

CALIFORNIA

<p>Structure, organization, and delivery of Child Representation State-by-state, county-by-county, etc.</p>	<p>The court must appoint counsel for the child absent a finding that the child would not benefit from counsel. This determination is within the court’s discretion and is based on the best interest of the minor. In order to find that the child would not benefit, the court must find that the child understands the nature of the proceedings and is able to communicate and advocate effectively with the court, all counsel, and the professionals involved. (Cal. Rules of Court, rule 5.660(b).) Practically speaking, independent counsel will be appointed in virtually all dependency cases. (In re S.D. (2002) 102 Cal.App.4th 560, 563.) Counsel may be any member of the bar, including a district attorney or public defender, so long as that attorney does not represent any party or county agency whose interests conflict with the child’s. Dependency DOG Book, H-11.</p> <p>The Dependency Representation, Administration, Funding, and Training (DRAFT) program was implemented to address critical trial court needs with respect to attorney quality, availability, and cost through the establishment of partnerships between participating courts and the AOC [Administrative Office of the Courts]. Under DRAFT, courts retain responsibility for juvenile dependency counsel selection while the AOC is responsible for direct attorney contracting and service administration. Primary components of DRAFT include competitive bidding for court-appointed counsel services, the execution of standardized appointed counsel contracts, and the development and promulgation of attorney performance and training standards. DRAFT Fact Sheet, 1.</p> <p>With the passage of the Trial Court Funding Act in 1997, funding for the courts shifted from the counties to the state. The funding for court-appointed dependency counsel services was included as part of that transition; thus, local courts continued to administer—and began to directly fund—attorney services for juvenile cases. DRAFT is now a permanent program. Currently, 20 court systems are participating in the program, and dependency cases under the jurisdiction of these 20 courts involve more than a third of the state’s juvenile dependency population. DRAFT Program.</p> <p>Courts contract with local attorneys and/or organizations to provide counsel to children in dependency proceedings. See, e.g., Alameda County.</p>
<p>Funding Child Representation</p>	<p>The court appoints attorneys to represent indigent parents and all children, and the state pays for the attorneys through funds administered by the Administrative Office of the Courts (AOC). Prior to the implementation of the Lockyer-Isenberg Trial Court Funding Act of 1997, each court arranged for representation in dependency cases, and funding was provided by the county. The transition to state funding of the trial courts modified this system by shifting the funding responsibility to the state, with local courts continuing to select and administer attorney services. As a result, significant disparities have existed among California’s 58 counties in terms of attorney caseloads, performance standards, and compensation. DRAFT Fact Sheet, 1.</p> <p>In many instances, when a county social services agency believes a child has been abused or neglected, the agency files a petition with its local juvenile court, thus initiating a juvenile dependency case. Both parents and children are entitled to legal representation, but many are unable to pay for their own attorneys. In these cases, the juvenile court appoints attorneys to represent the parents and the dependent children, and the state pays for these attorneys through funds administered by the</p>

