Cases, adopted by the New Mexico Supreme Court.
<p>6. Cessation of Representation: <i>Contacts post representation, if any.</i></p>	<p>- E. When a child reaches fourteen years of age, the child's guardian ad litem shall continue as the child's attorney; provided that the court shall appoint a different attorney for the child if:</p> <ol style="list-style-type: none"> (1) the child requests a different attorney; (2) the guardian ad litem requests to be removed; or (3) the court determines that the appointment of a different attorney is appropriate. Children's Code 32A-4-10. <p>- B. Unless excused by a court, a guardian ad litem appointed to represent a child's best interests shall continue the representation in any subsequent appeals. Children's Code 32A-1-7.</p> <p>B. Unless excused by a court, an attorney appointed to represent a child shall represent the child in any subsequent appeals. Children's Code 32A-1-7.1.</p> <p>- B. Withdrawal from continued representation.</p> <ol style="list-style-type: none"> (1) An attorney representing siblings has an ongoing duty to evaluate the interests of each sibling and assess whether there is a conflict of interest. (2) It is not necessary for an attorney to withdraw from representing some or all of the siblings if there is merely a possibility that a conflict of interest will develop. (3) If an attorney believes that a conflict of interest existed at appointment or has developed during representation, the attorney must take the necessary action to ensure that the siblings' interests are not prejudiced. Such action may include notifying the court or requesting to withdraw. (4) If an actual conflict of interest arises, and one or more siblings fourteen (14) or over and represented by the attorney will not waive the conflict or the continued representation of all of the siblings by the same attorney is not in the interest of the younger siblings, the attorney may continue to represent one or more siblings if each of the following conditions is met: <ol style="list-style-type: none"> (a) the attorney has successfully withdrawn from the representation of the siblings whose interests conflict with those of the sibling or siblings the attorney continues to represent; (b) the attorney has exchanged no confidential information relevant to the conflicting issue with any sibling whose interests conflict with those of the sibling or siblings the attorney continues to represent; and (c) continued representation of one or more siblings would not otherwise prejudice the other sibling or siblings formerly represented by the attorney. N.M. Sup. Ct. R. 10-313.1. <p>- 3.</p>

	<ul style="list-style-type: none"> • 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. <p>Performance Standards for Court-Appointed Attorneys in Child Abuse & Neglect Cases, adopted by the New Mexico Supreme Court.</p>
	Organizational and Administrative Supports for the Child Representative
7. General Representation Rules: <i>Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</i>	<p>Each Judicial District enters into contracts with attorneys to serve as GALs and Youth Attorneys, using state funds appropriated to the court system. Occasionally the court may appoint an attorney in a given case who does not have a contract.</p>
8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i>	<p>- A. A person who serves as a judge, prosecutor, child's attorney, guardian ad litem, treatment guardian, court appointed attorney, court appointed special advocate, foster parent, mental health commissioner or mental health treatment service provider for a child subject to an abuse or neglect petition, a family in need of services petition or a mental health placement shall receive periodic training, to the extent of available resources, to develop his knowledge about children, the physical and psychological formation of children and the impact of ethnicity on a child's needs. Institutions that serve children and their families shall, considering available resources, provide similar training to institutional staff.</p> <p>B. The training shall include study of:</p> <ol style="list-style-type: none"> (1) cross-cultural dynamics and sensitivity; (2) child development; (3) family composition and dynamics; (4) parenting skills and practices; (5) culturally appropriate treatment plans; and (6) alternative health practices. Children's Code 32A-18-1.

	<p>- GALs and youth attorneys must complete a minimum of ten hours of annual continuing legal education in the following areas:</p> <ul style="list-style-type: none"> o Relevant federal and state laws and agency regulations; o Relevant court decisions and court rules; o Court process and key personnel in child and family related litigation; o Applicable guidelines and standards for representation; o Child development needs and abilities; o Family dynamics and dysfunction including substance abuse and the use of kinship care; o 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 o 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. <p><u>Performance Standards for Court-Appointed Attorneys in Child Abuse and Neglect Cases, adopted by the New Mexico Supreme Court.</u></p>
<p>9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i></p>	<p>The New Mexico Administrative Office of the Courts solicits proposals from attorneys to serve as GALs and Youth Attorneys. Attorneys propose a fee structure in their bids. Preference is given to proposals that use a flat-fee structure. <u>New Mexico Administrative Office of the Courts, Request for Proposals at 11.</u></p> <p>- A. The following expenses shall be a charge upon the funds of the court upon their certification by the court:</p> <ol style="list-style-type: none"> (1) reasonable compensation for services and related expenses for counsel appointed by the court; (2) reasonable compensation for services and related expenses of a guardian ad litem or a child's attorney appointed by the court; and (3) the expenses of service of summonses, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Children's Code. <p>B. The court may order the parent or other person legally obligated to care for and support a child to pay all or part of the costs and expenses pursuant to Subsection A of this section when:</p> <ol style="list-style-type: none"> (1) the child has been found to be a delinquent child, a child of a family in need of court-ordered services, an abused or neglected child or a child with a mental illness or a developmental disability; (2) the parent or other person legally obligated to care for and support a child is given notice and a hearing to determine the parent or person's financial ability to pay the costs and expenses; and

	<p>(3) the court finds that the parent or person is able to pay all or part of the costs and expenses. Unless otherwise ordered, payment shall be made to the court for remittance to those to whom compensation is due or, if costs and expenses have been paid by the court, to the court for remittance to the state. The court may prescribe the manner of payment.</p> <p>- The court may order the department to pay attorney fees for the child's guardian ad litem or attorney if:</p> <p>A. the child is in the legal custody of the department;</p> <p>B. the child's guardian ad litem or the child, through the child's attorney:</p> <p>(1) requests in writing that the department move for the termination of parental rights;</p> <p>(2) gives the department written notice that if the department does not move for termination of parental rights, the guardian ad litem or the child, through the child's attorney, intends to move for the termination of parental rights and seek an award of attorney fees;</p> <p>(3) successfully moves for the termination of parental rights; and</p> <p>(4) applies to the court for an award of attorney fees; and</p> <p>C. the department refuses to litigate the motion for the termination of parental rights or fails to act in a timely manner. Children's Code 32A-4-30.</p>
<p>10. Caseload Levels: Caseloads are of a manageable size.</p>	<p><i>No explicit legal authority or requirement.</i></p>