

1 **ABA Model Act Governing the Representation of Children in**
2 **Abuse, Neglect, and Dependency Proceedings**¹

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4 **SECTION 1. DEFINITIONS. In this [act]:**

5 **(a) “Abuse or neglect proceeding” means a court proceeding under [cite state**
6 **statute] for protection of a child from abuse or neglect or a court proceeding under [cite**
7 **state statute] in which termination of parental rights is at issue.**ⁱ **These proceedings**
8 **include:**

9 **(1) abuse;**

10 **(2) neglect;**

11 **(3) dependency;**

12 **(4) termination of parental rights;**

13 **(5) permanency hearings; and**

14 **(6) post termination of parental rights through adoption or other**
15 **permanency proceedings.**

16 **(b) A child is:**

17 **(1) an individual who is under the age of 18; or**

18 **(2) an individual under the age of 21 who remains under the jurisdiction of**
19 **the juvenile court.**

20 **(c) “Child’s lawyer” (or “Children’s lawyer”) means a lawyer who provides legal**
21 **services for a child and who owes all of the same duties that are due an adult client,**
22 **including undivided loyalty, confidentiality, diligence, conflict of interest, communication,**
23 **duty to advise, and competent representation.**ⁱⁱ

24 **(d) “Court-appointed advisor” means an individual, not functioning or intended to**
25 **function as a lawyer, appointed by the court to assist the court in determining the best**
26 **interests of the child. The term includes but is not limited to well-trained lay advocates,**
27 **such as a Court Appointed Special Advocate (“CASA”), or a professional, other than an**
28 **attorney, who holds a relevant professional license and whose training relates to the**
29 **determination of a child's best interests.**

30 **(e) “Developmental level” means the ability to understand others and communicate,**
31 **taking into account such factors as age, mental capacity, level of education, cultural**
32 **background, and degree of language acquisition.**ⁱⁱⁱ

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¹ This Model Act was drafted under the auspices of the ABA Section of Litigation Children’s Rights Litigation Committee with assistance of the Bar-Youth Empowerment Program of the ABA Center on Children and the Law and First Star. The Act incorporates some language from provisions of the NCCUSL Representation of Children in Abuse, Neglect and Custody Proceedings Act.

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SECTION 2. APPLICABILITY AND RELATIONSHIP TO OTHER LAW.

(a) This [act] applies to an abuse, neglect, dependency, termination of parental rights or post termination of parental rights proceeding pending on or commenced on or after [the effective date of this act].

(b) Children in these proceedings are parties.

(c) This [act] does not affect children’s rights or standing under law other than this [act], or give standing or party status not provided under law other than this [act].^{iv}

SECTION 3. APPOINTMENT IN ABUSE OR NEGLECT PROCEEDING

(a) The court shall appoint a lawyer for each child who is the subject of a petition in an abuse, neglect, dependency, termination of parental rights, or post termination of parental rights proceeding. The appointment of the child’s lawyer must be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing.

(b) The court may, in addition to the appointment of a lawyer, appoint a court-appointed advisor to assist the court in determining the child’s best interests.

(c) The court may appoint one lawyer to represent siblings so long as there is no conflict of interest.^v

(d) All rules of professional conduct and any law establishing the obligations of lawyers to their clients shall apply to such appointed lawyers.

(e) The appointed lawyer shall represent the child in all stages of the proceedings.^{vi}

(f) Only the child, after consultation with a lawyer, may waive representation. Neither the court appointed advisor, nor a representative of the child may waive representation of the child.^{vii}

Commentary:

This rule recognizes the right of every child to have quality legal representation and a voice in any abuse, neglect, dependency, or termination of parental rights proceedings, regardless of developmental level. Nothing in this act precludes a child from retaining counsel. States also should provide lawyers to children who have been placed into state custody through voluntary placement arrangements. Being in the state’s custody, even through the parent’s voluntary decision, should entitle children to a lawyer.

