

Hearing Their Voices

Children and Their Legal Representation in the Dependency Court



My Life is Golden
Valerie, age 14

Children's Action Alliance

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Children's Action Alliance (CAA) is a non-profit, non-partisan organization dedicated to promoting the well-being of all of Arizona's children and their families through research, policy development, media campaigns and advocacy.

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Introduction¹

Arizona Juvenile Courts play a critical role in the lives of abused and neglected children when they enter foster care. The court processes for these cases are called dependency proceedings because children who ultimately need the protection of the court are deemed "dependent children." Many decisions in a dependent child's life from the time of entry into foster care to the moment of departure from the system are overseen by the court. Courts determine whether children will enter foster care, how often they will be moved from placement to placement once they enter care, whether they will see their siblings and other family members while in care, when they will leave the system, and where they will go once they leave.

Because dependency cases deal with ongoing and changing situations over an extended period of time, the court does not simply make a one-time decision concerning the care, custody, and placement of a child, but rather makes a series of decisions over time. In effect, step-by-step, the judge must determine how best to assure the safe upbringing of the child, assess changes in parental behavior and ensure that the child is eventually placed in a safe and permanent home. These decisions govern the lives and futures of the children and their parents. Who participates in court hearings and what information the court receives is critical in the decision-making process.

National Recommendations

The Pew Commission on Children in Foster Care recommended:

A strong voice for children and parents in court and effective representation by better trained attorneys and volunteer advocates

The Pew Commission on Children in Foster Care² was a national, nonpartisan panel funded by The Pew Charitable Trusts and composed of leading experts in child welfare. The Commission studied the dependency court system and in its 2004 final report concluded that the court system lacks sufficient tools, information, and accountability necessary to move children swiftly out of foster care and into permanent homes. One significant finding was that children lack a strong, effective voice in the court decisions that affect their lives. The Pew Commission stressed the value and importance of the representation of youth and parents in the legal process and recommended that children and their parents should have effective representation in the courtroom, through well-qualified attorneys, highly trained special advocates, and the ability to participate meaningfully in court proceedings themselves. As noted by the Pew Commission:

The decisions made in dependency court every day have powerful and life long implications for children and families. No child or parent should face the partial or permanent severance of familial ties without a fully informed voice in the legal process. Even when less shattering decisions are made, judges need to hear from the people who will be most affected by their decisions ---- children, parents, siblings, and other relatives, foster and adoptive parents.³

The youth voice in court is critical, but often depends on the legal representative who is appointed to act as the voice for the child. Numerous other Commissions, Associations and reports⁴ have recommended guidelines for a child's legal representative. These emphasize that a child's legal representative:

- Should be knowledgeable in legal and substantive child welfare and related matters, and should have regular continuing training to maintain currency.
- Should have early, frequent and meaningful contact with the client, at a minimum, prior to each hearing.
- Should explain and counsel the child concerning the issues of the court case, the child's rights, the court system, the proceedings, the legal representative's role in the court case, confidentiality and privilege, the possible outcomes of each hearing and the consequences of the child's participation or lack thereof.
- Should investigate the case, obtain and review all appropriate documentation, interview individuals involved with the child, attend all treatment, placement, administrative and court hearings involving the child's legal interest, request additional services as needed, and participate fully in the negotiation of agreements and settlements.⁵
- Should act diligently and expeditiously to reduce delay to permanency; and should act as an attorney would toward any client by participating in all aspects of the proceedings and developing and implementing legal strategies to achieve the client's goals.⁶

This report compares actual practice in Arizona to best practices for children. The report highlights the results of a national survey, related federal and state laws, Arizona court practices and the recommendations of Arizona foster youth. It also includes a description of some emerging steps to improve practice in Arizona. The report concludes with recommendations to enhance the youth voice and representation in Arizona's dependency courts.

"We have all had hearings in court. Everyone in court talks about you and makes decisions about you. Our thought was we would not want you to be there and get upset. However, we have deprived ourselves of those who know best."

The Honorable Patricia Escher, Presiding Juvenile Court Judge, Pima County
Commenting to foster youth at the 2006 Arizona Foster Youth Conference.

National Home at Last Survey

The *Home at Last Project*, a national outreach and education effort supported by the Pew Charitable Trusts, conducted national surveys in 2006 to explore perceptions and practices regarding youth participation in court. The surveys included questions about how often and when it might be appropriate for youth to attend court proceedings. The surveys show that both the opportunity to participate in court and the nature and quality of that participation affect a dependent child's experience.

Findings of the foster youth survey include:

- While youth would like to attend their dependency court hearings, they often do not do so.
- More than 1 in 4 foster youth respondents say they never attended their court hearings and 3 in 5 report that they attended court hearings only some of the time or less.
- Many of the youth respondents who attended their dependency court hearings believe their presence in court yielded real benefits and that these benefits would have been more pronounced if they had been present in court more often.
- Some youth perceive these benefits as stemming from the active role they were able to have in the decisions being made about their lives – they were involved in the process and were voicing their opinions.
- Other respondents report taking a more passive role in the proceedings, but felt that they nonetheless benefited from their ability to hear and see what was going on.
- Nearly one quarter (23%) of foster youth respondents reported that attending their court hearings was not helpful; they were unable to understand what was happening (either due to their age or the complexity of the proceedings) or they felt their voices were not really being heard.
- Some youth respondents reported that the hearings were inhospitable to children – there were long periods of waiting, youth needed to miss school to attend, and judges, attorneys and others in the hearings used language and acronyms that foster youth did not understand.

“Make sure children are aware and given the option to attend all hearings and to listen to their voice. Also have someone explain everything to the youth.”

Foster Alumni, age 20, *Home At Last* National Survey

There was also a *Home at Last* survey of child welfare professionals that found:

- Respondents believed that children should be in court at least some of the time.
- Just 8% of the respondents said that youth should always be present.
- The vast majority of respondents reported that children's presence should be based on a number of factors --- most importantly, the child's age and maturity level.
- Respondents had a clear sense that older children, who are better able to understand the proceedings and less apt to be bored or disruptive, should be present at their hearings more than younger children.

2006 Arizona Foster Youth Conference

More than 70 Arizona youth in foster care gathered for three days in July 2006 to brainstorm ideas and identify policy recommendations to improve the juvenile court and child welfare system processes.

Findings: It was clear from discussions and presentations at the youth conference that many foster youth in Arizona had experiences similar to the national youth survey findings. The youth attending the conference were generally over the age of 16, but many shared that they did not know who their legal representatives were, did not often speak with their legal representatives, did not have contact information for them and often did not attend court hearings. The youth who did have a strong legal representative and good court experiences believe that it made a positive difference in their lives in foster care.

Conference Recommendations

The recommendations⁷ on court practice include:

- The court system should track every case because each one is important and involves a child's future.
- Judges should meet with youth to know who they are because case files do not tell the whole story.
- Before making decisions, listen to the youth about where they want to live and what they want to do (sports, clubs, etc.)
- Incorporate a foster youth's goals and plans into any decision made by a judge or lawyer that has an effect on a youth's future.
- Inform youth about who is representing them in court.
- Make certain youth know how to get in contact with their attorney.
- Require lawyers to show more interest in youth and speak with them often and for more than 5 minutes at a time.
- Allow youth the choice of whether to attend court hearings.
- Allow youth at age 15 to speak in court on their own behalf.
- Assign youth a mentor or advocate for court related activities.
- Allow youth to choose who is in court with them.
- Ask youth about their goals and encourage them to succeed.
- Require caseworkers to indicate positive achievements in a youth's case file.
- Allow other people to submit information and items for a youth's case file in addition to the caseworker.
- Allow youth to see certain portions of their case files.

