

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
DUTIES AND RESPONSIBILITIES OF) Administrative Order
APPOINTED COUNSEL AND) No. 2015 - 40
GUARDIANS AD LITEM FOR PARENT)
REPRESENTATION IN DEPENDENCY)
CASES)
_____)

In 2009-2010, an ad hoc committee of the Committee of Juvenile Courts (COJC) met to develop attorney standards for court-appointed counsel and guardians ad litem who represent children in dependency cases. The standards were developed and considered and eventually *Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem for Child Representation in Dependency Cases* were adopted by Administrative Order No. 2011-16 on January 31, 2011. The Arizona Supreme Court adopted Rule 40.1 Duties and Responsibilities of Appointed Counsel and Guardians ad Litem on September 1, 2011, with an effective date of January 1, 2012.

In the course of the discussions about attorney standards for child representation, a recommendation was made to draft attorney standards for parent representation. At that time, the priority was to address child-representation standards. In December 2013, the Dependent Children’s Services Division, with the support of COJC, created a workgroup of stakeholders to commence a project to develop attorney standards (Standards) for parent representation. The workgroup worked throughout 2014 to develop draft Standards.

The draft Standards for parent representation were first presented to the COJC on May 22, 2014. The COJC approved sending “the parent representation standards draft out for comment and move on to AJC for further action.” The standards were distributed for comment over a six-week period, which ended on July 31, 2014. The Committee considered the comments and made some adjustments based on comments received. The revised Standards were then presented again to the COJC on February 12, 2015. The COJC approved “the Parent Representation Standards as best practices guidelines to be used in attorney training and forward them to the AJC to consider supporting their implementation as Standards through an Administrative Order by the Chief Justice and support filing a rule petition to have them subsequently implemented through Court Rule.”

The Superior Court Presiding Judges met on March 25, 2015, and the Standards were presented for discussion. Discussion ensued, a few modifications were made, and the Presiding Superior Court Judges passed a motion to “support approval of the general concept of the standards to the Arizona Judicial Council.”

The Arizona Judicial Council met the following day, March 26, 2015 and approved the “...attorney standards for parent representation with changes approved by the Superior Court Presiding Judges as best practices and implement through Administrative Order and eventually Court Rule.”

Due to the Supreme Court’s schedule for the consideration of rules, the earliest a rule could be adopted and effective is September, 2016. 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 Court Appointed Counsel and Guardians Ad Litem for Parent Representation in Dependency Cases, which shall become effective July 1, 2015. 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 parent in any dependency matter in the State is exempt from the introductory (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 Court Appointed Counsel and Guardians ad Litem for Parent Representation in Dependency Cases.

Dated this 7th day of May, 2015

SCOTT BALES
Chief Justice

Attorney Standards for Parent Representation

Pursuant to Article VI, Section 3, of the Arizona Constitution, the following Best Practice Standards for Dependency Cases (the Standards) are issued under the authority of the Supreme Court of the State of Arizona. All attorneys who represent parents and all attorneys appointed as guardian ad litem for parents in dependency cases in the State of Arizona must adhere to these Standards. Privately retained attorneys must become familiar with these Standards. In developing the Standards, the Court considered input from system partners in attendance at the *Hearing Their Voices – A Discussion About Parent Representation Symposium* that was held September 26, 2013, best practices within Arizona, and well-accepted standards developed by nationally recognized organizations. In particular, the standards for representation outlined in the American Bar Association’s *Standards for Parent Representation*, and the *Resource Guidelines* published by the National Council for Juvenile and Family Court Judges were instructive in developing the Standards for Arizona. In addition to adhering to the Standards for Dependency, Arizona attorneys and guardians ad litem should be familiar with and consult these national standards and references to ensure the highest standard of practice in this important area of the law.

Arizona Courts have broad discretion in enforcing the Standards and to impose sanctions when appropriate. Attorneys providing representation in Arizona may also be subject to sanctions under the Arizona Rules of Professional Conduct for failure to adhere to the Standards. Sanctions may include the removal of the attorney or guardian ad litem from a particular case or from representation of parents for a period of time.

- A. The attorney must promptly identify any potential and actual conflicts of interest that would impair his or her ability to represent the parent. The attorney must, if necessary, move to withdraw. An attorney must not accept more cases than he or she can ethically handle.
- B. The attorney must inform the parent of the attorney’s role and ethical obligations, including the concepts of privilege and confidentiality.
- C. The attorney must review the allegations of the dependency petition and explain to the parent the nature of the proceedings including terminology, timelines and courtroom protocol, his or her legal rights regarding the dependency action, various parties and participants associated with the action, ways that the parent can affect case outcomes, consequences of the parent not attending hearings, and possible consequences of being placed on the DES Central Registry.
- D. The attorney must explain all requirements outlined in the case plan and court orders.
- E. The attorney must, as required, participate in discovery, file pleadings, subpoena witnesses, provide the parent with disclosure and court documents and develop the parent’s position for each hearing. The attorney must ensure the court is notified when an interpreter is needed. If a parent is incarcerated, the attorney must ensure that the proper notice or motion is filed with the court in order for the parent to participate in the hearing.

The duties of the attorney include advocating for appropriate services for the parent and explaining the procedural and substantive status of their case.

- F. The attorney must communicate with the parent before the preliminary protective hearing, if possible or soon thereafter. The attorney must establish procedures for regular communication with a client. Prior to every substantive hearing, the attorney must communicate with the parent and must reply to communications from a client in a timely manner.
- G. Attorneys must be familiar with the child and public welfare systems, and community-based organizations serving parents and how services are accessed. Examples of such services are behavioral health, substance abuse treatment, domestic violence services, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification and permanency services.

Attorneys must be familiar with the substantive juvenile law. Attorneys must stay abreast of changes and developments in relevant federal and state law and regulations, Rules of Procedure for the Juvenile Court and case law. Attorneys must 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 for good cause shown and an additional two (2) hours within the first year of practice in juvenile court. All attorneys must complete at least eight (8) hours each year of education and training specifically on juvenile law and related topics such as child welfare policy and procedures, substance abuse and addiction, mental illness and treatment options, psychological evaluations (how to read), domestic violence, the effects of trauma, cultural awareness, social issues surrounding families involved in the dependency process, motivational interviewing, child and adolescent development, (including infant/toddler mental health), the effects of parental incarceration, the Indian Child Welfare Act, parent and child immigration issues, the need for timely permanency, and other training 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 must provide the presiding judge of the juvenile court 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 parent 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 must 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 must file annually an affidavit with the presiding judge of the juvenile court certifying their compliance with this section. Such affidavit must be filed concurrently with the affidavit of compliance with State Bar MCLE and must 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.