A court-appointed advisor shall not replace the appointment of a lawyer for the child. A court-appointed advisor serves to provide guidance to the court on the child’s best interest and does not establish a lawyer-client relationship with the child. Because this act deals specifically with the child’s lawyer, it will not further discuss or define the role of the court-appointed advisor.

After a child’s lawyer’s initial appointment to represent siblings where there is no conflict of

72 interest, if a conflict arises during the case, the lawyer should withdraw and the court should
73 appoint separate counsel.

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75 **SECTION 4. QUALIFICATIONS OF CHILD’S LAWYER**

76 **(a) The court shall appoint as a child’s lawyer only an individual who is qualified**
77 **through training or experience, according to standards established by [insert reference to**
78 **source of standards].**

79 **(b) Children’s lawyers shall be familiar with all relevant federal, state, and local**
80 **applicable laws.**

81 **(c) Children’s lawyers shall not be appointed to new cases when their caseload**
82 **exceeds more than a reasonable number given the jurisdiction, the percent of the lawyer’s**
83 **practice spent on abuse and neglect cases, the case complexity, and other relevant factors.**

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85 *Legislative Note: States that adopt training standards and standards of practice for*
86 *children’s lawyers should include the bracketed portion of this section and insert a reference to*
87 *the state laws, court rules, or administrative guidelines containing those standards.^{viii}*

88 *Jurisdictions are urged to specify the case limit at the time of passage of this Act.*

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90 *Commentary:*

91 The lawyer shall spend enough time on abuse and neglect cases to establish a lawyer-client
92 relationship and zealously advocate for the client. The amount of time and the number of
93 children a lawyer can represent will differ based on a number of factors, including type of case,
94 the jurisdiction, whether the lawyer is affiliated with a children’s law office, whether the lawyer
95 is assisted by investigators or other child welfare professionals, and the percent of the lawyer’s
96 practice spent on abuse and neglect cases. States are encouraged to conduct caseload analyses to
97 determine guidelines for lawyers representing children in abuse and neglect cases. States and
98 lawyers should look to guidelines set by the National Association of Counsel for Children and
99 relevant case law.^{ix}

100 **SECTION 5. ORDER OF APPOINTMENT.**

101 **(a) Subject to subsection (b), an order of appointment of a child’s lawyer shall be in**
102 **writing and on the record, identify the individual who will act in that capacity, and clearly**
103 **set forth the terms of the appointment, including the grounds for the appointment, rights of**
104 **access as provided under Section 8, and applicable terms of compensation as provided**
105 **under Section 12.**

106 **(b) In the order of appointment under subsection (a), the court may identify a**
107 **private organization, law school clinical program or governmental program through which**
108 **a child’s lawyer will be provided. The organization or program shall designate the lawyer**
109 **who will act in that capacity and notify the parties and the court of the name of the**
110 **assigned lawyer as soon as practicable.^x Additionally, the organization or program shall**
111 **notify the parties and the court of any changes in the individual assignment.**

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113 **SECTION 6. DURATION OF APPOINTMENT.**

114 **In an abuse or neglect proceeding, unless otherwise provided by a court order, an**
115 **appointment of a child’s lawyer continues in effect until the individual is discharged by**
116 **court order at the conclusion of the proceeding or dismissal of the case.^{xi} The appointment**
117 **includes all stages thereof, from removal from the home or initial appointment through all**
118 **applicable appellate proceedings. Counsel may, with the permission of the court, arrange**
119 **for supplemental or separate counsel to handle proceedings at an appellate stage.^{xii}**

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121 **SECTION 7. DUTIES OF CHILD’S LAWYER AND SCOPE OF**
122 **REPRESENTATION.**

123 **(a) A child's lawyer shall participate in any proceeding concerning the child with**
124 **the same rights and obligations as any other attorney for a party to the proceeding.**