Following the Foster Youth Conference, Children's Action Alliance in coordination with the Administration of the Courts (AOC) and the Arizona Department of Economic Security (ADES), worked with youth in foster care and foster care alumni to develop, ***Getting from Here to There: A Guide to the Dependency Court for Children and Youth in Foster Care.***

This Guide provides information for youth about the dependency court process and their rights and responsibilities in court. It is intended that the Guide be distributed statewide by AOC and ADES to foster youth, judicial officers, legal representatives, caregivers, ADES and AOC staff and volunteers (i.e., Foster Care Review Board (FCRB) and Court Appointed Special Advocates (CASA)).

The Guide can be viewed on -line at <http://www.azchildren.org/MyFiles/PDF/GuidetoDependency.pdf> and <http://www.supreme.state.az.us/dcsd/improve/docs/guidetodependency.pdf>

Appointment of Legal Representation for Children in Dependency Court

The Law:

To be eligible to receive a child abuse and neglect prevention and treatment program grant, the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 USC §5106a(b)(2)(A)⁸, requires assurance that the state has:

(xiii) provisions and procedures in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings ---

- (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
- (II) to make recommendations to the court concerning the best interests of the child.

This is one of more than 21 CAPTA requirements that Arizona's Governor must certify is in place in order to receive federal CAPTA funds. Arizona is in compliance with this CAPTA requirement as by state law and juvenile court rule every child who is the subject of a dependency petition must be assigned a guardian ad litem (GAL) "to protect the child's best interests."^{9,10,11}

In Arizona, the CAPTA requirement for a guardian ad litem is satisfied by one of the following:

- (1) An **attorney** acting as an attorney representing the child's wishes.¹⁵

The role of "attorney" is always to represent the wishes of the child client, and an attorney has a **privileged** relationship with the child. Attorneys for children have the same duties and obligations to their child client that they would have to an adult client.¹⁶ This includes the duty to explain the nature of the proceedings to the client; to explain "privilege" and "confidentiality"; to keep the client apprized of the progress of the proceeding, including hearing dates, what is expected to happen at each hearing, and explaining what did happen at each hearing. The attorney must explain the alternatives available to the client to achieve their goal¹⁷ and, most importantly, the attorney has a duty to abide by the client's wishes with regard to the objectives of the proceeding¹⁸ and to use "reasonable diligence and promptness"¹⁹ in representing the client's wishes.

- (2) An **attorney appointed as a guardian ad litem** and making recommendations to the court as to the child's best interests.²⁰

The role of a "guardian ad litem" is to protect the best interests of the child and to present to the court what they believe to be the child's best interest - not the child's wishes. Although the dependency proceeding itself is confidential,²¹ **no privilege** exists regarding information obtained by or about the child.

Although the GAL could be an attorney or a Court Appointed Special Advocate (CASA), the individual appointed is usually an attorney and many of the duties are necessarily the same as an attorney. However, the relationship is that of GAL and client, not attorney and client. There is no "privilege" when an attorney is appointed as a GAL for a child.

"Confidential" means that the court, parties, attorneys, the investigating agency, etc. may not reveal personally identifying information about the persons involved in the case to individuals who are not involved in the case.¹² Violation of confidentiality may be considered contempt of court and/or a criminal act.¹³

"Privilege" means that the attorney cannot reveal information about the client without the client's specific permission - with certain limited exceptions such as the need to prevent the commission of a crime.¹⁴ Violation of privilege could lead to a State Bar of Arizona disciplinary action against the attorney.

The GAL will be responsible for explaining the proceeding to the child client, notifying the child of hearing dates and what is expected to happen at each hearing, and explaining what did happen at each hearing. The GAL must also explain to the child the difference between the confidentiality of the proceeding, and “privilege”, and must specifically explain that, although the GAL may be an attorney, there is no privilege between them and the child.²² The GAL should also explain to the child that as a GAL they present to the court what they believe to be in the child’s best interest, this may not be necessarily what the child wishes.

(3) A **Court Appointed Special Advocate (CASA)** specially trained by the court but generally not a licensed attorney, making recommendations to the court as to the child’s best interests.²³

CASAs are specially trained volunteers who meet with the child and gather and provide independent, factual information to aid the court in making its decisions.²⁴ The role of the CASA is to provide written information and recommendations to the judge about the progress of the case, the needs of the child and family, an assessment of services that are or should be provided, an assessment regarding whether reasonable efforts have been made to move the child’s case to permanency, and to attend hearings to verbally advocate for the child’s best interest. If a CASA is appointed as a GAL, the role expands to include making argument before the Court, interviewing witnesses, having access to all evidence, and assisting the Court in obtaining impartial expert examinations and evidence relative to the child(ren)’s best interest. There is **no privilege** between the CASA who is appointed as GAL and the child.

The Practice Although children in Arizona’s dependency court are represented in accordance with the above options, there is no consistency in the state as to which type of advocate is assigned to represent children. Also, there are no statewide guidelines or rules for the juvenile courts to follow in making this determination.

As shown below, practices in Arizona county juvenile courts differ among counties. Sometimes the appointment practices are dependent on age or developmental level of the child. Other times assignments change based on the recommendation of the legal representative or the resources available to the court.

	Child Legal Representative Appointed at Filing of Dependency Petition	Additional Legal Representative Appointed²⁶
Apache	Attorney; GAL if child very young (under 3)	GAL if needed
Cochise	Attorney; GAL if child young (8 or under) ²⁷	GAL if requested; Attorney if needed for children who only have a GAL
Coconino	Attorney	GAL if needed
Gila	Attorney; GAL if child is very young	GAL if needed
Graham	Attorney if child is old enough to state an opinion; GAL for younger children.	GAL if needed for an older child, but rare
Greenlee	Attorney; GAL if child is very young	GAL if needed. Every child is appointed a CASA
La Paz	Attorney	GAL if requested.
Maricopa	GAL	Attorney if needed.
Mohave	Attorney	GAL if needed
Navajo	Attorney for children aged 14 and older; GAL ²⁸ for children under 14	GAL if needed for older child
Pima	Attorney	GAL if needed for older child, but rare
Pinal	Attorney; GAL if child is very young	GAL if needed
Santa Cruz	Attorney	GAL if needed. CASA is appointed when available.
Yavapai	Attorney	GAL if needed
Yuma	Attorney	GAL if needed.

In Maricopa County, the initial appointment for child's representative is always a GAL. In other counties, such as Pima, Coconino and Yavapai, the initial appointment is always as attorney. In still others, such as Cochise, Graham, Greenlee, Navajo and Pinal, the initial appointment may be an attorney or GAL based on the child's age and level of maturity. In these counties, a GAL may be appointed for younger children who may be considered unable to identify and express their wishes in their own self interest. This, however, does not necessarily mean a desire which the responsible adult legal representative may agree with. It simply means the ability to form and state a desire, such as: "I want to live with my mom." or "I don't want to live with Uncle Ben any more." Also in these counties, the age of when a GAL would be appointed in lieu of an attorney varies significantly.

