

10-570.1 Notice of guardian *ad litem* regarding child's attendance at hearing.

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT
IN THE CHILDREN'S COURT

STATE OF NEW MEXICO ex rel.
CHILDREN, YOUTH AND FAMILIES DEPARTMENT

No. _____

In the Matter of

_____, (a) Child(ren), and Concerning
_____, Respondent(s).

**NOTICE OF GUARDIAN *AD LITEM* REGARDING
CHILD'S ATTENDANCE AT HEARING¹**

I, _____, the guardian *ad litem* for _____ (name
of child) in the above cause, give notice of the following:

1. I [have] [have not] met with the child prior to the _____ (type of
hearing) on _____ (date) as required by Section 32A-1-7(E)(1) NMSA 1978.
[The following circumstances render such a meeting unreasonable: _____
_____]

2. I [have] [have not] interviewed the child, to the maximum extent possible given
the child's developmental capacity, prior to the _____ (type of hearing) on
_____ (date) as required by Section 32A-1-7(E)(1) NMSA 1978. [The following
circumstances render such an interview unreasonable: _____
_____]

3. To the maximum extent possible given the child's developmental capacity, I
[have] [have not] advised the child that, unless the court makes a determination that attendance is
not in the child's best interest, the child has a right to attend the _____ hearing on
_____ (date) because the child is a party to the case and because the court may be
making decisions regarding the child's placement, education, and case plan.²

4. I [have] [have not] talked to the child about what the child would like the court to
know regarding the child's position on issues related to his/her best interest.³

5. (Choose one of the following)

[] The child wishes to attend the _____ hearing on _____
(date).

OR

The child does not wish to attend the _____ hearing on _____ (date).

OR

Given the child's developmental capacity, the child cannot express a wish about whether to attend the _____ hearing on _____ (date).

6. I believe it [is] [is not] in the best interest of the child to attend the hearing because: _____

7. (Choose one of the following)

The child will attend the _____ hearing and [will] [will not] need the Department to arrange transportation for the child to attend the hearing.

OR

The child, being fully advised of the child's right to attend this hearing, will not attend this hearing. [The child requests leave to present the child's wishes to the Court regarding _____ and would like to present this information by _____ (describe method of alternative participation). The child requests leave to communicate with the court in this manner because _____.]⁴

8. I [have] [have not] advised the child that the child has the right to attend any future hearings in this case regardless of the child's choice to attend the hearing on _____ (date).

I certify that I have taken the steps outlined in this notice, and I am satisfied that the child understands his or her right to attend the hearing to the maximum extent possible given the child's developmental capacity.⁵

Guardian *ad litem*

USE NOTE

1. Under Rule 10-324(D) NMRA, a child under fourteen (14) years of age may be excluded from a hearing if the court finds that it is not in the child's best interest to attend. *See also* NMSA 1978, § 32A-4-20(E). This form and Rule 10-325.1 NMRA are intended to ensure that the child's lawyer (1) notifies the child in a timely manner of the child's right to attend each

hearing; (2) notifies the court and the children's court attorney of a request to arrange transportation for the child to attend the hearing; and (3) considers whether an alternative form of participation may be warranted.

2. The child is a party to an abuse and neglect proceeding and therefore has a right to attend any hearing in the case. *See* Rule 10-121(B)(3) NMRA; *see also* Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases § D-5 cmt. at 11 (Am. Bar Ass'n 1996) ("A child has the right to meaningful participation in the case."). A guardian *ad litem* therefore must notify the child of the right to attend and must consult with the child about whether attendance at a particular hearing is in the child's best interests. *See* NMSA 1978, § 32A-1-7(D), (E)(1). The child's attendance should be the norm, rather than the exception. *See* Standards of Practice, *supra*, § D-5 ("In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify."). The guardian *ad litem*'s position about whether attending some or all of the hearing is in the child's best interests should take into consideration factors such as the subject matter of the hearing, the potential to cause trauma to the child, and the child's physical, cognitive, and emotional development.

3. Interviewing the child may not be appropriate given the child's developmental capacity. When that is the case, interviewing the child's caregiver is especially critical to determining the child's best interests. *Accord* Performance Standards for Court-Appointed Attorneys in Child Abuse & Neglect Cases; Guardian *ad litem* (GAL) § 3 (N.M. Sup. Ct. Order No. 11-8500, effective May 23, 2011), <https://s3.amazonaws.com/realfile3016b036-bbd3-4ec4-ba17-7539841f4d19/d000e35b-fc82-4e3f-af81-dbc380b069a1?response-content-disposition=filename%3D%22New+Mexico+Attorney+Standards.16.pdf%22&response-content-type=application%2Fpdf&AWSAccessKeyId=AKIAIMZX6TNBAOLKC6MQ&Signature=gO2Op2PKRLFuGBN%2BrfqCtfIfUw%3D&Expires=1478729214> ("The GAL meets with the child and the child's caregiver in advance of . . . hearings . . . and other court proceedings to ascertain the need for witnesses or other evidence to be presented[.]"); Candice L. Maze, *Advocating for Very Young Children in Dependency Proceedings: The Hallmarks of Effective, Ethical Representation* 20 (Am. Bar Ass'n 2010), http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/ethicalrep_final_10_10.authcheckdam.pdf ("Because babies, toddlers, and most preschoolers are not verbal enough to describe what is taking place in their home environments, advocates must visit their very young child client wherever he spends considerable time—foster home, grandparents' house, parents' home, child care centers, early education/preschools.").

4. The bracketed language is intended to allow the child to request leave to submit information to the court that is unrelated to the substantive allegations of abuse and neglect in the petition. Such information may include updating the court about the child's well-being, including recreational, extracurricular, or school-related activities and interests, and may be presented via letter, video or audio recording, or any other manner that does not require the child's presence in the courtroom. If the child wishes to offer information related to the substantive allegations in the petition without appearing in court, the child must file a motion for alternative testimony as provided by Rule 10-340 and Form 10-571 NMRA.

5. This form describes the minimum efforts necessary to effectively communicate with the child before a hearing and does not supplant the lawyer's continuing duty to communicate with the child. *See* Rule 16-104 NMRA (defining a lawyer's duty to communicate with a client); Rule 16-114 (A) NMRA (providing that a lawyer shall as far as reasonably

possible, maintain a normal lawyer-client relationship with a client with diminished capacity); *see also* NMSA 1978, § 32A-1-7 (providing that the child's guardian *ad litem*, among other duties, shall meet with and interview the child prior to hearings under the Abuse and Neglect Act and, after consultation with the child, shall convey the child's position to the court at every hearing). Additional communication may be necessary after this notice is filed to ensure that the child's rights are protected. For example, a lawyer should review with the child the predisposition study and report required under NMSA 1978, § 32A-4-21, which is not due to the court until five (5) days before a dispositional hearing, to determine whether the report affects the child's position about attending the hearing.

[Approved by Supreme Court Order No. 17-8300-019, effective for all cases filed or pending on or after December 31, 2017.]