125 **(b) The duties of a child’s lawyer include, but are not limited to:**

126 **(1) taking all steps necessary to represent the client in the proceeding,**
127 **including but not limited to: interviewing and counseling the client, preparing a case theory**
128 **and strategy, preparing for and participating in negotiations and hearings, drafting and**
129 **submitting papers and orders, and such other steps as outlined in national and local**
130 **standards of practice on behalf of children;**

131 **(2) reviewing and accepting or declining to accept any proposed stipulation**
132 **for an order affecting the child and explaining to the court the basis for any opposition;**

133 **(3) taking action the lawyer considers appropriate to expedite the proceeding**
134 **and the resolution of contested issues;**

135 **(4) where appropriate, and after consultation with the client, encouraging**
136 **settlement and the use of alternative forms of dispute resolution and participating in such**
137 **processes to the extent permitted under the law of this state;^{xiii}**

138 **(5) consulting with any court-appointed advisor for the child;**

139 **(6) consulting with any person providing medical, mental health, social,**
140 **educational, or other services to the child, prior to any hearing;**

141 **(7) visiting the home, residence, or any prospective residence of the child,**
142 **including each time the placement is changed;**

143 **(8) seeking court orders or taking any other necessary steps to ensure that**
144 **the child’s health, mental health, educational, developmental, cultural and placement needs**
145 **are met;**

146 **(9) representing the child in all proceedings affecting the issues before the**
147 **court, including hearings on appeal or referring the child’s case to the appropriate**
148 **appellate counsel as provided for by/ mandated by [inset local rule/law etc]; and**

149 **(10) striving for representation of the child in ancillary legal matters,**
150 **whether through appointment from the court to represent the child as to ancillary matters**

151 **beyond the purview of the original court’s jurisdiction or through the retention of alternate**
152 **legal counsel.**

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154 *Commentary:*

155 The national standards mentioned in (b)(1) include the *ABA Standards of Practice for Lawyers*
156 *who Represent Children in Abuse and Neglect Cases*.

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158 The ancillary matters referred to in (b)(10) include special education, mental health treatment,
159 delinquency or criminal issues, status offender matters, guardianship, adoption, paternity,
160 probate, immigration matters, medical care coverage, SSI eligibility, youth transitioning out of
161 care issues, postsecondary education opportunity qualification, and tort actions for injury, as
162 appropriate.^{xiv} The lawyer should make every attempt to ensure that the child is represented by
163 legal counsel in all ancillary legal proceedings, either personally, when competent to do so, or
164 through referral or collaboration. There is value in having one lawyer represent the child across
165 multiple proceedings. The lawyer is better able to understand and fully appreciate the various
166 issues as they arise and how those issues may affect other proceedings.

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168 **(c) When the child is capable of directing the representation by expressing his or her**
169 **objectives, the lawyer shall maintain a normal client-lawyer relationship with the child in**
170 **accordance with the rules of professional conduct.**

171 *Commentary:*

172 The client-lawyer relationship for the child’s attorney is fundamentally indistinguishable from
173 the attorney-client relationship in any other situation and includes duties of client direction^{xv},
174 confidentiality^{xvi}, diligence^{xvii}, competence^{xviii}, loyalty^{xix}, communication^{xx}, and the duty to
175 advise.^{xxi} Client direction requires the lawyer to abide by the client’s decision about the
176 representation objectives. In order for children and youth to have an independent voice in abuse,
177 neglect, dependency, permanency hearings, and termination of parental right proceedings, the
178 lawyer shall advocate for the child’s expressed wishes.^{xxii} Moreover, providing the child with an
179 independent and client-directed advocate ensures that the child’s legal rights and interests are
180 adequately protected. Loyalty, among other things, requires the lawyer to comply with Model
181 Rule 1.7 when conflicts of interests arise.

182 It is the role of the court to determine a child’s best interest, not the role of the child’s lawyer.
183 Nothing in a lawyer’s training enables him or her to determine a child’s best interest. Such a
184 role is left to the court, and when appointed by the court, to an expert who is qualified by the
185 court.