In those counties where the initial appointment is as an attorney, the court may review the designation at a court hearing and, if it determines that the child is too young or immature to make decisions, the court will re-designate the appointment as GAL provided no privileged communication has taken place which would prevent reassignment. In other counties, the appointed attorney decides whether the child is able to make decisions and, if the attorney determines the child is not, the attorney simply acts as GAL without changing the formal designation.

In those counties in which the initial appointment is as a GAL, the court may also appoint an attorney to represent the child's wishes upon the child's or another party's request.

In those counties which initially appoint the child's representative as an attorney, a GAL may also be appointed, even for a child who is capable of making their own decisions, upon a determination by the court that the child's best interest may differ greatly from the child's desires, and that the child's best interest cannot otherwise be protected.

Arizona Ethics Opinion #86-13 states that an attorney may accept appointment as both attorney and guardian ad litem for a child in a dependency matter. "Although the lawyer's first obligation is to the minor client as the child's attorney, if there is no conflict between the wishes of the child and the 'best interests of the client' the lawyer may also act in the capacity of guardian ad litem."²⁹ If the attorney determines that the child's wishes and best interest differ, the attorney may assume the role of attorney, but must request the appointment of another GAL.

An attorney is also allowed by the Rules of Professional Conduct to request appointment of a GAL if the attorney determines that the client's "capacity to make adequately considered decisions in connection with the representation is diminished ... and the client is at risk of substantial physical, financial or other harm unless action is taken and [the client] cannot adequately act in the client's own interest..."³⁰

Most Arizona counties (Apache, Cochise, Coconino, Graham, Greenlee, Maricopa "for the most part", Navajo, Pinal and Yavapai) allow an attorney who is appointed as a GAL to also perform traditional attorney functions such as filing pleadings and calling and cross-examining witnesses. Others (Pima) do not. (Note: Pima County appoints attorneys for all children; then appoints GALs as necessary.³¹) Obviously, if the only appointed representative is a GAL, and the GAL is not allowed to perform traditional attorney functions, representation of the child's wishes may be significantly curtailed.

If a GAL determines that an attorney is needed to explain legal rights to the child, or that the child's wishes are different from what the GAL believes to be the child's best interest, or the GAL is not allowed to file pleadings or call witnesses which may be necessary to advocate for the child, the GAL should immediately request the appointment of an attorney for the child.

Whether this is the standard practice in such situations is unknown.

Every county juvenile court appoints a CASA for children in dependency matters when a CASA is available. However, there are not enough CASAs; less than 13 percent of the almost 10,000 children in out of home care have a CASA. Therefore, CASA appointments are prioritized by need, although "need" may be defined differently in different counties.

Attorney Training

The Law: Every Arizona licensed attorney is required to complete fifteen (15) hours of “continuing legal education” [CLE] each year to maintain the privilege of practicing law.³²

The Practice: There is no statewide requirement that attorneys providing legal representation for children in dependency matters have specialty training in such matters. Each county holds its own contracts with attorneys to represent children in dependency actions. Contract provisions for training and compensation are not uniform statewide. As Chart 2 depicts, some counties require that their attorneys have specialized training in child welfare and dependency issues, others do not.

Chart 2: Training Required for Child’s Legal Representative in Dependency Court

<u>Requires only State Bar minimum annual CLE (15 hours per year)</u>	<u>AOC Dependency Attorney Training³³ Required</u>	<u>AOC Dependency Attorney Training Expected</u>	<u>Other Specific Dependency Court Related Training Required</u>
La Paz (Attorneys are urged to attend AOC Dependency Training)	Graham, Greenlee, Pinal	Apache, Cochise, Coconino, Gila, Mohave*, Navajo, Santa Cruz**, Yavapai, Yuma	Maricopa (3 hours a year); Graham (3 in-house trainings with the judge a year); Pima (5 in-house court trainings a year)

* Working toward mandatory training.

** Attorneys are urged to attend AOC Dependency Training and the court is working to develop a required dependency training program.

There are CLE opportunities for child welfare and dependency court related trainings primarily in Phoenix and Tucson throughout the year. For example, the Juvenile Law Section of the Arizona State Bar presents a specialty training at each annual State Bar Convention, the location of which alternates between Phoenix and Tucson. The Section generally presents at least one additional specialty training in Phoenix and/or Tucson each year.³⁴ The Arizona Public Defenders Association provides an annual training in Phoenix which includes several specialty delinquency and dependency trainings for attorneys who are employed by county public and legal defender offices and attorneys who have contracts with the counties.³⁵

Recognizing the difficulty attorneys from rural Arizona counties face in attending trainings which were traditionally offered only in Maricopa and Pima Counties, the Arizona Supreme Court, Administrative Office of the Courts, Dependent Children’s Services Division developed a curriculum for a Dependency Attorney Training. Commencing in 2000, and about every two years since, the training has been made available without cost to attorneys and other stakeholders in each rural county in the state.

To raise attorney practice standards, Pima County has required at least a half of day training for new attorneys since 1998, and since that time the requirement to comply with court-ordered training has been incorporated into the contract issued by the County’s Office of Court Appointed Counsel. Judge Patricia Escher’s 2006 Administrative Order³⁶ requires all attorneys to complete the court’s New Contract Attorney Training before appointment to any juvenile court case, and requires each attorney to attend at least five “brown bag” training sessions provided by the court or their approved equivalent yearly.

Due to the increased attention on this issue in the last year, other courts are examining the concern about the adequacy of specialized training. Judge Richard Weiss of Mohave County states that the Mohave County Juvenile Court is moving towards mandatory training. As of October 2007, the court is recruiting core teams of attorneys for each of their three major cities, including Kingman, Lake Havasu City and Bullhead City, in an effort to conduct on-going trainings in each city.³⁷

Judge Kimberly Corsaro reports that Santa Cruz County is developing an attorney training program with help from the Pima County Juvenile Court. Currently, due to a small number of trained attorneys and case conflicts in this county, it is necessary at times for the court to appoint attorneys without specialty training.³⁸

Client Contact

The Law: All attorneys and GALs who are appointed for children in dependency proceedings are required to meet with their child client prior to the first court hearing (i.e. the preliminary protective hearing).³⁹

Children age twelve years and older are required to be notified of the periodic review hearing held at least every six months in their dependency matter. This notice is generally accomplished through the child's attorney or GAL, who receive the notice directly from the court, in court and/or via minute entry. Children do not receive the notice of hearings directly.

"The only time I got to speak to my attorney was right before court and I do not think that she was able to voice all of my concerns."

Foster Alumni, age 20
Home At Last National Survey

The Practice: Arizona juvenile courts differ in their requirements for contact between children's representatives and their child client, but every juvenile court judge expects that the attorney/GAL will have some contact with the child before each hearing. Some judges inquire of the child's representative at each hearing as to their contact with their client. Several counties require attorneys to have additional contacts such as attendance at case staffings, Child and Family Team meetings, etc.

