

**NEW YORK STATE SUPREME COURT
APPELLATE DIVISION, FOURTH DEPARTMENT**

**HONORABLE GERALD J. WHALEN
PRESIDING JUSTICE**



**GUIDELINES FOR ATTORNEYS FOR CHILDREN
IN THE FOURTH DEPARTMENT**

PREFACE

The Departmental Advisory Committee of the Fourth Department Attorneys for Children Program (Hon. Michael F. Griffith, Chair) drafted these guidelines and they have been approved by the Appellate Division, Fourth Department. The guidelines are an update of guidelines issued by the Departmental Advisory Committee of the Fourth Department Law Guardian Program in the 1980's and 1990's (Hon. John F. O'Donnell, Chair). The guidelines have been updated to reflect current practice in light of case law, statutory changes, Court Rules and Appellate Division, Fourth Department policy. These guidelines contain recommended best practices for all attorneys for children and shall be used as a basis for evaluation of the overall performance of attorneys for children.

FUNCTION OF THE ATTORNEY FOR THE CHILD

The following Rule of the Chief Judge must be followed by all attorneys for children in the Fourth Department:

Section 7.2 Function of the attorney for the child.

(a) As used in this part, "attorney for the child" means [an attorney] appointed by 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.

(b) The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation.

(c) In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.

(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 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.

SUMMARY OF RESPONSIBILITIES OF THE ATTORNEY FOR THE CHILD

The following Summary of Responsibilities of the Attorney for the Child was drafted by the Statewide Attorneys for Children Advisory Committee and approved by the Administrative Board of the Unified Court System. The Appellate Division, Fourth Department endorses this summary.

While the activities of the attorney for the child will vary with the circumstances of each client and proceeding, in general those activities will include, but not be limited to, the following:

- (1) Commence representation of the child promptly upon being notified of the appointment;
- (2) Contact, interview and provide initial services to the child at the earliest practical opportunity, and prior to the first court appearance when feasible;
- (3) Consult with and advise the child regularly concerning the course of the proceeding, maintain contact with the child so as to be aware of and respond to the child's concerns and significant changes in the child's circumstances, and remain accessible to the child;
- (4) Conduct a full factual investigation and become familiar with all information and documents relevant to representation of the child. To that end, the lawyer for the child shall retain and consult with all experts necessary to assist in the representation of the child.
- (5) Evaluate the legal remedies and services available to the child and pursue appropriate strategies for achieving case objectives;

(6) Appear at and participate actively in proceedings pertaining to the child;

(7) Remain accessible to the child and other appropriate individuals and agencies to monitor implementation of the dispositional and permanency orders, and seek intervention of the court to assure compliance with those orders or otherwise protect the interests of the child, while those orders are in effect; and

(8) Evaluate and pursue appellate remedies available to the child, including the expedited relief provided by statute, and participate actively in any appellate litigation pertaining to the child that is initiated by another party, unless the Appellate Division grants the application of the attorney for the child for appointment of a different attorney to represent the child on appeal.

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ABUSE AND NEGLECT PROCEEDINGS
Article 10, Family Court Act

A. The Function Of the Attorney for the Child

The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation...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 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.

B. Upon Appointment and Prior to the Initial Appearance of the Attorney for the Child

1. The attorney for the child must obtain and examine all pleadings and supporting documents.
2. In order to determine the current address and phone number of the child, the attorney for the child must contact the child protective worker named as petitioner in the action or if the worker is unavailable, the supervisor of such worker.
3. The attorney for the child should obtain information from the child protective worker regarding the present welfare of the child and services

the child may need.

4. Absent extraordinary circumstances, the attorney for the child must do the following:
 - a. If the child is in foster care or not with a named respondent, arrange through the foster care worker, foster parent or relative to visit and interview the child in a manner and environment appropriate to the child's age and maturity to ascertain more particular facts concerning the alleged abuse or neglect and to determine the child's wishes and needs regarding temporary visitation and placement.
 - b. If the child is in the care and custody of a named respondent, request permission from the attorney for the respondent to arrange an interview with the child out of the presence of the respondent and in a manner and environment appropriate to the child's age and maturity. If permission is refused, the attorney for the child should request the help of the court in arranging an interview with the child. During the interview, the attorney for the child should ascertain more particular facts concerning the alleged abuse or neglect and determine the child's wishes and needs regarding temporary visitation and placement.

5. Absent extraordinary circumstances, the attorney for the child should do the following:
 - a. If the child is in foster care or not with the named respondent,
 - (1) obtain from the child's caretaker information regarding the level and quality of care and services the child is currently receiving and services the child may need and;
 - (2) visit the child in the caretaker's home and make observations of the child and the child's interactions.
 - b. If the child is in the care and custody of the named respondent, request permission from the respondents' attorney to:
 - (1) meet with the respondent to obtain necessary background and relevant history and information regarding the child's care and need for services and;
 - (2) visit the child in the child's home and make observations of the child and the child's relationships.

6. The attorney for the child should obtain from the caseworkers and caretakers names and addresses of hospital personnel, physicians, teachers and other persons who have had significant contact with the child and may have pertinent information regarding the child. When representing an older child, the attorney for the child should attempt to obtain information directly from the child, if possible. If the older child does not have the information, then secondary sources should be contacted.
7. The attorney for the child should advise all other attorneys in the proceeding that the child may not be interviewed without the permission of the attorney for the child.

C. Prior to the Fact-Finding Hearing

1. The attorney for the child must:
 - a. Review the files and all relevant information.
 - b. Advise an older child, in terms the child can understand, of the nature of the proceeding, the child's rights, the role and responsibilities of the attorney for the child, the attorney-client privilege, the fact-finding process, and the possible consequences of a finding. The strengths and weaknesses of the petitioner's case should be evaluated from the point of view of fact-finding and disposition. The attorney for the child's strategy should be developed with full consultation, in terms the child can understand, with the child. If the child is capable of a knowing, voluntary and considered judgment, the attorney for the child must, after consultation with the child, advocate for the child's position, goals and strategies, unless to do so would likely result in a substantial risk of imminent, serious harm to the child.
 - c. Actively participate in any pre-trial discussion regarding any aspect of the case with the child protective agency and respondent's attorney, with or without the Judge or the Judge's law clerk present.
2. The attorney for the child should:
 - a. Contact persons who have had significant contact with the child and may have pertinent information regarding the child.
 - b. Obtain, by subpoena, if necessary, all the foster care child protective records from the agency (judicial subpoena duces tecum) and necessary and relevant medical, psychological, school, etc.,

records.