186 **(1) The lawyer for the child shall explain the proceedings to permit the client to**
187 **make informed decisions regarding the representation and abide by the child’s decisions**
188 **concerning the child’s objectives. This includes advising the child as to options and**
189 **eliciting the child’s wishes in a developmentally appropriate manner.**

190 *Commentary:*

191 The lawyer shall explain his or her role to the client and, if applicable, explain in what strictly
192 limited circumstances the lawyer cannot advocate for the client’s expressed wishes and in what
193 circumstances the lawyer may be required to reveal confidential information. The lawyer shall
194 tell the client this at the first meeting so the client understands the relationship.

195 In addition to explaining the lawyer’s role, the lawyer shall explain the process to the child in a
196 developmentally appropriate manner as set forth in Rule 1.4.^{xxiii} This explanation can and will
197 change based on age, cognitive ability, and emotional maturity. The lawyer shall take the time to
198 explain thoroughly and in a way that allows and encourages the child to ask questions and that
199 ensures the child’s understanding. The lawyer should also facilitate the child’s participation in
200 the proceeding (See Section 9).

201 In order to elicit the child’s objectives of representation, the lawyer should develop a relationship
202 with the child. The lawyer shall develop a thorough knowledge of the child’s circumstances and
203 need. The lawyer shall visit the child in the child’s home, school, or other appropriate place
204 where the child is comfortable. The lawyer shall observe the child’s interactions with parents,
205 foster parents, and other caregivers.

206 The child’s lawyer helps to make the child’s wishes and voice heard and is not merely the child’s
207 mouth piece. The lawyer should advise the child by providing options and information to assist
208 the child in making decisions, without unduly influencing the child. The lawyer should explain
209 the practical effects of taking various positions, the likelihood that a court will accept particular
210 arguments, and the impact of such decisions on the child, other family members, and future legal
211 proceedings.^{xxiv} The lawyer should investigate the relevant facts, interview persons with
212 significant knowledge of the child’s history, review relevant records, and work with others in the
213 case.

214 **(2) When the child’s capacity to make adequately considered decisions in connection**
215 **with a representation is diminished, the lawyer shall, as far as reasonably possible,**
216 **maintain a normal client-lawyer relationship with the client. When the lawyer reasonably**
217 **believes that the client:**

- 218 **a. Has diminished capacity,**
- 219 **b. Is at risk of substantial physical, financial or other harm unless action is**
220 **taken, and**
- 221 **c. Cannot adequately act in the client's own interest,**

222 **the lawyer may take reasonably necessary protective action, including consulting with**
223 **individuals or entities that have the ability to take action to protect the client and, in**
224 **appropriate cases, seeking the appointment of a guardian *ad litem*, or investigator to make**
225 **an independent recommendation to the court with respect to the best interests of the child.**
226 **Information relating to the representation of a child with diminished capacity is protected**
227 **by MR 1.6. When taking protective action, the lawyer is impliedly authorized under MR**
228 **1.6(a) to reveal information about the child, but only to the extent reasonably necessary to**
229 **protect the child’s interests.**^{xxv}

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231 *Commentary:*

232 Lawyers shall look to MR 1.14 for guidance when the child is at risk of substantial harm and
233 cannot make adequately considered decisions in connection with the representation. Physical
234 harm includes sexual harm. The commentary to MR 1.14 states “[T]he normal client-lawyer
235 relationship is based on the assumption that the client, when properly advised and assisted, is
236 capable of making decisions about important matters. When the client is a minor or suffers from
237 a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may
238 not be possible in all respects.”