All professional associations and the Arizona Supreme Court, Administrative Office of the Courts, Dependent Children's Services Division⁴⁰, agree that the child's representative should have early, frequent and meaningful contact with the child client; should counsel the child concerning the issues of the court cases, the child's rights, the court system, the proceedings, the representative's role in the proceeding, confidentiality and privilege, the possible outcomes of each hearing and the consequences of the child's participation or lack thereof. Getting to know the child as a person, and allowing the child to get to know and trust the representative are critical components of effective representation.⁴¹

The reality for foster youth: Although all children in Arizona's dependency court have some form of legal representation, at the 2006 Foster Youth Conference where there were youth 16 years of age and older attending, many youth indicated that they did not know who their attorney was, did not have contact information for their attorney, and often only met with their attorney for a few minutes prior to a court proceeding. Therefore, although there was a legal representative appointed, the responsibility and ability of the attorney to represent the child's desires or needs was questioned by the youth conference attendees.

"Lawyers should explain to youth all of their rights and they should meet with them more regularly."

Foster Alumni, age 20
Home At Last National Survey

Children in Court

The Law: The child who is the subject of the dependency may be allowed to attend the preliminary protective hearing “if the court finds that it is in the best interest of the child ...”⁴² Children age twelve and older are to get notice of and are permitted by statute, but not required, to attend periodic review hearings.⁴³ Children are required to attend their adoption hearing, unless the court orders otherwise,⁴⁴ and children twelve and older must consent to their adoption.⁴⁵ There is no specific requirement that children of any age be allowed to attend a contested adjudication, disposition, termination of parental rights or guardianship hearing.

The Practice: Counties differ greatly in the standard applied for children attending their own dependency hearings. Some courts require a specific, sometimes written request and specific permission from the judge for any child to attend any hearing. Some courts only allow children of a certain age, and then only with judicial permission. Other courts actively encourage children of any age to attend all hearings and encourage their foster parents, Child Protective Services worker and/or CASA to bring them whenever possible. Still other courts allow children who come to court to attend hearings, but do not actively invite or encourage such attendance. All courts will excuse the child from the proceeding when they believe it not in the child’s best interest to remain. Most all juvenile court judges will speak directly to children who do come to court - if only to inquire as to how they are doing.

Chart 3. Child’s Attendance, Notice and Participation at Court Hearings in Arizona

	May child attend court hearings?	Does the court require legal representatives to contact child before a hearing?	Are children allowed to speak to the Judge directly? ⁴⁶
Apache	Child older than age 14 may attend; under 14 years must have judge’s permission	Expects, but does not require.	Rarely
Cochise	Yes, encouraged to attend	Expects, but does not require	Yes
Coconino	Yes	Expects, but does not require.	Yes
Gila	Yes	Expects, but does not require	Sometimes
Graham	Yes, encouraged to attend	Expects, but does not require	Yes
Greenlee	Yes, encouraged to attend	Expects but does not require	Yes
La Paz	Yes, but only at the request of their attorney and with notice to the court.	Requires	Yes, and it is generally done in chambers without the attorneys but with a clerk and court reporter.
Maricopa	At Judge’s discretion	Expects, but does not require	Yes
Mohave	Yes	Expects but does not require	Yes
Navajo	Yes	Expects but does not require	Yes
Pima	Yes for child 12 and older; Child under age 12 must have court approval	Requires	Yes
Pinal	Yes	Expects but does not require. Judge asks at each hearing.	Yes
Santa Cruz	Yes, encouraged to attend	Expects but does not require	Yes
Yavapai	Yes	Expects but does not require	Yes
Yuma	Yes, but Court permission required for young children.	Expects but does not require	Yes

The Reality for Foster Youth

At the 2006 Foster Youth Conference, youth stated they do get a direct notice of hearings and often do not know when hearings are held. In fact, many youth did not know of their right to get notice and participate in Report and Review Hearings, and a good number have never attended any court hearings.

The survey conducted by the Pew Commission on Children in Foster Care, *Home at Last*, clearly reveals that youth in dependency proceedings "are often absent from or voiceless in the dependency court proceedings during which critical decisions about their lives are made."⁴⁷

Only recently have child welfare professionals come to appreciate the child's need to know what is going on in their lives and to feel some sense of control - or at least participation. Special presentations by foster youth and foster alumni to judges, administrators and other professionals around the country and in Arizona have revealed the youth's perception that their wishes and needs are not considered fully by the courts.⁴⁸

"Kids must make their voices heard. Judges make much better decisions when you tell us what you need, if you tell us what your dreams are."

The Honorable Eileen Willett, Presiding Juvenile Court Judge, Maricopa County
Commenting to foster youth at the 2006 Arizona Foster Youth Conference

Some progress has been made in the last year. For example, Judge Richard Weiss reports that the Mohave County Court is moving toward the Pinal County model where the judge asks the attorneys at each hearing whether contact with the child has been made.⁴⁹ Attorneys in that county clearly now understand that contact with the children prior to each hearing is very important to the court.

Under the leadership of Judge Eileen Willett, the Maricopa County Juvenile Court established a court orientation program for dependent youth. The intent is to empower youth to attend court and participate in the dependency court decision-making process. As part of this program, youth are brought to the courthouse and introduced to lawyers, judges, CPS caseworkers and others who actively explain their roles in the dependency process. Information and tools are shared with youth. The youth become familiar with the courtroom itself, making the decision to appear in court less intimidating. Alumni of the foster care program provide positive role models and tell of situations from their own experiences to encourage youth to have their voices heard. Currently the court has focused these opportunities on youth 12 years of age and older.

Judge Patricia Escher, Presiding Juvenile Court Judge of Pima County, established a Children's Voice Committee in 2006 which is developing guidelines for children in court. The draft Pima County Guidelines require that each child over the age of 12 be invited to all hearings, allow an attorney to request the attendance of a child under the age of 12, and provide that CPS has the responsibility for arranging transportation to hearings. The recommendations also direct each juvenile court judge to set aside one hour every other month at court to meet with each child who became part of that judge's dependency caseload in the previous 45-15 days. The interaction is intended to be informal and not to involve discussion of a child's case.

Standards and References

Uniform Standards for Legal Representation: A number of national organizations have developed uniform rules, standards, resource guidelines, technical assistance reports and publications specifically related to representation of a child in court. The primary principles of all of these Guidelines (outlined more specifically on page 2 and cited in endnote 4) include

- ♦ required knowledge and training for legal representatives
- ♦ meaningful and substantive contact with children
- ♦ full investigation of the case and
- ♦ advocating for the child's best interests including acting diligently and expeditiously to reduce delay to permanency.

The Reality: Arizona Supreme Court, Administrative Office of the Courts has published *Statewide Standards and Training Guidelines for Attorneys in Dependency Cases*, a comprehensive description of Arizona best practices. These guidelines are used as a training tool. But the standards are not mandatory unless incorporated into county contracts or required by specific courts (Apache, Pima).

Conclusions and Recommendations

Arizona Juvenile Courts play a critical role in the lives of abused and neglected children who are removed from their homes, determining whether children will enter foster care, how often they will be moved from placement to placement, whether they will see their siblings and other family members while in care, when they will leave the system, and where they will go once they leave. Professional associations, national panels of experts, and a broad field of research agree that court decisions will be strongest if youth have a meaningful voice during the process as well as effective representation by those appointed to work with them.

Arizona's laws and Supreme Court Rules of Procedure for the Juvenile Court provide a solid foundation for representation of children in the dependency court process and for participation of children in court proceedings. In 2000, the Administrative Office of the Courts, Dependent Children's Services Division developed the *Statewide Standards and Training Guidelines for Attorneys in Dependency Cases* (see Appendix 4). These standards and guidelines also provide very good direction. However, the guidelines are not mandatory statewide for either the courts or attorneys.