	Administrative Office of the Courts. DRAFT Program.
<p>1. General Duties: Timely appointment, mandatory or discretionary, attorney or lay person, represent child’s interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</p>	<p>If a child or nonminor dependent is not represented by counsel, the court shall appoint counsel for the child or nonminor dependent, unless the court finds that the child or nonminor dependent would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding. A primary responsibility of counsel appointed to represent a child or nonminor dependent pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child or nonminor dependent. Counsel may be a district attorney, public defender, or other member of the bar, provided that he or she does not represent another party or county agency whose interests conflict with the child's or nonminor dependent's interests. The fact that the district attorney represents the child or nonminor dependent in a proceeding pursuant to Section 300 as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to Section 300 is not in and of itself a conflict of interest. Cal. Welf. & Inst. Code § 317(c).</p> <p>The counsel for the child shall be charged in general with the representation of the child’s interests...in any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. In addition counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. Cal. Welf. & Inst. Code § 317(e).</p> <p>Counsel may invoke privileges on behalf of child (but must have informed consent if court finds child to be of sufficient age and maturity to consent, which is presumed if child is over 12, subject to rebuttal of clear and convincing evidence). If counsel invoked privilege, child may waive it but if child invokes, counsel may not waive it. Counsel may have full access to child’s records. Cal. Welf. & Inst. Code § 317(f).</p> <p>The Judicial Council shall adopt a rule of court effective July 1, 2001, that complies with the requirement of the federal Child Abuse Prevention and Treatment Act (Public Law 93-247) for the appointment of a guardian ad litem, who may be an attorney or a court-appointed special advocate, for a child in cases in which a petition is filed based upon neglect or abuse of the child or in which a prosecution is initiated under the Penal Code arising from neglect or abuse of the child. Cal. Welf. & Inst. Code § 326.5.</p> <p>The appointment of an attorney to represent the child does not prevent the appointment of a CASA volunteer for that child, and courts are encouraged to appoint both an attorney and a CASA for the child in as many cases as possible. CAL. R. CT. 5.660(f)(4).</p> <p>The court must appoint counsel for a child who is the subject of a petition under section 300 and is unrepresented by counsel, unless the court finds that the child would not benefit from the appointment of counsel.</p> <p>(1) In order to find that a child would not benefit from the appointment of counsel, the court must find all of the following:</p> <p>(A) The child understands the nature of the proceedings;</p>

	<p>(B) The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and</p> <p>(C) Under the circumstances of the case, the child would not gain any benefit by being represented by counsel. CAL. R. CT. 5.660(a)(1).</p>
<p>2. Out of Court - Actions to be Taken: Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</p>	<p>(e)(1) Counsel shall be charged in general with the representation of the child's interests. To that end, counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses ... When counsel is appointed to represent a nonminor dependent, counsel is charged with representing the wishes of the nonminor dependent except when advocating for those wishes conflicts with the protection or safety of the nonminor dependent. Cal. Welf. & Inst. Code § 317(e)(1).</p> <p>(2) If the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes. Counsel shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child.</p> <p>(3) Counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding, and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. Counsel representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker, and is not expected to provide nonlegal services to the child. Cal. Welf. & Inst. Code § 317(e)(2)-(3).</p> <p>If the attorney for child, or CASA acting as CAPTA GAL, learns of any interest or right [to be protected or pursued in other judicial or administrative forums], they attorney or CASA must notify the court immediately and seek instructions from the court as to any appropriate procedures to follow. CAL. R. CT. 5.660(g)(2).</p> <p>Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation. CAL. R. CT. 5.660(d)(4).</p> <p>The attorney for a child for whom a dependency petition has been filed must provide his or her contact information to the child's caregiver no later than 10 days after receipt of the name, address, and telephone number of the child's caregiver. If the child is 10 years of age or older, the attorney must also provide his or her contact information to the child for whom a dependency petition has been filed no later than 10 days after receipt of the caregiver's contact information. The attorney may give contact information to a child for whom a dependency petition has been filed who is under 10 years of age. CAL. R. CT. 5.660(d)(5).</p>
<p>3. In Court – Active Participation in Hearings:</p>	<p>Counsel...shall represent the...child at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the...child unless relieved by the court upon the substitution of other counsel or for</p>