239 The lawyer determines whether the child suffers from diminished capacity. This decision shall
240 be made after sufficient contact and regular communication with the client. Just because the
241 lawyer does not agree with the child’s objectives does not mean the child does not have the
242 capacity to direct the representation. When determining whether the child has this ability the
243 lawyer shall elicit the child’s expressed wishes in a developmentally appropriate manner and not
244 expect the child to convey information in the same way an adult client would. A child’s age is
245 not determinative of diminished capacity. For example, even very young children are regarded
246 as having opinions that are entitled to weight in legal proceedings concerning their custody.^{xxvi}

247 There are several factors that should guide a lawyer when making this decision, including: the
248 child’s cognitive ability, emotional and mental development, ability to communicate, ability to
249 understand consequences, decision consistency, and strength of wishes.^{xxvii} The lawyer may also
250 consider the value of consulting an expert to assist the lawyer in determining the child’s
251 capacity. A child may have the ability to make certain decisions, but not others. A child with
252 diminished capacity often has the ability to understand, deliberate upon, and reach conclusions
253 about matters affecting the child's own well-being such as sibling visits, kinship visits and school
254 choice.

255 When diminished capacity is an issue and the child is at risk of substantial harm, and cannot
256 adequately act in the child’s own interest, the lawyer may take protective action. Lawyers may
257 consult family members, consult professionals who work with the child, or use a reconsideration
258 period to clarify or improve circumstances in order to protect the child.^{xxviii} This rule reminds
259 lawyers, among other things, that they should ultimately be guided by the wishes and values of
260 the child to the extent known.^{xxix}

261 A request made of the judge to appoint a guardian *ad litem* should be reserved for extreme cases
262 where the child is at risk of substantial physical harm, cannot act in his or her own interest and
263 all protective action remedies have been exhausted. Requesting the judge to appoint a court
264 appointed advisor or guardian *ad litem* may undermine the relationship the lawyer has
265 established with the child. It also potentially comprises confidential information the child may
266 have revealed to the lawyer. The child’s lawyer may not disclose the reasons for requesting an
267 appointment of a court appointed advisor or a guardian *ad litem*.

268 The lawyer cannot ever become the guardian *ad litem*, in part due to confidential information
269 that the lawyer receives in the course of representation.

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271 **(d) When the child is incapable of directing the representation by expressing**
272 **his or her objectives, the lawyer shall represent the child’s legal interests. The lawyer for**
273 **the child may take reasonably necessary protective action including consultation with**
274 **individuals or entities that have the ability to take action to protect the client and, in**
275 **appropriate cases, request the appointment of a guardian ad litem or investigator to make**
276 **an independent recommendation to the court with respect to the best interests of the child.**

277 *Commentary:*

278 This rule is focused solely on the situations in which a child is incapable of directing the
279 representation. When the child cannot direct the representation, a lawyer is to be guided both by
280 the child’s legal rights and interests and by the child’s particular situation, including the child’s
281 developmental stage, social and family connections, and long and short term options. “A legal
282 interest is any interest that the legal proceeding has authority to address.”^{xxx} In providing this
283 representation, the lawyer will not be the decision-maker for the child, but instead will ensure
284 that the child’s substantive and procedural rights are being served. For example, the lawyer may
285 advocate to ensure that any court or decision-maker has sufficient evidence and utilizes lawful
286 standards to make those determinations and that such decisions are made in a timely fashion.

287 When representing a child who is incapable of directing the representation, the child’s lawyer
288 should present evidence supporting the child’s legal rights and interests, and critically examine
289 the state’s evidence and the parents’ evidence. The child’s legal rights include but are not
290 limited to familial integrity; the child’s family and social connections; the least intrusive state
291 intervention, including dismissal of the action; contact with significant adults and siblings; the
292 safety, permanency and well-being of the child;^{xxxi}; the timely disposition of the case, preserving
293 the right to appeal and initiating cases as permitted by law. The lawyer’s representation should
294 be guided by the child’s particular situation, including the child’s identity, history, family
295 systems, and social, ethnic, socioeconomic, cultural, and racial context.

296 While the child is in state care, the child’s lawyer should ensure that the state agency is
297 providing the services to which the child is entitled under the law including the least restrictive
298 placement alternative, a safe foster home, stability of placements, medical care, early
299 intervention and educational needs, state and federal benefits, visitation, effective case planning,
300 and services to the biological family addressing the underlying reason for removal.

