

NEW YORK

<p>Structure, organization, and delivery of Child Representation</p> <p>State-by-state, county-by-county, etc.</p>	<p>The office of court administration may enter into an agreement with a legal aid society for the society to provide attorneys to represent children in the family court or appeals in proceedings originating in the family court in a county having a legal aid society. Fam. Ct. Act, Art. 2, Part 4, § 243</p> <p>Organized by judicial departments, which each have an Attorney for the Child Program. The Attorney for the Child Program (formerly known as the Law Guardian Program) provides legal counsel to minors in certain Family Court matters, including juvenile delinquency and child protective proceedings. For more information, contact your local Family Court. http://www.nycourts.gov/admin/nycourts-introguide.pdf</p> <p>The purpose of the Attorneys for Children (hereinafter AFC) Program is to provide representation to minors in many kinds of court proceedings (such as juvenile delinquency, custody and visitation, and child protective proceedings). https://www.nycourts.gov/courts/ad4/AFC/AFC-index.html</p>
<p>Funding Child Representation</p>	<p>The costs of attorneys for children under section two hundred forty-five shall be payable by the state of New York within the amounts appropriated therefor. Fam. Ct. Act, Art. 2, Part 4, § 248</p> <p>(a) If the office of court administration proceeds pursuant to subdivision (a) of section two hundred forty-three of this chapter, the agreement shall provide that the society shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the program for the provision of attorneys for children by the respective legal aid society, approved by the administrative board, and the office of court administration may require such reports as it deems necessary from the society</p> <p>(b) If an appellate division proceeds pursuant to subdivision (b) of such section two hundred forty-three, the agreement may provide that the attorney or attorneys shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the providing of law guardians by the respective attorney or attorneys, and the appellate division may require such reports as it deems necessary from the attorney or attorneys.</p> <p>(c) If an appellate division proceeds pursuant to subdivision (c) of such section two hundred forty-three, law guardians shall be compensated and allowed expenses and disbursements in the same</p>

	<p>Fam. Ct. Act, Art. 2, Part 4, § 245</p> <p>The attorney for the child shall be entitled to compensation pursuant to applicable provisions of law for services rendered up to and including disposition of the petition. The attorney for the child shall, by separate application, be entitled to compensation for services rendered subsequent to the disposition of the petition. Fam. Ct. Act, Art. 10, Part 1, § 1016</p> <p>The AFC Program administers the AFC panels, including processing their vouchers for payment; providing extensive and mandatory legal education; and providing support services. https://www.nycourts.gov/courts/ad4/AFC/AFC-index.html</p>
<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>This act declares that minors who are the subject of family court proceedings or appeals in proceedings originating in the family court should be represented by counsel of their own choosing or by assigned counsel. This declaration is based on a finding that counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition. This part establishes a system of attorneys for children who often require the assistance of counsel to help protect their interests and to help them express their wishes to the court. Nothing in this act is intended to preclude any other interested person from appearing by counsel. Fam. Ct. Act, Art. 2, Part 4, § 241.</p> <p>As used in this act, "attorney for the child" refers to an attorney admitted to practice law in the state of New York and designated under this part to represent minors pursuant to section two hundred forty-nine of this act. Fam. Ct. Act, Art. 2, Part 4, § 242</p> <p>*Effective 9/1/15 (a) In a proceeding ... where... a minor is sought to be placed in protective custody... the family court shall appoint an attorney to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor... In any proceeding under article ten-B of this act, the family court shall appoint an attorney to represent a youth, under the age of twenty-one, who is the subject of the proceeding, if independent legal representation is not available to such youth. In any other proceeding in which the court has jurisdiction, the court may appoint an attorney to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.</p> <p>(b) In making an appointment of an attorney for a child pursuant to this section, the court shall, to</p>

the extent practicable and appropriate, appoint the same attorney who has previously represented the child. Notwithstanding any other provision of law, in a proceeding under article three of this act following an order of removal made pursuant to article seven hundred twenty-five of the criminal procedure law, the court shall, wherever practicable, appoint the same counsel who represented the juvenile offender in the criminal proceedings. [Fam. Ct. Act, Art. 2, Part 4, § 249](#)