<p>Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</p>	<p>cause. The representation shall include representing the...child in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship. Cal. Welf. & Inst. Code § 317(d).</p> <p>(e)(1) Counsel shall be charged in general with the representation of the child's interests. To that end, counsel shall ... examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. Counsel may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. Cal. Welf. & Inst. Code § 317(e)(1).</p>
<p>4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders</p>	<p><i>No explicit legal authority or requirement.</i></p>
<p>5. Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>A notice of appeal on behalf of the child must be filed by the child's trial counsel, GAL, or the child if the child is seeking appellate relief from the trial court's judgment or order. CAL. R. CT. 5.660(1)(b).</p> <p>(b) Child as appellant A notice of appeal on behalf of the child must be filed by the child's trial counsel, guardian ad litem, or the child if the child is seeking appellate relief from the trial court's judgment or order.</p> <p>(c) Recommendation from child's trial counsel or guardian ad litem (1) In any juvenile dependency proceeding in which a party other than the child files a notice of appeal, if the child's trial counsel or guardian ad litem concludes that, for purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel on appeal, the child's trial counsel or guardian ad litem must file a recommendation in the Court of Appeal requesting appointment of separate counsel. (2) A child's trial counsel or guardian ad litem who recommends appointment of appellate counsel for a child who is not an appellant must follow the procedures outlined in (d)-(g).</p> <p>(d) Time for trial counsel or guardian ad litem to file the recommendation with the Court of Appeal A recommendation from the child's trial counsel or guardian ad litem may be filed at any time after a notice of appeal has been filed, but absent good cause, must be filed in the Court of Appeal no later than 20 calendar days after the filing of the last appellant's opening brief. CAL. R. CT. 5.661(b)-(d).</p> <p>(f) Factors to be considered The following are factors to be considered by a child's trial counsel or guardian ad litem in making a recommendation to the Court of Appeal: (1) An actual or potential conflict exists between the interests of the child and the interests of any respondent; (2) The child did not have an attorney serving as his or her guardian ad litem in the trial court; (3) The child is of a sufficient age or development such that he or she is able to understand the nature of the proceedings and, (A) The child expresses a desire to participate in the appeal, or</p>

	<p>(B) The child's wishes differ from his or her trial counsel's position;</p> <p>(4) The child took a legal position in the trial court adverse to that of one of his or her siblings, and an issue has been raised in an appellant's opening brief regarding the siblings' adverse positions;</p> <p>(5) The appeal involves a legal issue regarding a determination of parentage, the child's inheritance rights, educational rights, privileges identified in division 8 of the Evidence Code, consent to treatment, or tribal membership;</p> <p>(6) Postjudgment evidence completely undermines the legal underpinnings of the juvenile court's judgment under review, and all parties recognize this and express a willingness to stipulate to reversal of the juvenile court's judgment;</p> <p>(7) The child's trial counsel or guardian ad litem, after reviewing the appellate briefs, believes that the legal arguments contained in the respondents' briefs do not adequately represent or protect the best interests of the child; and</p> <p>(8) The existence of any other factors relevant to the child's best interests. CAL. R. CT. 5.661(f).</p>
<p>6. Cessation of Representation: Contacts post representation, if any</p>	<p><i>No explicit legal authority or requirement beyond conflicts with siblings, below.</i></p> <p><i>(2) Withdrawal from appointment or continued representation</i></p> <p>(A) An attorney representing a group of siblings has an ongoing duty to evaluate the interests of each sibling and assess whether there is an actual conflict of interest.</p> <p>(D) If an attorney believes that an actual conflict of interest existed at appointment or developed during representation, the attorney must take any action necessary to ensure that the siblings' interests are not prejudiced, including:</p> <p>(i) Notifying the juvenile court of the existence of an actual conflict of interest among some or all of the siblings; and</p> <p>(ii) Requesting to withdraw from representation of some or all of the siblings.</p> <p>(E) If the court determines that an actual conflict of interest exists, the court must relieve an attorney from representation of some or all of the siblings.</p> <p>(F) After an actual conflict of interest arises, the attorney may continue to represent one or more siblings whose interests do not conflict only if:</p> <p>(i) The attorney has successfully withdrawn from the representation of all siblings whose interests conflict with those of the sibling or siblings the attorney continues to represent;</p> <p>(ii) The attorney has exchanged no confidential information with any sibling whose interest conflicts with those of the sibling or siblings the attorney continues to represent; and</p> <p>(iii) Continued representation of one or more siblings would not otherwise prejudice the other sibling or siblings. CAL. R. CT. 5.660(A), (D)-(F).</p>
<p>7. General Representation Rules: Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</p>	<p>Court appoints the attorney, but only attorneys who have completed minimum training. Binding rules and procedures are established.</p> <p>Counsel shall have...training that ensures adequate representation of child. Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines. Cal. Welf. & Inst. Code § 317(c).</p> <p>(d) Competent counsel</p> <p>Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel.</p> <p>(1) Definition</p> <p>"Competent counsel" means an attorney who is a member in good standing of the State Bar of California, who has</p>