- c. Consult with any attorney who previously represented the child.
 - d. Seek approval from the respondent's attorney to interview the parents regarding the allegations of the petitioner. After permission is granted, interview the respondents.
 - e. If any existing reports are insufficient or for any other valid reason, request services such as an independent mental health evaluation under § 722-c of the County Law.
 - f. Request any temporary orders that may be in the child's interests, including preventive and rehabilitative services under the Child Welfare Reform Act, temporary foster care or temporary placement with a relative. If the child is in foster care, the attorney for the child must consider the possibility of placement with a relative or friend as well as possible alternative foster care placement, and in consultation with the child, the attorney for the child should advocate for appropriate parental visitation and sibling visitation, if appropriate.
3. If the child has been removed from the child's residence prior to a court order, the attorney for the child must participate actively at the § 1027 hearing or § 1028 hearing (requesting such hearing be held, if necessary) and present evidence and a position concerning the need for removal; if necessary and advisable, the attorney for the child should appeal an adverse finding.

D. The Fact-Finding Hearing

1. The attorney for the child must take an active role during the fact-finding hearing as the child's advocate.
2. The attorney for the child must be familiar with the relevant records, reports and evidence and ensure that necessary witnesses testify and relevant material is introduced into evidence.
3. Whenever appropriate, the attorney for the child must present independent evidence and witnesses, cross-examine witnesses, make opening and closing statements, and make necessary motions.
4. The attorney for the child must be fully involved in any discussion regarding the proposed testimony of the child and, if it is determined that the child should testify, must strongly advocate for that testimony to be

taken in a legally acceptable and emotionally neutral setting.

- a. Following the filing of the petition, the attorney for the child must arrange to be present whenever the child is interviewed by an attorney and must advise all attorneys that interviews with the child must be scheduled, if at all, through the attorney for the child.
- b. The attorney for the child should prepare the child for testifying by:
 - (1) bringing the child to the courtroom shortly before the trial, showing the child the setting, introducing the child to the judge and available attorneys of record, and advising the child in simple terms as to the nature of an oath and the purpose and mechanics of testifying.
 - (2) when appropriate, scheduling an appointment with the child and the attorney who has subpoenaed the child to advise the child (in the presence of the attorney for the child) of questions that may be asked at trial.

E. The Pre-Dispositional Hearing

1. The attorney for the child should request the court to order reports that may be helpful, including mental health studies or other evaluations.
2. The child should be interviewed again to determine the child's wishes, the weight to be accorded those wishes, the possible dispositional evidence and, if relevant, the status and appropriateness of the foster home.
3. The attorney for the child should consider re-visiting the natural home and, if relevant, the foster home; the respondents should again be interviewed with the consent of respondents' attorneys. Parental and sibling visitation should be evaluated and, if possible, observed.
4. Every relevant report and record should be obtained or subpoenaed, including school records, court-ordered evaluations and the records of any supportive or rehabilitative program.
5. When necessary, the attorney for the child should develop independently a complete dispositional plan to present to the court. If a full dispositional hearing is needed, potential witnesses and other evidence should be subpoenaed to support the specific dispositional plan.
6. The child should be consulted and apprised, in terms the child can understand, of the specific dispositional plan and possible alternatives

proposed by the attorney for the child or child protective agency. When the child is capable of a knowing, voluntary and considered judgment, the attorney for the child should follow the child's wishes with regard to the specific disposition that the attorney for the child intends to present and argue, unless to do so would likely result in a substantial risk of imminent, serious harm to the child.

7. Child protective officials and other appropriate persons should be consulted regarding the dispositional plan; if possible, the attorney for the child and agency should reach agreement or consent concerning the disposition.

F. The Dispositional Hearing

1. The attorney for the child must present and advocate a specific dispositional plan to the court and apprise the court of the child's wishes.
2. The attorney for the child should ensure that every relevant report and witness supportive of the attorney for the child's dispositional plan are presented to the court.
3. When relevant, witnesses should be cross-examined; if appropriate, such as when the attorney for the child disagrees with the agency's plan, the attorney for the child should present evidence to support the alternate plan.
4. If the court intends to interview the child in chambers, the attorney for the child must be present; all questions should be posed only by the court and the attorney for the child, and attorneys may submit written questions to the court prior to the interview. The attorney for the child must prepare the child for the meeting with the court and should question the child in an age-appropriate manner.

G. Post Disposition

1. The attorney for the child should explain to the child, in terms the child can understand, the disposition and its consequences, the child's rights, and possibilities of post-hearing motions or hearings, and the responsibilities of each of the parties, including the child protective agency and the respondents.
2. If the attorney for the child believes that the court's determination is contrary to the child's wishes or interests and grounds exist upon which to base an appeal, after considering the wishes of the child, a notice of appeal should be filed. If there is an appeal, the attorney for the child must comply with the guidelines set forth in the appeals section of these

guidelines. If the child is capable of a knowing, voluntary and considered judgment, the attorney for the child must follow the child's wishes with regard to the filing of an appeal, unless to do so would likely result in a substantial risk of imminent, serious harm to the child.

3. The attorney for the child must examine the dispositional order to ensure that the order conforms with the finding and disposition; the attorney for the child should ensure that statutorily required findings and notices, such as the possibility of future termination of parental rights (if there was an abuse finding) and contempt warnings for violations of orders of protection, are included in the order.
4. To effectuate post-disposition review and to ensure that court-ordered reports reach the attorney for the child, the attorney for the child should request that the order of disposition contain the provision that the attorney for the child remain the child's attorney for the duration of the order.
 - a. The attorney for the child should ensure that the dispositional order contains provisions that direct the child protective agency and other service providers named in the order to provide periodic reports to the attorney for the child on the actual provision of services, the compliance of the respondents' with the court, and the current welfare of the child.
 - b. In appropriate cases, the attorney for the child, in monitoring the provisions of the dispositional services, should return the matter to court if necessary to protect the interests of the child. (The attorney for the child is empowered by the Family Court Act to seek new hearings and reconsiderations of orders [see Family Court Act §1061] on behalf of the child).
 - c. The attorney for the child must provide the child with a phone number or other method of contacting the attorney for the child in the event that problems arise with regard to the disposition.

FOSTER CARE APPROVAL PROCEEDINGS
Social Services Law § 358-a

A. The Function of the Attorney for the Child

The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation...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 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.

B. Prior to the Initial Appearance of the Attorney for the Child

1. The attorney for the child must obtain and examine all pleadings and supporting documents. The transfer of custody instrument executed by the parent or transfer of care instrument signed by a non-parent also should be examined.
2. The attorney for the child must obtain the current address and phone number of the child and must obtain from the foster care worker information regarding the present welfare of the child and services the child needs.
3. Absent extraordinary circumstances, the attorney for the child must

arrange through the foster care worker, foster parent or relative to visit and interview the child in a manner and environment appropriate to the child's age and maturity to ascertain more particular facts concerning the child's and family's situation and to determine the child's wishes and needs regarding visitation, services and placement.