301 When children are able to articulate thoughts and feelings, but suffer from diminished capacity;
302 their lawyers should look to Rule (c)(2) for guidance, as (d) refers only to children who are
303 incapable of directing representation .

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305 **SECTION 8. ACCESS TO CHILD AND INFORMATION RELATING TO THE**
306 **CHILD.**

307 **(a) Subject to subsections (b) and (c), when the court appoints the child’s lawyer, it**
308 **shall issue an order, with notice to all parties, authorizing the lawyer appointed to have**

309 access to:

310 (1) the child; and

311 (2) confidential information regarding the child, including the child's
312 educational, medical, and mental health records, responsible social services agency files,
313 court records including court files involving allegations of abuse or neglect of the child, any
314 delinquency records involving the child, and other information relevant to the issues in the
315 proceeding, and reports that form the basis of any recommendation made to the court.

316 (b) A child's record that is privileged or confidential under law other than this [act]
317 may be released to a lawyer appointed under this [act] only in accordance with that law,
318 including any requirements in that law for notice and opportunity to object to release of
319 records. Information that is privileged under the lawyer-client relationship may not be
320 disclosed except as otherwise permitted by law of this state other than this [act].

321 (c) An order issued pursuant to subsection (a) shall require that a child's lawyer
322 maintain the confidentiality of information released pursuant to Model Rule 1.6. The court
323 may impose any other condition or limitation on an order of access which is required by
324 law, rules of professional conduct, the child's needs, or the circumstances of the
325 proceeding.

326 (d) The custodian of any record regarding the child shall provide access to the
327 record to an individual authorized access by order issued pursuant to subsection (a).

328 (e) Subject to subsection (b), an order issued pursuant to subsection (a) takes effect
329 upon issuance.^{xxxii}

330 **SECTION 9. PARTICIPATION IN PROCEEDING.**

331 (a) Each child who is the subject of an abuse or neglect proceeding has the right to
332 attend and fully participate in all hearings related to their case.

333 (b) Each child shall receive notice of his or her right to attend the court hearings by
334 the child welfare agency worker and the child's representative.

335 (c) If the child is not present at the hearing, the court shall determine whether the
336 child was properly notified of his or her right to attend the hearing, whether the child
337 wished to attend the hearing, whether the child had the means (transportation) to attend,
338 and the reasons for non appearance.

339 (d) If the child wished to attend and was not transported to court the matter shall
340 be continued.

341 (e) The child's presence should only be waived after counsel for the child has
342 consulted with the child and provided for a waiver of the child's presence.

343 (f) A child's lawyer appointed under this [act] is entitled to:

344 (1) receive a copy of each pleading or other record filed with the court in the
345 proceeding;

346 (2) receive notice of and attend each hearing in the proceeding [and

347 **participate and receive copies of all records in any appeal that may be filed in the**
348 **proceeding];**

349 **(3) receive notice of and participate in any case staffing or case management**
350 **conference regarding the child in an abuse or neglect proceeding; and**

351 **(4) receive notice of any intent to change the child’s placement.**

352 **(g) A child’s lawyer appointed under this [act] may not engage in ex parte contact**
353 **with the court except as authorized by law other than this [act].**

354 **(h) A court-appointed advisor may not take any action that may be taken only by a**
355 **lawyer licensed in this state, including making opening and closing statements, examining**
356 **witnesses in court, and engaging in discovery other than as a witness. A court-appointed**
357 **advisor may not engage in ex parte contact with the court.**

358 **(i) A party may call any court-appointed advisor for the child as a witness for the**
359 **purpose of cross-examination regarding the advisor’s report even if the advisor is not listed**
360 **as a witness by a party.**

361 **[(j) In a jury trial, disclosure to the jury of the contents of a court-appointed**
362 **advisor’s report is subject to this state’s rules of evidence.]^{xxxiii}**