The court shall appoint an attorney to represent a child who has been allegedly abused or neglected upon the earliest occurrence of any of the following: (i) the court receiving notice, pursuant to paragraph (iv) of subdivision (b) of section one thousand twenty-four of this act, of the emergency removal of the child; (ii) an application for an order for removal of the child prior to the filing of a petition, pursuant to section one thousand twenty-two of this act; or (iii) the filing of a petition alleging abuse or neglect pursuant to this article. [Fam. Ct. Act, Art. 10, Part 1, § 1016](#)

(a) As used in this part, "attorney for the child" means a law guardian appointed by the family court pursuant to section 249 of the Family Court Act, or by the supreme court or a surrogate's court in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto.

...

(d) In other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position.

(1) In ascertaining the child's position, the attorney for the child must consult with and advise the child to the extent of and in a manner consistent with the child's capacities, and have a thorough knowledge of the child's circumstances.

(2) If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.

(3) When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so,

	notwithstanding the attorney's position. N.Y. R. Ct §7.2
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	In addition to all other duties and responsibilities necessary to the representation of a child who is the subject of a proceeding under this article, an attorney for a child shall upon receipt of a report from a child protective agency pursuant to sections one thousand thirty-nine, one thousand thirty-nine-a, one thousand fifty-two-a, one thousand fifty-three, one thousand fifty-four, one thousand fifty-five, one thousand fifty-seven and one thousand fifty-eight, review the information contained therein and make a determination as to whether there is reasonable cause to suspect that the child is at risk of further abuse or neglect or that there has been a substantive violation of a court order. Where the attorney for the child makes such a determination, the attorney shall apply to the court for appropriate relief pursuant to section one thousand sixty-one. Nothing contained in this section shall relieve a child protective agency or social services official of its duties pursuant to this act or the social services law. Fam. Ct. Act, Art. 10, Part 7, § 1075
3. In Court – Active Participation in Hearings: 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.	No explicit legal authority or requirement.
4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders	No explicit legal authority or requirement

5. Appellate Advocacy:
Decision to appeal,
withdrawal,
participation in appeal,
conclusion by appeal.

(a) Upon an appeal in a proceeding under this act, the appellate division to which such appeal is taken, or is sought to be taken, shall assign counsel to any person upon a showing that such person is one of the persons described in section two hundred sixty-two of this act and is financially unable to obtain independent counsel or upon certification by an attorney in accordance with section eleven hundred eighteen of this article. The appellate division to which such appeal is taken, or is sought to be taken, may in its discretion assign counsel to any party to the appeal. Counsel assigned under this section shall be compensated and shall receive reimbursement for expenses reasonably incurred in the same manner provided by section seven hundred twenty-two-b of the county law. The appointment of counsel by the appellate division shall continue for the purpose of filing a notice of appeal or motion for leave to appeal to the court of appeals. Counsel may be relieved of his or her representation upon application to the court to which the appeal is taken for termination of the appointment, by the court on its own motion or, in the case of a motion for leave to appeal to the court of appeals, upon application to the appellate division. Upon termination of the appointment of counsel for an indigent party the court shall promptly appoint another attorney.

(b) Whenever an attorney has been appointed by the family court pursuant to section two hundred forty-nine of this act to represent a child in a proceeding described therein, the appointment shall continue without further court order or appointment where (i) the attorney on behalf of the child files a notice of appeal, or (ii) where a party to the original proceeding files a notice of appeal. The attorney for the child may be relieved of his representation upon application to the court to which the appeal is taken for termination of the appointment. Upon approval of such application the court shall appoint another attorney for the child.

(c) An appellate court may appoint an attorney to represent a child in an appeal in a proceeding originating in the family court where an attorney was not representing the child at the time of the entry of the order appealed from or at the time of the filing of the motion for permission to appeal and when independent legal representation is not available to such child.

(d) Nothing in this section shall be deemed to relieve attorneys for children of their duties pursuant to subdivision one of sections 354.2 and seven hundred sixty of this act.