National surveys and discussions with foster youth in Arizona indicate that children are often not encouraged to voice their wishes and concerns during the court process. Many youth have had little understanding of the process that is shaping their future and have had little contact with the adults who represent them in court. As noted in this report, however, we have made some progress over the course of this past year. With the sharing of recommendations from the 2006 Foster Youth Conference, the discussion of these issues at judicial trainings, and the publication of *From Here to There: A Guide to the Dependency Court for Children and Youth in Foster Care*, some juvenile court judges have taken an active role to examine their county practices. Improvements are being made and more are being considered.

Nevertheless, there remains great variation around Arizona in how the laws, rules, and guidelines are applied. There are no statewide minimum requirements to train attorneys in children and youth issues, to promote adequate representation of children, or to encourage youth participation in the court process. As a result, some youth are not receiving adequate representation or the opportunity to voice their own wishes in the court process. Minimum, required standards should be put in place to assure all children receive adequate legal representation and have the knowledge and opportunity to participate in court hearings as allowed by law.

Listed below are clear steps that can be taken by the Arizona Department of Economic Security, the Arizona Supreme Court and juvenile court judges to strengthen the representation of dependent children and youth.

Recommendations for the Arizona Supreme Court

- The Arizona Supreme Court should develop more specific court rules regarding the appointment of legal representatives for children and should provide that an attorney (acting as an attorney and not as a guardian ad litem — GAL) be the *first* consideration for appointment to represent children in dependency actions. Rules should also specify a more consistent approach when a GAL should be appointed based on a child's very young age or developmental level. This should be limited to circumstances when a child is preverbal, very young or incapable of meaningful communication.

All counties, except Maricopa County, appoint attorneys for all children or children over a certain age, and then appoint attorneys or CASAs to serve as GALs as warranted based on a child's age and developmental capacity. An attorney appointment as the first consideration provides the child the strongest voice to express his or her desires in court and should be the practice statewide.

Recommendations for the Arizona Supreme Court (continued)

- The Arizona Supreme Court should adopt court rules that require minimum basic and on-going training for children's legal representatives. The rule could accept training credits through attendance in-person at approved professional conferences, professional associations or Administrative Office of the Courts (AOC) sponsored trainings, county court brown-bag lunch trainings, seminars, classes, or through AOC or county juvenile court approved alternative training opportunities, including on-line training modules.
- The Arizona Supreme Court through the AOC Dependent Children's Services Division should develop on-line Internet training and access to other Internet training opportunities and resources to allow for all attorneys representing children in the dependency court to meet mandatory specialty training requirements.
- The Arizona Supreme Court should adopt rules to ensure children, especially those over age 12, have the right to attend all court hearings. There should be a presumption that any child can attend court hearings unless the judge finds that it is not in the child's best interest (due to maturity, developmental level or subject matter).
- The Arizona Supreme Court should expand training for Juvenile Court Judges to include the developmental, social, educational, and safety needs of children in the court setting.
- The Arizona Supreme Court should develop a uniform format for describing the rights of dependent children in court and should make this available through publications and on their website.
- The Arizona Supreme Court should review the *Statewide Standards and Training Guidelines for Attorneys in Dependency Cases* and adopt rules regarding the legal representation of children in dependency proceedings, including the basic obligations of the attorney to:
 - Have initial and on-going contact with the child client. Rules should require legal representatives to meet with all children face-to-face (barring extraordinary circumstances) prior to the preliminary protective hearing and prior to every substantive hearing as well as before and after major events or changes in the child's life or case plan.
 - Have on-going communications with children regarding the legal process, their rights, their placement options, what can happen at court and what did happen at court.
 - Provide notice and discuss with children of all up-coming court hearings. Legal representatives should assure that children understand their right to participate in court proceedings, are encouraged to attend and fully understand the consequences of participating or not participating in the hearings.
 - Participate as much as possible, and at the very least monitor, non-judicial activities (i.e. meetings, case staffings, Foster Care Review Board reviews, school meetings, etc.).
- The Arizona Supreme Court should monitor the implementation of the proposed rules, once adopted, through the Administrative Office of the Courts' Operational Review process.

"I should have been able to voice my own opinion."

Foster Alumni, age 23
Home At Last National Survey

Recommendations for Juvenile Court Judges

- Presiding Juvenile Court Judges should work with county administrators to assure that county staff and contract attorneys serving as children's legal representatives are required to meet the standards and training requirements developed through the Arizona Supreme Court.
- Each juvenile court judge should ensure that all school-aged children (and their caregivers) receive in writing contact information for their assigned attorney, GAL, CASA and Child Protective Services caseworker.
- Each juvenile court judge should schedule court hearings to accommodate the school schedules of children, especially those aged 12 and older (schedule hearings for late afternoons, after school hours).
- Each juvenile court judge should encourage children to speak directly to them in court.
- As many children as possible should have a CASA, but juvenile court judges should only appoint a CASA as a GAL when the child already has an appointed attorney or is too young to voice a desire.
- At every proceeding, each juvenile court judge should ask legal representatives (attorneys, GALs, CASAs, and any other appointed representatives) and youth, if present, what contact they have had with each other.
- If youth are not present at a proceeding, each juvenile court judge should ask the attorneys whether the youth was informed of the hearing and given an opportunity to attend.
- The Presiding Juvenile Court Judge in each county should arrange periodic orientations of the court for children and make opportunities available for children to meet informally with judicial officers and other court staff.

Recommendations for the Department of Economic Security

- The Arizona Department of Economic Security should specify in policy, provider contracts, and training for caregivers that children have the right to contact their attorney at any time.
- The Arizona Department of Economic Security should ensure through policy and trainings that caseworkers and caregivers understand the rights of youth to participate in dependency court processes and encourage youth to attend court hearings.
- The Arizona Department of Economic Security should ensure that caseworkers understand that they are responsible to arrange transportation for children to court hearings.

Recommendation for the Supreme Court, Juvenile Court Judges, and the Department of Economic Security

- The courts, legal representatives, the Arizona Department of Economic Security and children's caregivers should encourage children to attend court hearings.

Appendices

and

Endnotes

Appendix 1

Individuals Providing Information for This Report

The Honorable Robert M. Brutinel, Presiding Superior Court Judge, Yavapai County

The Honorable Peter Cahill, Presiding Juvenile Court Judge, Gila County

The Honorable Kimberly Corsaro, Presiding Juvenile Court Judge, Santa Cruz County

The Honorable Robert Duber, Presiding Juvenile Court Judge, Gila County

The Honorable Patricia Escher, Presiding Juvenile Court Judge, Pima County

The Honorable Donna Grimsley, Presiding Juvenile Court Judge, Apache County

Lee Hocking, Assistant Attorney General

Donna Kostmier, Cochise County CASA coordinator

The Honorable Ann Littrell, Presiding Juvenile Court Judge, Cochise County

The Honorable Margaret McCullough, Presiding Juvenile Court Judge, Coconino County