4. Absent extraordinary circumstances, if the child is too young to provide meaningful information, the attorney for the child must obtain from the child's caretakers information regarding the level and quality of care and services the child is currently receiving and services the child may need and visit the child in the caretaker's home and make observations of the child and the child's interactions.
5. The attorney for the child should obtain from the caretakers and caseworkers names and addresses of hospital personnel, physicians, teachers and other persons who have had significant contact with the child and may have pertinent information regarding the child. When representing an older child, the attorney for the child should attempt to obtain this information directly from the child, if possible. If the older child does not have the information, then secondary sources should be contacted.
6. If the record and documents show a prior foster care placement, the relevant court records should be reviewed and any attorney for the child who previously represented the child should be consulted.

C. Prior to the Hearing

1. The attorney for the child must review the documents from the family's case file that are required to be filed with the court 10 days before the hearing. If more information is needed, the F.A.S.P. (Family Assessment and Service Plan) and any necessary and relevant medical, psychological, and school records should be obtained (by subpoena if necessary). These records should be reviewed in detail to determine issues such as the agency's assessment of the natural family and the specific problems that require foster care placement, the services which were offered to prevent placement, the parental response, the estimated time necessary to ameliorate the conditions that resulted in foster care placement, the identification and availability of services required for the child and the family, and the visitation plan.
2. The attorney for the child should determine whether all necessary parties have been served with notice of the proceeding, such as an unwed father who has the right to receive notice and to be heard at the time of proceeding.

3. The attorney for the child should determine, if possible, whether the parents executed the transfer instrument voluntarily or whether there was possible coercion (patent or latent); it also should be ascertained whether the parents waived a § 358-a hearing and consented to a court review on the papers only, and whether the parents were aware of and were offered alternatives to placement, including preventative services.
4. After a review of the relevant documents, the caseworker should be interviewed and asked about agency efforts to prevent or eliminate the need for removal of the child from the home and the reasons why such efforts were not made. The parents' attorneys should be asked for permission to interview the parents. When permission is granted, the attorney for the child should interview the parents. If the parents oppose continued placement, the plan concerning the child should be considered by the attorney for the child. The parents also should be asked about the nature of the agency's efforts to prevent or eliminate the need for removal of the child from the home.
5. If the existing reports are inadequate or for any other valid reason, the attorney for the child should request services such as an independent mental health evaluation under § 722-c of the County Law.
6. If the child has siblings in foster care, the siblings' caseworker should be interviewed regarding the family situation and the case plan for the siblings and parents.
7. Absent extraordinary circumstances, the attorney for the child must meet with the child and, if the child is capable of providing meaningful information, must interview the child to ascertain his/her desires concerning placement and services. The child should also be questioned concerning possible neglect or abuse. The child must be advised, in terms the child can understand, of the nature of the proceeding; the child's rights, the role and responsibilities of the attorney for the child, the agency, the court, and the parents; the attorney-client privilege; and the possible dispositional alternatives available to the court.
8. In consultation with the child, the attorney for the child should form an opinion whether placement at this time is an appropriate plan for the child, giving due consideration to the child's wishes. The attorney for the child's strategy should be developed with full consultation, in terms the child can understand, with the child. If placement is deemed appropriate, the attorney for the child should form an opinion whether the specific proposed placement is appropriate, including whether it is the least restrictive appropriate placement, whether the proposed duration of the placement is appropriate, and whether the proposed service and visitation plans are

appropriate. If the child is capable of a knowing, voluntary and considered judgment, the attorney for the child must, after consultation with the child, advocate for the child's position and goals, unless to do so would likely result in a substantial risk of imminent, serious harm to the child.

D. The Hearing

1. If appropriate, the attorney for the child should submit motions, such as a motion to produce records or a motion for a mental health evaluation of the child or any other party.
2. If there was a parental waiver of the hearing, the attorney for the child should question the agency worker under oath concerning the facts surrounding waiver and efforts to encourage the parent to attend the hearing.
3. If parental presence is deemed necessary, the attorney for the child should request an adjournment and the issuance of process.
4. The attorney for the child should consider whether an Article 10 proceeding (abuse or neglect) would be appropriate; if so, the attorney for the child should either request that the court direct that such a proceeding be commenced or for permission to file.
5. The attorney for the child should present independent evidence to support the child's position and, when necessary, call relevant witnesses such as school officials or the foster care parents.
6. The attorney for the child should advise the court of the child's wishes and desires.
7. The attorney for the child should assist in determining whether reasonable efforts were made by the agency to prevent or eliminate the need for placement or whether there were good reasons why such efforts were not made.
8. The attorney for the child should advocate a complete appropriate plan. If any aspect of the agency plan appears to be inappropriate, including the decision to place, the proposed duration and level of placement, visitation, services to the child and the family, or the specific placement (the suitability of the foster home, distance from the natural home, school, etc.) the attorney for the child should present evidence and advocate appropriate alternatives.
9. If the court intends to speak to the child in chambers, the attorney for the

child must be present; all questions should be posed only by the court and the attorney for the child, and attorneys may submit written questions to the court prior to the interview. The attorney for the child must prepare the child for the meeting with the court and question the child in an age-appropriate manner.

10. The attorney for the child should advocate for inclusion of appropriate specific conditions in the court's order approving placement that require the agency to implement a specific plan of action toward returning the child home.

E. Post Hearing

1. The attorney for the child must explain to the child, in terms the child can understand, the disposition and its consequences, the child's rights, future permanency hearings, and the responsibilities of each of the parties, including the agency and the parents.
2. The attorney for the child must examine the dispositional order to ensure that the order conforms with the dispositional findings.
3. If the attorney for the child believes that the court's determination is contrary to the child's wishes or interests and grounds exists upon which to base an appeal, after considering the wishes of the child, a notice of appeal should be filed. If there is an appeal, the attorney for the child must comply with the guidelines set forth in the appeals section of these guidelines. If the child is capable of a knowing, voluntary and considered judgment, the attorney for the child must follow the child's wishes with regard to the filing of an appeal, unless to do so would likely result in a substantial risk of imminent, serious harm to the child.
4. The attorney for the child must provide the child with a phone number or other method of contacting the attorney for the child in the event that problems arise with regard to the disposition.

PERMANENCY PROCEEDINGS
Family Court Act § 1086 et seq.

A. The Function of the Attorney for the Child

The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation...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 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.

B. Prior to the Initial Appearance of the Attorney for the Child

1. The attorney for the child must obtain and examine all pleadings and supporting documents, including the placement instrument.
2. If the permanency report omits the name and address of the foster parents or the name and address of the biological parents, the attorney for the child should obtain this information from the caseworker who has signed the report.
3. The attorney for the child must obtain the current address and phone number of the child and information regarding the present welfare of the child and services the child may need the foster care worker to secure.