(e) An attorney appointed or continuing to represent a child under this section shall be compensated and shall receive reimbursement for expenses reasonably incurred in the same manner provided by section thirty-five of the judiciary law.

(f) In any case where an attorney is or shall be representing a child in an appellate proceeding pursuant to subdivision (b) or (c) of this section, such attorney shall be served with a copy of the notice of appeal. [Fam. Ct. Act, Art. 10, Part 1, § 1120](#)

<p>6. Cessation of Representation: Contacts post representation, if any</p>	<p>Whenever an attorney has been appointed by the family court pursuant to section two hundred forty-nine of this act to represent a child in a proceeding under this article, such appointment shall continue without further court order or appointment during (i) an order of disposition issued by the court pursuant to section one thousand fifty-two of this article directing supervision, protection or suspending judgment, or any extension thereof; (ii) an adjournment in contemplation of dismissal as provided for in section one thousand thirty-nine of this article or any extension thereof; or (iii) the pendency of the foster care placement ordered pursuant to section one thousand fifty-two of this article. All notices and reports required by law shall be provided to such attorney for the child. Such appointment shall terminate upon the expiration of such order, unless another appointment of an attorney for the child has been made by the court or unless such attorney makes application to the court to be relieved of his or her appointment. Upon approval of such application to be relieved, the court shall immediately appoint another attorney for the child to whom all notices and reports required by law shall be provided. Fam. Ct. Act, Art. 10, Part 1, § 1016</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>The office of court administration may enter into an agreement with a legal aid society for the society to provide attorneys to represent children in the family court or appeals in proceedings originating in the family court in a county having a legal aid society. Fam. Ct. Act, Art. 2, Part 4, § 243</p> <p>Organized by judicial departments, which each have an Attorney for the Child Program. The Attorney for the Child Program (formerly known as the Law Guardian Program) provides legal counsel to minors in certain Family Court matters, including juvenile delinquency and child protective proceedings. For more information, contact your local Family Court. http://www.nycourts.gov/admin/nycourts-introguide.pdf</p> <p>The purpose of the Attorneys for Children (hereinafter AFC) Program is to provide representation to minors in many kinds of court proceedings (such as juvenile delinquency, custody and visitation, and child protective proceedings). https://www.nycourts.gov/courts/ad4/AFC/AFC-index.html</p>
<p>8. Lawyer Training: Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</p>	<p>(a) The chief administrator of the courts ... shall promulgate court rules for attorneys for children. Such court rules shall:</p> <p>...</p> <p>2. provide for the development of training programs with the input of and in consultation with the state office for the prevention of domestic violence. Such training programs must include the dynamics of domestic violence and its effect on victims and on children, and the relationship between such</p>

	<p>dynamics and the issues considered by the court, including, but not limited to, custody, visitation and child support. Such training programs along with the providers of such training must be approved by the office of court administration following consultation with and input from the state office for the prevention of domestic violence; and</p> <p>3. require that all attorneys for children, including new and veteran attorneys, receive initial and ongoing training as provided for in this section. Fam. Ct. Act, Art. 2, Part 4, § 249-b</p>
<p>9. Lawyer Compensation: Adequate and timely compensation, reimbursement provided for expenses.</p>	<p>The attorney for the child shall be entitled to compensation pursuant to applicable provisions of law for services rendered up to and including disposition of the petition. The attorney for the child shall, by separate application, be entitled to compensation for services rendered subsequent to the disposition of the petition. Fam. Ct. Act, Art. 10, Part 1, § 1016</p>
<p>10. Caseload Levels: Caseloads are of a manageable size</p>	<p>(a) The chief administrator of the courts ... shall promulgate court rules for attorneys for children. Such court rules shall:</p> <p>1. prescribe workload standards for attorneys for children, including maximum numbers of children who can be represented at any given time, in order to ensure that children receive effective assistance of counsel comporting with legal and ethical mandates, the complexity of the proceedings affecting each client to which the attorney is assigned, and the nature of the court appearance likely to be required for each individual client. Fam. Ct. Act, Art. 2, Part 4, § 249-b</p>