The Honorable John Nelson, Presiding Juvenile Court Judge, Yuma County

The Honorable Dale Nielson, Presiding Juvenile Court Judge, Navajo County

Brenda Oldham, Private Attorney

William Owsley, Attorney, Office of Legal Advocate, Maricopa County

The Honorable Corey Sanders, Presiding Juvenile Court Judge, Graham County

The Honorable Monica Stauffer, Presiding Juvenile Court Judge, Greenlee County

The Honorable Peter A. Thompson, Commission, Maricopa County Superior Court

Sheila Tickle, Juvenile Court Administrator, Maricopa County Trial Courts

The Honorable Robert Weiss, Presiding Juvenile Court Judge, Mohave County

The Honorable Eileen Willett, Presiding Juvenile Judge, Maricopa County

Phyllis Yedica, Judicial Assistant, Pinal County

Appendix 2

State Statutes and Arizona Supreme Court Rules of Procedure for Juvenile Court

Regarding Representation of Children and Youth in Dependency and Termination Matters

ARS §8-221 states:

- A. In all proceedings involving ... dependency or termination of parental rights that are conducted pursuant to this title and that may result in detention, a juvenile has the right to be represented by counsel.
...
- C. Before any court appearance which may result in institutionalization or mental health hospitalization of a juvenile, the court shall appoint counsel for the juvenile ...
...
- I. In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile's best interests. This guardian may be an attorney or a court appointed special advocate.

ARS §8-522 states:

- A. The presiding judge of the juvenile court in each county may appoint an adult as a special advocate to be the guardian ad litem for a child who is the subject of a dependency action. The court shall make this appointment at the earliest possible stage in the proceedings. A child, through the child's guardian ad litem or attorney, has the right to be informed of, to be present at and to be heard in any proceeding involving the dependency or termination of parental rights.
...
- E. A special advocate shall:
...
 - 6. Meet with the child.
 - 7. Advocate for the child's safety as the first priority.
 - 8. Gather and provide independent, factual information to aid the court in making its decision regarding what is in the child's best interest and in determining if reasonable efforts have been made to prevent removal of the child from the child's home or to reunite the child with the child's family.
 - 9. Provide advocacy to ensure that appropriate case planning and services are provided for the child.
 - 10. Perform other duties prescribed by the Supreme Court by rule.
...
- G. The special advocate shall receive notice of all hearings, staffings, investigations and other matters concerning the child. The special advocate shall have a right to participate in the formulation of any agreement, stipulation or case plan entered into regarding the child. . . .

Rule 38, Rules of Procedure for the Juvenile Court states:

- A. Counsel shall be assigned to represent those persons entitled to counsel as provided by law and the Indian Child Welfare Act, from the filing of a dependency petition through the preliminary protective hearing until the court formally appoints counsel or otherwise relieves assigned counsel. Counsel is required to meet with the client prior to the preliminary protective hearing. ...
- B. The court shall order the appointment of counsel for those persons entitled to counsel and determined to be indigent, as provided by law. ...

Rule 40, Rules of Procedure for the Juvenile Court states:

- A. The court may appoint a guardian ad litem to protect the interest of the child. The guardian ad litem may be an attorney, volunteer special advocate or other qualified person.

Rule 42, Rules of the Supreme Court

Rules of Professional Conduct ER 1.14, Client with Diminished Capacity, states:

(a) When a client's capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by ER 1.6 [confidentiality of information]. When taking protective action pursuant to paragraph (b) the lawyer is impliedly authorized under ER 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interest.

Regarding the Child's Attendance at Hearing

Rule 37, Rules of Procedure for the Juvenile Court states:

A. **Parties.** Reference to a party to the action means a child, parent, guardian, . . . petitioner and any person who has been permitted to intervene

Rule 41, Rules of Procedure for the Juvenile Court states:

A. Only those persons permitted by law may attend dependency, guardianship and termination of parental rights proceedings. The court may exclude any person whose presence the court finds would impede the full and fair presentation of the evidence.

The court may limit the presence of a participant to the time of the participant's testimony if:

1. It is in the best interest of the child; or
2. It is necessary to protect the privacy interests of the parties and will not be detrimental to the child.

ARS §8-115 states:

A. The court shall hold a hearing on a petition [to adopt] filed pursuant to this article The prospective adoptive parent, the spouse of a prospective adoptive parent and the child to be adopted shall attend unless the court orders otherwise. ...

ARS §8-522 states:

B. The presiding judge of the juvenile court in each county may appoint an adult as a special advocate to be the guardian ad litem for child who is the subject of a dependency action. ... A child, through the child's guardian ad litem or attorney, has the right to be informed of, to be present at and to be heard in any proceeding involving the dependency or termination of parental rights. (*Emphasis added*)

ARS §8-824 states:

B. The following persons shall be present at the preliminary protective hearing.

...

2. The child's guardian ad litem or attorney.

C. If the court finds that it is in the best interests of the child, the court may allow the following to be present at the preliminary protective hearing:

1, The child.

ARS §8-847 states:

A. At a proceeding to review the disposition orders of the court, the court shall provide the following persons notice of the review and the right to participate in the proceeding.

...

5. The child, if twelve years of age or older.

Appendix 3

2006 Arizona Foster Youth Conference Recommendations

My Voice, My Life, My Future: Youth Involvement in Dependency Court

2006 Arizona Youth Conference
Tucson, Arizona
July 19-21, 2006

More than 70 Arizona youth in foster care gathered for three days in July 2006 to brainstorm ideas and identify policy recommendations to improve the juvenile court and child welfare system processes.

Youth identified topic areas of interest and broke out into work groups. Recommendations were made around the work group topics; others were made during the panel discussion with policy-makers at the conclusion of the conference. Certain recommendations clearly address court practices, and others focus on Department of Economic Security policy and practices.

The recommendations made by the youth at this conference are as follows:

RECOMMENDATIONS

Unsafe Placements

- Unsafe placements can be avoided and should be avoided
- Group home staff need more training. This is because youth in care have experiences that staff cannot handle, and/or staff don't understand normal teenage development. We recommend there be court mandated training.
- Foster homes should be looked into more carefully and more in depth. Because some foster homes are only in it for the money and don't feel like a real family. We recommend better investigations and unannounced visits.
- Staff should have drug screening because they are role models, and being under the influence can put youth in harm's way, we recommend mandatory drug screening.

Youth Voice In Court

- There should be a policy for judges and lawyers that incorporate our goals and plans into any decision made regarding a youth's future.
- Youth should be able to speak up in court on their own behalf.
- Children in CPS should be allowed to change their caseworkers if the youth feels he/she is not being heard or if they are not getting their needs met.
- Youth should be able to see/know their rights without any question whenever they need to. Youth should get their own individual copy of their rights. The rights should be displayed in all homes (shelters, group homes, etc.).
- Listen to the youth before making decisions
 - ♦ Where youth want to live
 - ♦ What youth want to do (sports, clubs, etc.)
- Youth at age 15 should be able to speak for themselves in court.
- Caseworkers should be required to indicate positive achievements in a youth's case file.
- Youth should be able to see their case files.
- Judges and lawyers should ask youth about their goals and encourage them to succeed.
- Lawyers need to show more interest in youth and speak with them often and for more than 5 minutes.
- Youth should have a mentor/advocate in court.
- Youth should know how to get in contact with their attorney.