4. Absent extraordinary circumstances, the attorney for the child must arrange through the foster care worker, foster parent or relative to visit and interview the child in a manner and environment appropriate to the child's age and maturity to ascertain more particular facts concerning the child's and family's situation and to determine the child's wishes and needs regarding visitation, services and placement.
5. Absent extraordinary circumstances, if the child is unable to provide meaningful information, the attorney for the child must obtain from the child's caretaker's information regarding the level and quality of care and services the child is currently receiving and services the child may need and visit the child in the caretaker's home and make observations of the child and the child's interactions.
6. The attorney for the child should obtain from the caretakers and caseworker's names and addresses of hospital personnel, physicians, teachers and other persons who have had significant contact with the child and may have pertinent information regarding the child. When representing an older child, the attorney for the child should attempt to obtain information directly from the child. If the older child does not have the information, then secondary sources should be contacted.
7. Relevant court records pertaining to the child's initial placement in foster care should be reviewed and any attorney for the child who previously represented the child should be consulted.

C. Prior to the Hearing

1. The attorney for the child should obtain a copy of the Family Assessment and Service Plan (F.A.S.P.) (by subpoena if necessary), and the permanency hearing report, and review them in detail, focusing on permanency plans, child and family services, permanency goals, amendments to the initial F.A.S.P., progress notes, the comprehensive service plan, and the goal and objective review sections of the permanency hearing report. The extent of compliance with plans and the time frames for meeting the plans should be carefully scrutinized and any discrepancies noted.
2. The attorney for the child should specifically determine in what manner the agency intends to comply with the relevant time periods set forth in Family Court Act § 1089.
3. Any necessary and relevant medical, psychological and school records should be obtained (by subpoena if necessary) and reviewed.

4. The attorney for the child should determine whether all necessary parties have been served with notice of the proceeding, including the agency having custody of the child, the agency supervising the child's foster care, the foster parents in whose home the child has resided for a continuous period of twelve months, and the child's parent or guardian or other person who transferred care of the child to the agency.
5. The attorney for the child should ensure that the hearing is scheduled so that it will take place before the expiration of the relevant time periods set forth in Family Court Act § 1089.
6. After a review of the relevant documents, the caseworker should be interviewed and asked about the child protective agency's efforts to reunite the family. The parents' attorneys should be asked for permission to interview the parents. When permission is granted, the attorney for the child should interview the parents. If the parents oppose continued placement, their plan concerning the child should be considered by the attorney for the child. The parents should also be asked about the nature of the child protective agency's efforts to reunite the family.
7. If existing reports are insufficient or for any other valid reason, the attorney for the child should request services such as an independent mental health evaluation under § 722-c of the County Law.
8. If the child has siblings in foster care, the siblings' caseworker should be interviewed regarding the family situation and the case plan for the siblings and parents.
9. Absent extraordinary circumstances, the attorney for the child must interview the child to ascertain the child's desires concerning placement and services. The child should also be questioned concerning possible neglect or abuse in the foster care placement or in the home. The child should be advised, in terms the child can understand, of the nature of the proceeding; the child's rights; the role and responsibilities of the attorney for the child, the child protective agency, the court and the parents; the attorney-client privilege; and the possible dispositional alternatives available to the court.
10. The attorney for the child should form an opinion as to the appropriateness of the disposition and the dispositional plan proposed by the agency, including any recommendation for continued foster care. If the attorney for the child disagrees with the agency's plan, a comprehensive alternative plan should be prepared for submission to the court. If continued placement is deemed appropriate, the attorney for the child should form an opinion whether the specific placement is appropriate, including whether it

is the least restrictive appropriate placement, whether the proposed duration of the placement is appropriate, and whether the proposed service and visitation plans are appropriate.

D. The Hearing

1. The attorney for the child should consider whether to go forward with the hearing if there has not been compliance with the time lines for service of the Permanency Hearing Report. If appropriate, the attorney for the child should submit motions, such as a motion to produce records or a motion for a mental health evaluation of the child or any other party.
2. The attorney for the child should present independent evidence to support the child's position and, when necessary, call relevant witnesses such as school officials or the foster parents. If appropriate, the attorney for the child should cross-examine witnesses called by the parties – detailed examination is particularly important when the attorney for the child disagrees with the child protective agency's plan.
3. The attorney for the child should advise the court of the child's wishes and desires.
4. The attorney for the child should advocate a complete appropriate plan. If any aspect of the agency plan appears to be inappropriate, including the decision to continue placement or return home, the proposed duration and level of placement, visitation, services to the child and family, or the specific placement (the suitability of the foster home, the restrictiveness of the level of care, distance from the natural home, school, etc.), the attorney for the child should present evidence and advocate appropriate alternatives.
5. Where there is a permanency goal of returning the child home, the attorney for the child should ascertain whether the proposed plan provides for this to occur within appropriate time parameters.
6. If the court intends to speak to the child in chambers, the attorney for the child must be present; all questions should be posed only by the court or the attorney for the child, and other attorneys should submit written questions to the court prior to the interview. The attorney for the child must prepare the child for the meeting with the court and should question the child in an age-appropriate manner.
7. The attorney for the child should advocate for inclusion of appropriate specific conditions in the court's order approving continued placement which require the agency to implement a specific plan of action toward

returning the child home.

E. Post Hearing

1. The attorney for the child must explain to the child, in terms the child can understand, the disposition and its consequences, the child's rights and responsibilities of post hearing motions or hearings (particularly the right to seek review of the placement at any time), and the responsibilities of each of the parties, including the child protective agency and the parents.
2. If the attorney for the child believes that the court's determination is contrary to the child's wishes or interests and grounds exists upon which to base an appeal, after considering the wishes of the child, a notice of appeal should be filed. If there is an appeal, the attorney for the child must comply with the guidelines set forth in the appeals section of these guidelines. If the child is capable of a knowing, voluntary and considered judgment, the attorney for the child must follow the child's wishes with regard to the filing of an appeal, unless to do so would likely result in a substantial risk of imminent, serious harm to the child.
3. If a proceeding to terminate parental rights has been ordered, or if a placement for adoption has been ordered, the attorney for the child should closely monitor the agency to ensure that a timely termination petition is filed or adoptive placement is made and should return the matter to court if necessary to protect the interests of the child.
4. To effectuate post-disposition review, the attorney for the child must request that the order of disposition contain the provision that the attorney for the child remain attorney for the duration of the order.
5. The attorney for the child must examine the dispositional order to ensure that the order conforms with the findings and the disposition.
6. The attorney for the child must provide the child with a phone number or other method of contacting the attorney for the child in the event that problems arise with regard to the disposition.

TERMINATION OF PARENTAL RIGHTS PROCEEDINGS
Social Services Law § 384-b

A. The Function of the Attorney for the Child

The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation...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 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.