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364 *Commentary:*
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366 Courts shall provide the child with notification of each hearing. The Court shall enforce the
367 child’s right to attend and fully participate in all hearings related to their dependency cases.^{xxxiv}
368 Having the child in court emphasizes for the judge and all parties that this hearing is about the
369 child.^{xxxv} Factors to consider regarding the child’s presence at court and participation in the
370 proceedings include: whether the child wants to attend, the child’s age, the child’s
371 developmental ability, the child’s emotional maturity, the purpose of the hearing and whether the
372 child would be severely traumatized by such attendance.^{xxxvi} In making this decision, the lawyer
373 is urged to consult with therapists, caretakers, or other persons who have specific knowledge of
374 the child.^{xxxvii}

375
376 Lawyers should consider the following participation options to provide the most meaningful
377 experience for the child and the court: allowing the child to be present throughout the entire
378 hearing, presenting the child’s testimony in chambers adhering to all applicable rules of
379 evidence, arranging for the child to visit the courtroom in advance, video or teleconferencing the
380 child into the hearing, allowing the child to be present only when the child’s input is required,
381 excluding the child during harmful testimony, and presenting the child’s statements in court
382 adhering to all applicable rules of evidence.

383
384 Courts must reasonably accommodate the child to ensure the hearing is a meaningful experience
385 for the child. The court should consider: scheduling hearing dates and times when the child is
386 available and least likely to disrupt the child’s routine, setting specific hearing times to prevent
387 the child from having to wait, making courtroom waiting areas child friendly, and ensuring the
388 child will be transported to each hearing.

389
390 The lawyer for the child plays an important role in the child’s court attendance and participation.
391 The lawyer shall ensure that the child is properly prepared for the hearing. The lawyer should
392 meet the child in advance to let the child know what to expect at the hearing, who will be
393 present, what their roles are, what will be discussed, and what decisions will be made. If the
394 child would like to speak to the judge, the lawyer should help the child decide what to say. The
395 lawyer should also make time after the hearing to explain the judge’s ruling and allow the child
396 to ask questions about the proceeding.

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SECTION 10. ATTORNEY WORK PRODUCT AND TESTIMONY.

400 **Except as authorized by [insert reference to this state’s rules of professional**
401 **conduct] or court rule, a child’s lawyer may not:**

- 402 **(a) be compelled to produce the lawyer’s work product developed during the**
403 **appointment;**
404 **(b) be required to disclose the source of information obtained as a result of**
405 **the appointment;**
406 **(c) introduce into evidence a report prepared by the lawyer; or**
407 **(d) testify in court [according to Model Rule 3.7]**

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409 *Commentary:* Nothing in this act shall diminish or otherwise change the attorney-work product
410 protection for children, nor shall a child have any lesser rights than any other party in regard to
411 this protection.

412 If a state requires lawyers to report abuse or neglect under a mandated reporting statute, the state
413 should list that statute under (a).

414

415 **SECTION 11. CHILD’S RIGHT OF ACTION.**

- 416 **(a) There shall not be malpractice liability immunity for the child’s lawyer.**
417 **(b) Only the child has a right of action for money damages against a child’s lawyer**
418 **for inaction or action taken in the capacity of child’s lawyer.**
419 **(c) A court-appointed advisor appointed pursuant to this [act] is not liable for**
420 **money damages because of inaction or action taken in the capacity of court-appointed**
421 **advisor unless the inaction or action taken constituted willful misconduct or gross**
422 **negligence.**^{xxxviii}

423 **SECTION 12. FEES AND EXPENSES IN ABUSE OR NEGLECT**
424 **PROCEEDINGS.**

- 425 **(a) In an abuse or neglect proceeding, a child’s lawyer appointed pursuant to this**
426 **[act] is entitled to reasonable and timely fees and expenses in an amount set by [court or**
427 **state agency to be paid from (authorized public funds)].**^{xxxix}

428 (b) To receive payment under this section, the payee shall complete and submit a
429 written claim for payment, whether interim or final, justifying the fees and expenses
430 charged.

