

Honorable Sarah R. Simmons
Presiding Juvenile Court Judge
Pima County Juvenile Court
Chair, Committee on Juvenile Courts
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ARIZONA SUPREME COURT

In the matter of :)
)
PETITION TO ADD RULE 40.1,) Supreme Court No. R-11-____
DUTIES AND RESPONSIBILITIES) (Request for Modified
OF APPOINTED COUNSEL AND) Comment Period
GUARDIANS AD LITEM)
_____)

I. Background and Purpose of the Proposed Rule Amendments and New Rules.

Members of the Commission on Victims in the Courts (COVIC), the Committee on Juvenile Courts (COJC), as well as child welfare stakeholders and community partners have long realized the need to promote practice standards for attorneys and Guardians ad Litem representing children in the child welfare system and the need to support the 2003 Child Abuse Prevention and Treatment Act (CAPTA) reauthorization that promotes higher quality representation for children in care and bars the appointment of untrained or poorly trained court-appointed representatives for children.

In December 2002, the Court Improvement Project Advisory Workgroup created draft attorney representation standards and presented these to the Arizona Judicial Council (AJC). AJC accepted the standards and authorized development of training curriculum based on the standards. Attorneys were trained throughout the state and these standards were incorporated into their training.

In 2008 and 2009, a subgroup of COVIC worked on draft standards for attorneys representing children in court. The draft standards were discussed and distributed with the eventual presentation of a Rule Petition to the AJC on December 2, 2008. The AJC voted to support the concept of attorney standards in juvenile dependency cases, but not authorize the filing of the rule petition (AJC minutes, December 2, 2008). On February 26, 2010, the COVIC turned the completion of the project over to the Committee on Juvenile Courts (COJC), “as the standards would ultimately impact the juvenile court and the children it serves” (COJC Minutes, February 26, 2010). On February 26, 2010, the Committee on Juvenile Courts voted to refer the draft attorney standards to the Court Improvement Advisory Committee to form a committee to develop a set of standards and report back to the COJC (COJC Minutes, February 26, 2010).

The Court Improvement Advisory Committee created an Ad Hoc Work Group, The Attorney Standards for Child Representation Committee. The Committee first met on March 30, 2010 and was composed of The Honorable Sarah Simmons, Chair, (Presiding Judge, Juvenile Court, Pima County, now Chair of the Committee on Juvenile Courts), The Honorable Robert Brutinel (Presiding Judge and Juvenile Presiding Judge Yavapai County, former Chair of the Committee on Juvenile Courts, and newly appointed Justice of the Arizona Supreme Court), The Honorable Richard Weiss, (Presiding Judge and Juvenile Presiding Judge Mohave County), The Honorable Dawn Bergin, (Judge, Juvenile Court Maricopa County), The Honorable Eileen C. Bond, (Judge Pro Tem Yavapai County), The Honorable Patricia Trebesch (former Assistant Attorney General, newly appointed Judge Pro Tem in Yavapai County), John Phelps (CEO and Executive Director, State Bar of Arizona) and attorneys David Kovalik (Pima), Kasey Coughlin (Pima), Jennifer Jordan (Yavapai), Carolyn Morescki (AG’s Office), Melissa Puett (Mohave), William Owsley (Maricopa), and public members Beth Rosenberg, Director of Child Welfare

and Juvenile Justice (Children's Action Alliance) and Maria Hoffman, Director, Legislative Office of Family Advocacy.

The Attorney Standards for Child Representation Committee met several times during 2010, bringing the committee's proposed standards to the COJC on September 17, 2010. The COJC voted to "approve the attorney standard[s] as presented, that an administrative order from the Chief Justice of the Supreme Court be requested, and to distribute them for comment" (COJC minutes, September 17, 2010). On October 1, 2010, these draft standards were presented to COVIC. From September 27, 2010 until close of business November 8, 2010 the standards were distributed for comment. (Please see Appendix A for distribution list.) The proposed standards were presented to the AJC on December 7, 2010. The AJC approved the proposed attorney standards in dependency cases as presented.

II. Contents of the Proposed Rule Amendments and New Rules.

The proposed new rule establishes Duties and Responsibilities for attorneys and guardians ad litem. (Please see Appendix B for complete text of the proposed rule.)

III. Pre-Petition Distribution and Comment.

Comments to the petition could not be obtained due to the need to file the petition by January 10, 2011. While the standards were approved by the AJC on December 7, 2010, the intervening holidays, staff vacations and mandatory furlough day did not permit comment other than that which is described in Section I. Background and Purpose of the Proposed Rule Amendments and New Rules.

“APPENDICES”

Appendix A

Distribution List

1. General notice to all AZ lawyers via ELegal (the State Bar's bi-weekly electronic newsletter)
2. State Bar Committees:
 - a. Professionalism
 - b. Ethics
 - c. CLE
 - d. MCLE
3. State Bar Sections:
 - a. Family Law
 - b. Juvenile Law
4. Maricopa County Bar
5. Pima County Bar
6. Pima County Contract Attorneys
7. Pima County Office of Children's Counsel
8. Yavapai Juvenile Defense Attorneys
9. State bar of AZ Board of Governors
10. COVIC – Committee on Victims in Court
11. Child & Family Protection Division Appeals Team Office of AZ AG's Office
12. Children's Action Alliance Newsletter (goes to about 6,000 people across the state)
13. AZ Association for Foster & Adoptive Parents
14. Department of Economic Security
15. Foster Care Review Board Volunteers
16. Court Appointed Special Advocates
17. Court Improvement Website

Appendix B

Rule 40.1 Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment

All attorneys and guardians ad litem appointed to represent children in dependency cases in the State of Arizona shall adhere to this rule. Privately retained attorneys shall become equally familiar with this rule. In developing the Standards on which this rule is based, the Court considered 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 Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, the National Association for Counsel for Children's *Revised Version of the ABA Standards*, 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 this rule, 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 shall have broad discretion in enforcing this rule 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 rule. Sanctions may include the removal of the attorney or guardian ad litem from a particular case or from representation of children for a period of time.