B. Upon Appointment and Prior to the Initial Appearance of the Attorney for the Child

1. The attorney for the child must obtain and examine all pleadings and supporting documents.
2. The attorney for the child must determine whether the agency has served all necessary parties, including adjudicated fathers and other statutorily included individuals.
3. The attorney for the child should review all prior court records involving the child and family in question. Additionally, the attorney for the child should consult with any attorney for the child who previously represented the child.
4. The attorney for the child should obtain and review the child protective

agency case record in order to assess the agency's involvement with the family during the time of placement, services that were made available to the family, the utilization, if any, of those services and the quantity and quality of parental visitation.

5. Absent extraordinary circumstances, the attorney for the child must arrange through the foster care worker, foster parent or relative to visit and interview the child in a manner and environment appropriate to the child's age and maturity to ascertain more particular facts concerning the placement, the foster parents, respondents and the child's wishes and needs concerning placement and adoption.
6. Absent extraordinary circumstances, if the child is unable to provide meaningful information the attorney for the child must visit the child in the caretaker's home and make observations of the child and the child's interactions.
7. The attorney for the child should obtain from the child's caretakers information regarding the level and quality of care and services the child is currently receiving and services the child may need.
8. The attorney for the child must contact the foster care worker assigned to the case and obtain information regarding the current living situation of the child in question, the physical and emotional problems the child may be experiencing and the worker's evaluation of the potential for adoption of the child.

C. Prior to the Hearing

1. The child must be advised, in terms the child can understand, of the nature of the proceedings; the child's rights; the parents' rights; the role and responsibility of the child protective agency, the court, the foster parents and the attorney for the child; the attorney-client privilege; and the possible dispositional alternatives available to the court.
2. The attorney for the child must arrange to be present whenever the child is interviewed by an attorney and must advise all attorneys that interviews should be scheduled only with the permission of the attorney for the child.
3. The parents' attorneys must be consulted for approval to interview respondents; if possible, the respondents should be interviewed and, if they oppose termination, their plan concerning the child's future should be evaluated.
4. If appropriate, the attorney for the child should visit the natural parents'

home.

5. If appropriate, services such as mental health evaluations should be requested under § 722-c of the County Law.
6. After a review of the relevant documents and interviews, the caseworker should be interviewed, particularly concerning the permanency decisions involving the child (for example, a possible adoption by foster parents); with approval of their counsel, if any, the foster parents or the institutional representatives also should be interviewed.
7. The attorney for the child must formulate a position whether parental rights should be terminated, after consultation with the child, and in light of other available options, and should prepare for the fact-finding hearing accordingly.
8. The attorney for the child should actively participate in any pre-trial discussion regarding any aspect of the case with the child protective agency and respondent's attorney, with or without the Judge or the Judge's law clerk present.

D. The Fact-Finding Hearing

1. The attorney for the child must take an active role during the fact-finding hearing as the child's advocate.
2. The attorney for the child must be familiar with relevant records, reports and evidence and ensure that necessary witnesses testify and relevant material is introduced into evidence.
3. When appropriate, the attorney for the child must present independent evidence and witnesses, cross-examine witnesses, make opening and closing statements, and make necessary motions.
4. The attorney for the child must be fully involved in any discussion regarding the proposed testimony of the child and, if it is determined that the child should testify, must strongly advocate for that testimony to be taken in a legally acceptable and emotionally neutral setting.
 - a. The attorney for the child should prepare the child for testifying by:
 - (1) bringing the child to the courtroom shortly before the trial, showing the child the setting, introducing the child to the judge and available attorneys of record, and advising the child in simple terms as to the nature of an oath and the

purpose and mechanics of testifying.

- (2) when appropriate, scheduling an appointment with the child and the attorney who has subpoenaed the child to advise the child (in the presence of the attorney for the child) of questions that may be asked at trial.

E. Post Fact-Finding Hearing

1. At the conclusion of a termination proceeding based on abandonment or mental disability, the attorney for the child should request that the court hold a dispositional hearing unless the attorney for the child concurs with the child protective agency's plan to have parental rights terminated and the child adopted. (Because a dispositional hearing is required in permanent neglect and severe or repeated abuse proceedings, such request is not necessary in those proceedings).
2. The child must be consulted and apprised, in terms the child can understand, of the specific dispositional plans proposed. When the child is capable of knowing, voluntary and considered judgment, the attorney for the child must follow the child's wishes with regard to the specific disposition that the attorney for the child intends to present and argue, unless to do so would likely result in a substantial risk of imminent, serious harm to the child.
3. If appropriate for a dispositional hearing, services, such as mental health evaluation, should be requested under § 722-c of the County Law.
4. The attorney for the child should request the court order reports that may be helpful and submit appropriate motions to produce relevant reports, such as relevant records pertaining to the parents of the child.

F. The Dispositional Hearing

1. The attorney for the child must present and advocate a specific dispositional plan to the court and inform the court of the child's wishes. If the attorney for the child believes that specific services are necessary for the child or family, the attorney for the child should request that the court order those services.
2. The attorney for the child should ensure that all relevant reports, witnesses and recommendations are presented to the court.
3. Witnesses should be cross-examined to elicit relevant information to support the attorney for the child's plan; the attorney for the child should

also present evidence to support the plan, particularly when it conflicts with a party's recommendations (the child protective agency's or the parents).

4. If the court intends to speak to the child in chambers, the attorney for the child must be present; all questions should be posed only by the court and the attorney for the child and other attorneys may submit written questions to the court prior to the interview. The attorney for the child must prepare the child for the meeting with the court and should question the child in an age-appropriate manner.

G. Post Disposition

1. The attorney for the child must explain to the child, in terms the child can understand, the disposition and its consequences; the child's rights and the possibility of post-hearing motions or hearings; and the responsibilities of each of the parties, including the child protective agency, the parents and the foster parents.
2. If the attorney for the child believes that the court's determination is contrary to the child's wishes or interests and grounds exists upon which to base an appeal, after considering the wishes of the child, a notice of appeal should be filed. If there is an appeal, the attorney for the child must comply with the guidelines set forth in the appeals section of these guidelines. If the child is capable of a knowing, voluntary and considered judgment, the attorney for the child must follow the child's wishes with regard to the filing of an appeal, unless to do so would likely result in a substantial risk of imminent, serious harm to the child.
3. The attorney for the child must examine the dispositional order to ensure that the order conforms with the findings of disposition.
 - a. In the event that the proceedings result in a suspended judgment, the attorney for the child should review petitioner's reports regarding respondent's compliance with the terms of the suspended judgment and make any appropriate motion to further the child's wishes and interests.
 - b. In the event the proceedings result in an order of commitment of guardianship and custody to the authorized agency and if adoption is the goal for the child, and if after the attorney for the child has consulted with the child, the attorney for the child takes the position that adoption is the goal for the child, the attorney for the child must attend the next permanency hearing, review the agency report regarding facilitation of the adoption and monitor the services and assistance to be provided to the child and the prospective adoptive

parents to expedite the adoption.