431 (c) If the court, after a hearing, determines that a party whose conduct gave rise to
432 a finding of abuse or neglect is able to defray all or part of the fees and expenses set
433 pursuant to subsection (a), the court shall enter a judgment in favor of [the state, state
434 agency, or political subdivision] against the party in an amount the court determines is
435 reasonable.^{xi}
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437 SECTION 13. EFFECTIVE DATE. This [act] takes effect on _____.

ⁱ NCCUSL, 2006 *Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings*, Sec. 2(2) [Hereinafter NCCUSL Act]

ⁱⁱ *Id.*, Sec. 2(6); American Bar Association, *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*, Part I, Sec A-1, 29 Fam. L. Q. 375 (1995). The standards were formally adopted by the ABA House of Delegates in 1996. [Hereinafter ABA Standards].

ⁱⁱⁱ *Id.*, Part I, Sec A-3.

^{iv} NCCUSL, Sec. 3(b)

^v *Id.*, Sec. 4(c); *see also* ABA Standards, Part I, Sec B-1

^{vi} ABA Standards, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1.; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

^{vii} *See* La. Child. Code Ann. Art. 1016(A).

^{viii} ABA Standards, Part II, Sec L-1-2.

^{ix} *See NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001)*, available at <http://www.naccchildlaw.org/documents/naccrecommendations.doc>. *See also* *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353, 1362 (N.D. Ga. 2005) (citing testimony of Marvin Ventrell, NACC Executive Director). The caseload here enumerated is set forth as an upper limit. For some groups of children, a smaller caseload may be appropriate.

^x NCCUSL Act, Sec. 9

^{xi} *Id.*, Sec. 10(a)

^{xii} ABA Standards, Part I, Sec D-13; F-1-5; *see generally* La. Sup. Ct. R. XXXIII, Standard 1.; *see generally* Ariz. R. Proc. Juv. Ct. R. 39(b).

^{xiii} NCCUSL Act, Sec. 11 Alternative A..

^{xiv} ABA Standards, Part I, Sec C-1-6; *see generally* La. Sup. Ct. R. XXXIII, Standards 1-7.

^{xv} ABA Model Rules of Professional Responsibility (hereinafter M.R.) 1.2

^{xvi} M.R. 1.6

^{xvii} M.R. 1.3

^{xviii} M.R. 1.1

^{xix} M.R. 1.7

^{xx} M.R. 1.4

^{xxi} M.R. 2.1

^{xxii} ABA Standards, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, 1996 commentary A-1

^{xxiii} M.R. 1.4

^{xxiv} M.R. 2.1

^{xxv} M.R. 1.14(c)

^{xxvi} M.R. 1.14 cmt. 1

^{xxvii} M.R. 1.14, cmt. 1

^{xxviii} M.R. 1.14 cmt. 5

^{xxix} M.R. 1.14 cmt. 5

^{xxx} *Recommendations of the 1995 Fordham Conference on Ethical Issues in the Legal Representation of Children*,

Rec. IV.B.3.a.

^{xxx}_i The Adoption and Safe Families Act defines permanency broadly and includes returning home, adoption, being placed with a relative or legal guardian or planned permanent living arrangement. 42 U.S.C. Section 675(5)(C).

^{xxx}_{ii} NCCUSL Act, Sec. 15.

^{xxx}_{iii} NCCUSL Act, Sec. 16.

^{xxx}_{iv} American Bar Association Youth Transitioning from Foster Care August 2007; American Bar Association Foster Care Reform Act August 2005

^{xxx}_v ABA Standards. Approved by the American Bar Association House of Delegates, February 5, 1996

^{xxx}_{vi} *Id*

^{xxx}_{vii} *Id*

^{xxx}_{viii} NCCUSL Act, Sec. 18; *see also* NACC, *Recommendations for Representation of Children in Abuse and Neglect Cases*, Sec. 3A(8).

^{xxx}_{ix} N.C. Gen. Stat. Ann. § 7B-603.

^{xl} NCCUSL Act, Sec. 19.