Caseworkers and the Courts

- Caseworkers should document changes/updates to a youth's case file that show the positive changes youth have made.
- Caseworkers should meet youth and get to know them (us) - If a youth gets a new CPS caseworker, the youth should meet with both the new and old caseworker at the same time to help in the case transition.
- Caseworkers should be obligated by the court to better prepare foster kids to be on their own, by making sure kids are provided with independent living skills.
- Caseworkers should meet with youth and go over the case file together.
- Caseworkers should try to understand what the youth is going through and connect with the youth on a personal level.
- Caseworkers should call at least once a week.
- Caseworkers should help youth learn how to stay in care until age 21.

Court Environment

- Youth should get to choose who's in court with them.
- Youth should have the choice to go to court hearings.
- Youth should be informed as to who is representing them.
- Listen to youth.
- Other people should be able to submit things to a youth's case file.
- Youth should be able to see certain portions of their case files.
- The Court should track every case like it is important.
- Judges should meet with youth to know who they are – case files do not tell the story

Teenage Parents In Foster Care

- DES needs to either approve more day care centers or needs to build facilities that provide the proper care for teenage parents in foster care.
- DES should allow pregnant teens and teen parents access to food stamps, cash assistance and child support that goes directly to the parent and child. DES should have funds set aside specifically for teen parents.
- Caseworkers, foster parents and the court should take more time to get to know teen parents by scheduling appointments with these youth. They shouldn't just base decisions for teen parents on their personal or family history in the case file.
- Teen parents need encouragement, training and options.
- Teen parents should have more say in parental decisions

Other recommendations (raised during panel discussion)

- Raise Independent Living Subsidy Rate.
- Create a monthly newsletter for youth.
- Provide more benefits to help teen moms in school as there is no time to get a job.
- Get furniture donations for independent living youth when businesses remodel (e.g., Hilton).

Appendix 4

Statewide Standards and Training Guidelines for Attorneys in Dependency Cases - Arizona Administrative Office of the Courts, Dependent Children's Services Division

A. Statewide standards for attorneys in dependency cases.

1. Attorneys must be familiar with the standards for representation set forth in the National Council of Juvenile and Family Court Judges Resource Guidelines.
2. Attorneys for children must be familiar with the American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases.
3. Attorneys appointed for children must clarify whether their appointment is as a GAL or as attorney and the ethical obligations associated therewith.
4. Attorneys have an obligation to inform their clients about the nature of the proceedings, the attorney's role, the possible outcomes of each hearing, and the consequences of the clients participation or lack of participation.
5. Attorneys must participate in discovery, file the appropriate pleadings and develop the client's position for each hearing. This may include identifying appropriate family and professional resources for the clients, as well as subpoenaing witnesses to testify in support of the client's position.
6. Attorneys must personally meet with their client prior to the Pre-Hearing Conference. Attorneys for children must meet with clients prior to a hearing. Pre-verbal client meetings should take place in the minor's placement.
7. Attorneys must have some meaningful contact with their clients prior to every substantive hearing. There may be older children who cannot speak, but still should meet with attorney. To determine the pre-verbal child's position, attorneys must contact caretakers, case managers, daycare providers, CASAs and relatives. If the minor's placement is at issue, contact with the pre-verbal minor should be at the minor's placement. Substantive hearings include all preliminary protective hearings, dependency contest, review hearings and motions involving placement, visitation or services.
8. To the extent possible, attorneys should attend or provide input to CPS staffings and Foster Care Review Board reviews.
9. Attorneys may use appropriately trained support staff to perform the contacts noted in items 4, 6 and 7 above. Support staff performing these contacts must adhere to the standards noted herein.
10. Attorneys should identify any potential and actual conflicts of interest that would impair their ability to represent a client. Specifically, attorneys for children should determine if the appointment of a guardian ad litem is necessary, or if the appointment of another attorney is required to represent siblings with different positions.
11. Attorneys for children should determine whether their clients should appear at Court hearings by assessing the client's desire to attend, type of hearing, client's age, emotional and intellectual functioning, and impact on the minor.

12. Attorneys should be knowledgeable of the child welfare and related systems serving children (i.e., behavioral health, DDD, AHCCCS) and should be aware of the State and local community based service providers and organizations that can assist clients regarding financial assistance, counseling support and other reunification services and know how to access these services.

B. Training Curriculum for Attorneys Appointed in Dependency Case Proceedings.

1. Attorneys must be familiar with the substantive dependency law. Attorneys have an obligation to stay abreast of changes and developments in relevant Federal and State laws, state regulations, and relevant court decisions. They should also receive training on child development, substance abuse, behavioral health and other common issues including the affects of child abuse and neglect.
2. Attorneys must attend an initial training program (such as the State Bar's Juvenile Dependency in a Nutshell program) designed to educate them about dependency procedures and other related topics. (See Exhibit A)
3. The presiding juvenile court judge in each county may modify these standards for good cause.

C. Compensation

1. The juvenile court shall assist the attorneys to meet the standards by paying them in a manner commensurate with other attorneys providing indigent legal representation and assisting in developing or making programs accessible.

Exhibit A: Sample Training

- Adoptions
- Ethics
- Juvenile Court Survival Training
- Changes in Dependency and Severance Statutes
- The Role of Mediation in Dependency Cases
- Child Sexual Abuse and the Family Treatment
- The Use of Psychological Evaluations with Parents and Children
- Domestic Violence
- Bonding and Attachment Disorder
- Kids Care
- Center for the Difficult Child
- Model Court Multi Disciplinary Training
- The Realities of Addiction
- NCJFCJ Mediation Training
- Family Assistance Administration Eligibility
- Contract Attorney Dependency Training

Endnotes

- 1 Adapted from "My Voice, My Life, My Future: Foster Youth Participation in Court: A National Survey," Home at Last, 2006.
 - 2 "Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care," The Pew Commission for Children in Foster Care, May 2004. <http://pewfostercare.org>
 - 3 Ibid, page 35.
 - 4 The National Conference of Commissioners on Uniform State Laws has been working for several years on developing Uniform Rules for Representation of Children in Abuse and Neglect and Custody Proceedings. The Commission has recently adopted a Uniform Act for presentation to the states, which is available at the Commission website www.nccusl.org
- August, 2003, the American Bar Association Section of Family Law published amended "Standards of Practice for Lawyers Representing Children in Custody Cases" available at www.afccnet.org/pdfs/abaStandards.pdf.
- February, 1996 the American Bar Association published "Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases" - available at www.afccnet.org/pdfs/AbuseNeglectStandards.pdf. Adherence to these standards is required by some Arizona counties (Apache, Pima).
- The National Council of Juvenile and Family Court Judges publishes several Resource Guidelines, including the 1995 "Improving Court Practice in Child Abuse and Neglect Cases" 1995 available at www.ncjfc.org
- "Child Welfare Law and Practice, Representing Children, Parents and State Agencies in Abuse, Neglect, and Dependency Cases," "The Red Book," edited by Marvin Ventrell and Donald Duquette of the National Association of Counsel for Children was published in 2005. Other technical assistance reports and publications of the National Association of Counsel for Children are available at www.nacchildlaw.org. The Association published a revised version of the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases in April, 1999, available at www.nacchildlaw.org/documents/abastandardsnaccrevised.doc. The Association also publishes a comprehensive list of recommended readings in the field at www.naccchildlaw.org/childrenlaw/recreadings.html.
- In July, 2005 the National Association of Counsel for Children adopted a "Resolution in Support of the Findings and Recommendations of the Pew Commission on Children in Foster Care, NACC Resolution 3" which specifically supported the Pew Commission's recommendations that:
1. Children and parents involved with dependency court should have high quality legal representation, provided by highly qualified attorneys; and
 2. Children should be notified of and afforded the opportunity to participate in the court proceedings in their own dependency case; ...
- In 1993, the American Bar Association published "The Child's Attorney," by Ann Haralambie, a Tucson attorney.
- The National CASA Association published "Roles and Responsibilities of Guardians ad Litem" in 1992. Other publications of National CASA are available at www.casenet.org and www.nationalcasa.org.
- The American Bar Association has published numerous books specifically related to the representation of child in court. See: www.abanet.org. An example is "Legal Ethics in Child Welfare Cases", by Jennifer L. Renne, ABA 2004.
- 5 See American Bar Association "Standards of Practice ..." *supra* at Sec. C.
 - 6 See American Bar Association "Standards of Practice ..." *supra* at Sec. B-1; Arizona Supreme Court AOC, Statewide Standards....
 - 7 All the recommendations from the conference can be found in Appendix 3.
 - 8 Child Abuse Prevention and Treatment Act as amended by The Keeping Children and Families Safe Act of 2003.