4. To effectuate post-disposition review:
 - a. In appropriate cases, the attorney for the child, in monitoring the provision of dispositional services, must return the matter to court if necessary to protect the interests of the child.
 - b. The attorney for the child must provide the child with a phone number or other method of contacting the attorney for the child in the event that problems arise with regard to the disposition.

PINS PROCEEDINGS
Article 7, Family Court Act

A. The Function of the Attorney for the Child

The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation...in person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.

B. The Decisions of the Child

In certain areas of legal representation that do not affect the merits of the proceeding or substantially prejudice the rights of a child, the attorney for the child is entitled to make decisions. Otherwise the authority to make decisions is exclusively the child's and, if made within the boundaries of the law, such decisions are binding on the attorney. An attorney for the child in a PINS proceeding must advise the child fully of the strengths and weaknesses of the case and the prospects of success on appeal, but it is for the child to decide what defense strategy should be followed and whether an appeal should be taken (see *generally* Code of Professional Responsibility, Canon 7).

C. Prior to the Initial Appearance

1. The attorney for the child should interview the child concerning the allegations in the petition and the child's possible involvement. The child should be interviewed outside the presence of the parents. If the attorney for the child is not assigned until the initial appearance, a brief adjournment should be requested to enable the attorney for the child to meet with the child.
2. At the initial appearance, the court ordinarily will consider the issue of detention. Because of the impact this decision has on the child's rights and the course of the case, the attorney for the child must be prepared to address this issue in a manner consistent with the wishes of the child and to support this application with all available evidence. The attorney for the child should determine whether the child wants to remain at home. If removal from home is a possibility, the attorney for the child must determine and advocate for the child's wishes, including possible temporary placement with a relative, friend or foster parent.
3. The family situation and relevant social history should be explored with the

child and the parents (with permission of the parent's attorney, if applicable), including family relationships, prior court proceedings, school records, mental health history and any handicapping conditions.

4. The child and the child's parents (unless the parent is the petitioner and in that event with permission of the parents' attorneys, if applicable) should be advised in terms the child can understand of the attorney-client relationship and of the nature, purpose and stages of the proceedings including the possible consequences of a finding.
5. The attorney for the child should obtain the names of all persons involved in the acts alleged including all witnesses and co-respondents. The attorney for the child should determine whether any statements or admissions were made and the circumstances under which they were made. Possible affirmative defenses should be explored.
6. The attorney for the child should review the pre-petition diversion efforts to determine if the diligent efforts required by Family Court Act § 735 have been made to divert the child from being the subject of the a PINS petition. The attorney should assure that the designated lead agency has taken all required steps related to diversion.
7. If the petitioner is a school authority, the school officials should be consulted and every effort made to provide appropriate family or educational services without continuing the court action.
8. The attorney for the child should consult with the probation officer and every effort should be made to provide appropriate services to ameliorate the situation without continuing the court action.

D. The Initial Appearance

1. The petition and supporting papers should be examined for sufficiency and appropriate motions should be made, such as a motion to dismiss for unverified petition or lack of jurisdiction.
2. The possible substitution of a neglect petition or a referral to a child protective agency should be considered and, if appropriate, the attorney for the child should file the necessary papers.
3. If the child admits that the child committed the complained of acts to the attorney for the child and no legal defenses are available, the case should be discussed with appropriate officials, such as the county attorney, judge, probation officer and petitioner, to consider alternatives to a finding, e.g., an adjournment in contemplation of dismissal. If the child denies to the

attorney for the child that the child committed the complained of acts, alternatives other than dismissal should not be considered unless there are special circumstances that render a finding probable and the child agrees fully to the proposed alternative. The attorney for the child should be fully informed of all facts and circumstances before considering advising a child to admit to the petition.

4. Consistent with the child's legal interests and with the consent of the child, the attorney should seek appropriate services, by court order if necessary, to protect the child's interests and to implement a service plan through a referral for diversion. These services may include services for the child or for the parent(s) provided the request is made in order to advance the child's legal interests.

E. Pre-Fact Finding Hearing

1. Prior to the fact-finding hearing, the attorney for the child should conduct a thorough, continuing, and independent investigation and discovery. The child's social services, mental health, drug and alcohol, medical, law enforcement, school and other records relevant to the case should be reviewed. Interviews with the child, witnesses, petitioner, and other individuals involved with the child should be conducted. Oral and written statements should be prepared. The attorney for the child should obtain copies of all relevant statements, lab reports, criminal history reports, etc. from the petitioner's files. Every practical defense should be developed.
2. The attorney for the child should determine whether habitual conduct can be proven.
3. If necessary, experts such as mental health specialists should be retained.
4. The scope of any testimony and possible cross-examination should be carefully prepared with the child and major defense witnesses.
5. The full range of appropriate pre-trial discovery, such as school records, should be carefully considered and, where appropriate, the attorney for the child should file motions for discovery on a timely basis.
6. Dispositional alternatives should be carefully explored, including possible community based non-residential programs, placement with relatives or friends, or other dispositions that involve the minimum feasible loss of liberty. A dispositional strategy should be formulated before reaching a negotiated agreement or attending the fact-finding hearing.

7. The strengths and weaknesses of the petitioner's case should be fully evaluated from the point of view of fact-finding and disposition. The defense strategy should be developed with full consultation and agreement of the child. The child's parents (unless the parent is the petitioner) may be consulted. The child must agree with the attorney for the child's position, goals and strategies.
8. Applicable statutes, case law, and evidentiary rules should be reviewed.
9. The attorney for the child should determine whether the petitioner can prove that the child needs supervision or treatment; if the need for supervision or treatment may not be proven, a defense concerning this element should be prepared.
10. The attorney for the child must not enter an admission on behalf of the child except on the consent of the child and only after fully advising the child about the dispositional alternatives, in terms the child can understand, of the facts, alternatives and consequences of the rights the child is waiving.

F. The Fact-Finding Hearing

1. The attorney for the child may present an opening statement.
2. Petitioner's witnesses should be cross-examined (unless cross-examination is waived in accordance with valid defense strategy), and the attorney for the child should make an attempt to impeach such witnesses by using appropriate questioning, inconsistent prior statements, and other evidentiary methods.
3. Appropriate expert witnesses should be called.
4. Defense witnesses, including the child, should be questioned in accordance with pre-trial preparation; if necessary, character or rebuttal witnesses should be called.
5. The attorney for the child should present a summation.
6. Post-trial motions and briefs should be submitted where appropriate.

G. The Pre-Disposition Hearing

1. The probation report must be reviewed and discussed with the child and may be discussed with the child's parents (unless the parent is the petitioner). Care should be taken when revealing undisclosed sensitive

information contained in the report.