	<p>participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.</p> <p>(2) Evidence of competency The court may require evidence of the competency of any attorney appointed to represent a party in a dependency proceeding. CAL. R. CT. 5.660(d)(1)-(2).</p> <p>A CAPTA guardian ad litem must be appointed for every child who is the subject of a juvenile dependency petition under section 300. An attorney appointed under rule 5.660 will serve as the child's CAPTA guardian ad litem under section 326.5. If the court finds that the child would not benefit from the appointment of counsel, the court must appoint a CASA volunteer to serve as the child's CAPTA guardian ad litem. The court must identify on the record the person appointed as the child's CAPTA guardian ad litem. CAL. R. CT. 5.662.</p> <p>(g) In a county of the third class, if counsel is to be provided to a child at the county's expense other than by counsel for the agency, the court shall first use the services of the public defender before appointing private counsel. Nothing in this subdivision shall be construed to require the appointment of the public defender in any case in which the public defender has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the public defender after making a finding of good cause and stating the reasons therefor on the record. Cal. Welf. & Inst. Code § 317(g).</p> <p>(b)(1) In any appellate proceeding in which the child is an appellant, the court of appeal shall appoint separate counsel for the child. If the child is not an appellant, the court of appeal shall appoint separate counsel for the child if the court of appeal determines, after considering the recommendation of the trial counsel or guardian ad litem appointed for the child pursuant to subdivision (e) of Section 317, Section 326.5, and California Rule of Court 1448, that appointment of counsel would benefit the child. In order to assist the court of appeal in making its determination under this subdivision, the trial counsel or guardian ad litem shall make a recommendation to the court of appeal that separate counsel be appointed in any case in which the trial counsel or guardian ad litem determines that, for the purposes of the appeal, the child's best interests cannot be protected without the appointment of separate counsel, and shall set forth the reasons why the appointment is in the child's best interests. The court of appeal shall consider that recommendation when determining whether the child would benefit from the appointment of counsel. The Judicial Council shall implement this provision by adopting a rule of court on or before July 1, 2007, to set forth the procedures by which the trial counsel or guardian ad litem may participate in an appeal, as well as the factors to be considered by the trial counsel or guardian ad litem in making a recommendation to the court of appeal, including, but not limited to, the extent to which there exists a potential conflict between the interests of the child and the interests of any respondent. Cal. Welf. & Inst. Code § 395(4)(b)(1).</p>
<p>8. Lawyer Training: Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</p>	<p>(3) <i>Experience and education.</i> (A) Only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. Attorney training must include: (i) An overview of dependency law and related statutes and cases;</p>

	<p>(ii) Information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, and reasonable efforts; and</p> <p>(iii) For any attorney appointed to represent a child, instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home placement.</p> <p>(B) Within every three years, attorneys must complete at least eight hours of continuing education related to dependency proceedings. CAL. R. CT. 5.660(d)(3).</p> <p>The Judicial Council shall promulgate rules of court that establish ... training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001. Those training requirements shall include instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care. Cal. Welf. & Inst. Code § 317(c).</p> <p>Child is entitled to competent counsel, meaning “an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.” The court may require evidence of the competency of any attorney appointed to represent a party in a dependency proceeding. CAL. R. CT. 5.660(d)(1)-(2).</p>
<p>9. Lawyer Compensation: Adequate and timely compensation, reimbursement provided for expenses.</p>	<p>The court may fix the compensation for the services of appointed counsel. Cal. Welf. & Inst. Code § 317(c).</p>
<p>10. Caseload Levels: Caseloads are of a manageable size.</p>	<p>Rule of court may include guidelines to the courts for determining...caseload standards for GALs. Cal. Welf. & Inst. Code § 326.5.</p> <p>The appointed counsel shall have a caseload and training that ensures adequate representation of the child or nonminor dependent. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001. Cal. Welf. & Inst. Code § 317(c).</p> <p>The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements stated in (3), (4), and (5). CAL. R. CT. 5.660(d)(6).</p>