⁹ ARS §8-221(I) states: "In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile's best interests. This guardian may be an attorney or a court appointed special advocate." This statute tracks the federal Child Abuse Prevention and Treatment Act, 42 USC §5106a(b)(2)(A) (xiii)(2000).

A strict reading of these statutes would only require a GAL for children who are alleged to have been abused or neglected. In Arizona, the statutory definition of a "dependent child" includes children who have been abandoned, and children who have committed certain delinquent offenses but are too young to be adjudicated, or who have been found to be incompetent to stand trial. See ARS §8-201.13. In practice in Arizona, all children alleged to be dependent are first assigned then appointed an attorney or a GAL. The vast majority of GALs who are appointed are attorneys.

¹⁰ Rule 40, Rules of Procedure for the Juvenile Court states: "A. The court may appoint a guardian ad litem to protect the interest of the child. The guardian ad litem may be an attorney, volunteer special advocate or other qualified person."

¹¹ Under the federal Indian Child Welfare Act, the dependency court may, but is not required to, appoint counsel for Indian children, as defined by the Act. In Arizona, Indian children are accorded the same rights and protections as are non-Indian children in dependency proceedings.

¹² See e.g. the admonition required in open hearings by 17B A.R.S. Juvenile Court Rules of Procedure, Rule 41

¹³ 17B A.R.S. Juvenile Court Rules of Procedure, Rule 41(G); ARS §8-807(S)

¹⁴ 17A A.R.S. Rules of the Supreme Court, Rule 42, Arizona Rules of Professional Conduct, Preamble, states that as a representative of clients, a lawyer performs various functions including advisor, advocate, negotiator and evaluator. ER 1.2(a) states: "A lawyer shall abide by a client's decisions concerning the objectives of representation..." ER 1.6 states: "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except ... to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act ... a lawyer may reveal the intention of his client to commit a crime and the information necessary to prevent the crime. ...".

¹⁵ Attorney is an individual licensed to practice law by the State of Arizona, also called a lawyer. "Attorneys" or "Lawyers" represent clients, such as children in dependency court. The attorney's job is always to tell the Judge what their client wants and why the Judge should agree with their client.

¹⁶ 17A A.R.S. R. Supreme Court Rule 42, Arizona Rules of Professional Conduct, Comment to ER 1.14

¹⁷ 17A A.R.S. R. Supreme Court Rule 42, Arizona Rules of Professional Conduct, ER 1.2 and 1.4

¹⁸ 17A A.R.S. R. Supreme Court Rule 42, Arizona Rules of Professional Conduct, ER 1.2

¹⁹ 17A A.R.S. R. Supreme Court Rule 42, Arizona Rules of Professional Conduct, ER 1.3

²⁰ Court Appointed Special Advocate [CASAs] are volunteers appointed by the dependency court who are specially trained to "advocate" for the child and advise the court and those working with the child what the child needs to be safe and healthy.

²¹ Although a person who is the subject of an investigation may request that a dependency hearing be open to the public pursuant to ARS §8-224(A), all records pertaining to dependency, termination of parental rights and adoption proceedings are confidential. ARS §8-121, 208(F), 541 and 807; 17B A.R.S. Rules of the Juvenile Court, Rule 47.

²² See Arizona Ethics Opinion #2000-06.

²³ Guardian ad litem (GAL) is an attorney or CASA appointed by the court to protect the child's best interest. A GAL's job is to tell the Judge what the GAL believes is best for the child.

²⁴ ARS §8-522(E)

²⁵ ARS §8-522(E) and Arizona CASA program statement.

- 26 All counties appoint CASAs, if available, to cases. Since there are only 775 CASAs for the approximately 10,000 children in out of home care, less than 13% of children in out of home care have a CASA. Some CASAs are appointed to assist more than one child such as in a sibling group.
- 27 Cochise County frequently appoints an experienced, especially trained CASA – or the CASA coordinator – as GAL.
- 28 Navajo County may appoint a CASA as GAL, depending on availability of attorneys to accept such an appointment.
- 29 Arizona Ethics Opinion #86-13 page 3
- 30 17A A.R.S. R. Supreme Court Rule 42, Arizona Rules of Professional Conduct, ER 1.14(a)
- 31 Pima County appoints attorneys for all children; then appoints a GAL as necessary.
- 32 17A A.R.S. R. Supreme Court Rule 45
- 33 The Administrative Office of the Courts makes the Dependency Attorney Training available approximately every two years, but only in rural counties.
- 34 More information is available at www.myazbar.org/SecComm/SectionsIV.
- 35 Information is available at www.adpanet.org.
- 36 Arizona Superior Court in Pima County, Juvenile Division, Administrative Order, NO. 2006-02, May 2, 2006 issued by Patricia G. Escher, Presiding Judge, Pima County Juvenile Court Center.
- 37 Email from The Honorable Richard Weiss to Beth Rosenberg, Children's Action Alliance, September 24, 2007.
- 38 Email from The Honorable Kimberly Corsano to Beth Rosenberg, Children's Action Alliance, September 21, 2007.
- 39 17B A.R.S. Rules of Procedure for the Juvenile Court., Rule 38
- 40 See Statewide Standards and Training Guidelines for Attorneys in Dependency Cases, Arizona Administrative Office of the Courts.
- 41 ABA "Standards of Practice ..." *supra* at Sec. C
- 42 ARS §8-825(C)(1)
- 43 ARS §8-847(B)(5)
- 44 ARS §8-115
- 45 ARS §8-106(A)(3)
- 46 Generally, parties in a Dependency are expected to communicate with the Judge through their attorney or GAL. When any party speaks directly to the Judge, it is in the presence of the other parties and attorneys, and with the Judge's permission.
- 47 Pew Commission on Children in Foster Care, Home at Last, "My Voice, My Life, My Future" Foster Youth Participation in Court: a National Survey. 2006. Available at www.fostercarehomeatlast.org
- 48 See e.g. "My Voice, My Life, My Future: Youth Involvement in Dependency Court," 2006 Arizona Youth Conference, July, 2006; Pew Commission on Children in Foster Care, "Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care, 2004."
- 49 Email from The Honorable Richard Weiss to Beth Rosenberg, Children's Action Alliance, September 24, 2007.



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