2. Appropriate dispositional alternatives must be explored with the child, including, where appropriate, specific placements with residential or non-residential programs. The petitioner or probation officials should be consulted with regard to possible alternatives. The child's wishes must be ascertained and the child and his or her parents should be advised of possible alternatives.
3. The attorney for the child should develop a specific dispositional plan to present to the court, and gather witnesses and evidence in support of the plan when it is likely to be contested. The attorney for the child must follow the child's wishes with regard to the specific disposition that the attorney for the child intends to present. Witnesses should be prepared as thoroughly as they would be for a fact-finding hearing.

H. The Dispositional Hearing

1. The attorney for the child must advocate the child's decision regarding the dispositional alternative. All supporting evidence, including school records, mental health reports, prior history, affidavits, and witnesses should be presented. Where appropriate, evidence concerning the absence of a need for treatment or supervision should be presented.
2. All supporting records, documents, reports and files referred to should be entered into evidence in order to preserve a record for appeal.
3. Witnesses testifying on behalf of the petitioner, including preparers of reports, should be cross-examined concerning their recommendations in order to determine whether less restrictive alternatives have been exhausted.
4. With the consent of the child, the attorney for the child must present and argue a complete dispositional alternative consistent with the desires of the child, including specific programs or dispositional orders, and, if appropriate, alternative possibilities.

I. Post Disposition

1. The attorney for the child must explain to the child and his parents (unless the parents are the petitioners), in terms the child can understand, the disposition and its consequences, including the possibility of post-trial motions or requests for new hearings, the consequences of possible violations of the dispositional order, and the continuing jurisdiction of the court.

2. The child and his parent (unless the parents are the petitioners) must be advised of the right to appeal. The possibilities of appeal should be explored fully, including possible grounds. The attorney for the child should file a notice of appeal unless the child indicates explicitly and intelligently the child's decision to waive an appeal. A follow-up letter explaining the child's right to appeal is recommended.
3. The attorney for the child should review the dispositional order to ensure that the order conforms to the agreed disposition or finding.
4. If there is an appeal, the attorney for the child must comply with the guidelines set forth in the appeals section of these guidelines.
5. The attorney for the child should remain accessible to the child and other appropriate individuals and agencies to monitor implementation of the dispositional and permanency orders, and seek intervention of the court to assure compliance with those orders or otherwise protect the interests of the child, while those orders are in effect.

DELINQUENCY PROCEEDINGS
Article 3, Family Court Act

A. The Function of the Attorney for the Child

The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation...in juvenile delinquency proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.

B. The Decisions of the Child

In certain areas of legal representation that do not affect the merits of the proceeding or substantially prejudice the rights of a child, the attorney for the child is entitled to make decisions. Otherwise the authority to make decisions is exclusively the child's and, if made within the boundaries of the law, such decisions are binding on the attorney. An attorney for the child in a juvenile delinquency proceeding must advise the child fully of the strengths and weaknesses of the case and the prospects of success on appeal, but it is for the child to decide what defense strategy should be followed and whether an appeal should be taken (*see generally* Code of Professional Responsibility, Canon 7).

C. Prior to the Initial Appearance

1. The attorney for the child should interview the child to ascertain detailed facts concerning the act(s) charged and the facts surrounding the child's arrest and questioning. (If the attorney for the child is not assigned until the initial appearance, the attorney for the child should request a brief adjournment to carry out these functions).
2. At the initial interview the attorney for the child should carefully ascertain the child's involvement, if any, in the act(s) charged; the child's possible involvement should be examined on a confidential basis outside the presence of the parents.
3. At the initial appearance, ordinarily the court will consider the issue of detention. Because of the impact this decision has on the child's rights and the course of the case, the attorney for the child must be prepared to address this issue in a manner consistent with the wishes of the child and to support this application with all available evidence. The attorney for the child should determine whether the child desires to remain at home. If removal from home is a possibility, the attorney for the child must

determine and advocate for the child's wishes, including possible temporary placement with a relative, friend or foster parent.

4. The child and his parents should be advised, in terms the child can understand, of the nature of the proceedings; the child's rights, including the right to testify and right to remain silent; the role and responsibilities of the attorney for the child; the attorney-client privilege, the fact-finding process; and the possible consequences of a finding.
5. The family situation and relevant social history should be explored with the child and his parents, including family relationships, prior court proceedings, school records, mental health history and any special needs.
6. The attorney for the child should obtain the names of all persons involved in the incident including all witnesses and co-respondents. The attorney for the child should determine whether any statements or admissions were made and the circumstances under which they were made. Possible affirmative defenses should be explored.
7. The attorney for the child should ascertain, to the extent possible, the reason the case was not adjusted; if the presentment agency or court approval is required for adjustment services, that possibility should be explored.

D. The Initial Appearance

1. The petition and supporting papers should be examined carefully and if any defects are found the attorney for the child should file appropriate preliminary motions, e.g., a motion to dismiss.
2. The attorney for the child should discuss the case with the presentment agency (and perhaps probation) to consider alternatives to a finding of delinquency, such as a dismissal, substitution of a PINS petition or an adjournment in contemplation of dismissal. (The timing of this discussion will depend, in part, on local custom.)
3. The decision whether to request a probable cause hearing, the timing of such hearing, and establishing dates for discovery and fact-finding are issues that the attorney for the child must consider, on a case-by-case basis. Deviation from the statutory standard may be exercised based upon the facts of the case and upon the consent of the child.

E. The Probable Cause Hearing (Detention Cases)

1. The probable-cause hearing should be used to determine whether it is reasonable to believe that a delinquency act was committed, whether it is reasonable to believe the respondent committed such act and, if the court finds reasonable cause, whether continued detention is necessary.
2. The attorney for the child should attempt to interview major witnesses, such as the complainant or victim who may testify at the probable cause hearing. The attorney for the child should obtain copies of all relevant statements, lab reports, criminal history reports, etc., from the presentment agency's files.
3. The child should be interviewed again.
4. Evidence that supports the discontinuance of detention should be gathered, including school records, affidavits, and witnesses who could testify concerning the lack of probable cause or present alternatives to detention.
5. The attorney for the child must actively participate at the hearing.
6. The decision regarding filing a demand for a bill of particulars, dates for discovery and fact-finding are issues that the attorney for the child must consider on a case-by-case basis. If the court orders continued remand, deviation from the statutory standard may be made based upon the facts of the case and upon the consent of the child. In the absence of any countervailing factors or in the absence of the child's consent, the attorney for the child should demand an expedited fact-finding hearing date, and request the expedited service of discovery materials and a response to a bill of particulars.

F. Pre-Fact-Finding Hearing

1. The attorney for the child should interview the child and witnesses. Oral and written statements may be prepared. If helpful, the scene of the crime should be visited and the alleged acts re-enacted. If necessary, third parties, such as investigators or experts, should be retained where appropriate and/or to avoid the possibility that the attorney for the child may be called as a witness.
2. The strength and weaknesses of the presentment agency's case should be fully evaluated from the point of view of both fact-finding and disposition. The defense strategy should be developed with full consultation, in terms the child can understand, with the child. The attorney for the child's position and goals must be agreed to by the child.

3. Applicable statutes, case law and evidentiary rules should be reviewed.
4. Every possible defense, including incompetency or lack of intent, should be considered. If necessary, experts such as mental health specialists should be retained.
5. The scope of testimony and possible cross-examination must be carefully prepared with the child and major defense witnesses.
6. The full range of appropriate pre-trial motions (e.g. discovery, suppression, inspection, Wade, Huntley) should be considered and, when relevant, filed on a timely basis. Similarly, appropriate pre-trial hearings should be requested. The attorney for the child must be aware of and comply with applicable time limitations governing service of notice of intent to offer alibi evidence, evidence of mental health disease or defect, etc.
7. If appropriate, additional conferences with the presentment agency should be requested so that an agreed disposition, including an adjournment in contemplation of dismissal or an admission, can be explored.
8. Dispositional alternatives should be carefully explored, including possible community based programs or other dispositions that involve the minimum feasible loss of liberty. A dispositional strategy should be formulated prior to reaching a negotiated agreement or attending the fact-finding hearing.
9. The attorney for the child should not advise a child to make an admission to the petition unless pre-trial discovery and evaluation have revealed no viable legal impediment to a finding.
10. The attorney for the child must not enter an admission on behalf of the child except upon the consent of the child and only after fully advising the child, in terms the child can understand, of the facts, alternatives and consequences of the rights that the child is waiving.

G. The Fact-Finding Hearing

1. If appropriate, pre-trial motions that were not heard prior to the fact-finding hearing (e.g., suppression) should be filed.
2. The attorney for the child may present an opening statement.
3. Presentment agency witnesses should be cross-examined (unless cross-

examination is waived in accordance with a valid defense strategy), and the attorney for the child should attempt to impeach such witnesses by using appropriate questioning, inconsistent prior statements, and other evidentiary methods.

4. Defense witnesses, including the child, should be questioned in accordance with pre-trial preparation; if necessary, character or rebuttal witnesses should be called.
5. The attorney for the child should present a summation.
6. If appropriate, post-trial motions and briefs should be submitted.

H. Pre-Dispositional Hearing

1. The probation report must be reviewed and discussed with the child and may be reviewed and discussed with the child's parents. Care should be taken when revealing undisclosed sensitive information contained in the report.
2. Appropriate dispositional alternatives must be explored with the child. The county attorney or probation officials may be consulted with regard to possible alternatives. The child's wishes must be ascertained and the child and the child's parents should be advised of possible alternatives.
3. The attorney for the child should develop a specific dispositional plan to present to the court and gather witnesses and evidence in support of the plan where it is likely to be contested. The attorney for the child must follow the child's wishes with regard to the specific disposition that the attorney for the child intends to present. Witnesses should be prepared as thoroughly as for the fact-finding hearing.
4. The attorney for the child should ensure, where appropriate, that the dispositional hearing is scheduled within applicable time limitations.

I. The Dispositional Hearing

1. The attorney for the child must advocate the child's decision regarding the dispositional alternative. All supporting evidence, including school records, mental health reports, prior history, affidavits and witnesses should be presented. Where appropriate, evidence concerning the absence of a need for treatment or supervision should be presented.
2. All supportive records, documents, reports and files referred to should be entered into evidence in order to preserve a record for appeal.

3. Witnesses testifying on behalf of the petitioner, including preparers of reports should be cross-examined concerning their recommendations in order to determine whether less restrictive alternatives have been exhausted.
4. The attorney for the child should present and argue a complete dispositional alternative consistent with the consent and needs of the child, including specific programs or dispositional orders and, if appropriate, alternative possibilities.

J. Post-Disposition

1. The attorney for the child must explain to the child and the child's parents, in terms the child can understand, the disposition and its consequences, including the rights of post-trial motions or requests for new hearings, the consequences of possible violations of the dispositional order, and the continuing jurisdiction of the court.
2. The child and the child's parents must be advised in writing of the right to appeal. The possibilities of appeal should be explored fully, including possible grounds. The attorney for the child should file a notice of appeal unless the child indicates explicitly and intelligently the decision to waive an appeal.
3. The attorney for the child must examine the dispositional order to ensure that the order conforms to the agreed disposition or finding.
4. If there is an appeal, the attorney for the child must comply with the guidelines set forth in the appeals section of these guidelines.
5. The attorney for the child should remain accessible to the child and other appropriate individuals and agencies to monitor implementation of the dispositional and permanency orders, and seek intervention of the court to assure compliance with those orders or otherwise protect the interests of the child, while those orders are in effect.

**GUIDELINES FOR COUNSEL FOR THE CHILD
IN CUSTODY AND VISITATION PROCEEDINGS**

A. The Function Of the Attorney for the Child

The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation...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.

B. Role of the Attorney for the Child

Attorneys for children should define their role and should be responsible for ensuring that their role is understood by the child, litigants and their attorneys, as well as judges. The attorney for the child must participate actively in all proceedings but must not submit any pre-trial report to the court. The attorney for the child may submit appropriate papers, such as a trial brief, memorandum of law or written summation, and engage in oral argument.

C. Consultation with Client

1. Absent extraordinary circumstances, the attorney for the child must:

- a. arrange an interview with the child outside the presence of the litigants, with the cooperation of the litigants and their attorneys, when the child is of the age and maturity where an interview would be appropriate. If the litigants or their attorneys are not cooperative in arranging the interview, the attorney for the child should request the help of the court in arranging to meet with the child;
 - b. interview the child in a manner and environment (the child's home, school, etc.) appropriate to the child's age and maturity to determine the child's wishes and needs regarding custody and visitation;
 - c. if the attorney for the child deems it necessary and appropriate to interview the litigants, obtain permission from the litigants' attorneys to meet the litigants to acquire necessary background and relevant history and information regarding the child's care and needs. If permission is denied, the attorney for the child should consider applicable discovery under the CPLR to obtain necessary background and relevant history and information regarding the child's care and needs;
 - d. where appropriate, visit the child in the child's home and make observations of the child and the child's relationships;
 - e. maintain contact with the child and encourage the child to communicate directly with the attorney for the child whenever the child has any concerns, questions or problems relevant to the proceeding. Whenever possible, and where appropriate, the attorney for the child must promptly inform the child of the outcome of any pre-trial conferences or court proceedings; and
 - f. resist efforts to have the child present at proceedings, unless the child's presence is required by the court or the attorney for the child consents.
2. Although ascertaining the child's preferences is important, the attorney for the child should be sensitive to the vulnerable position of the child. The child may love and wish to remain loyal to both parents. The child may take on responsibilities that are not appropriate, such as responsibility for the litigants' problems or for the ultimate custody and visitation decision. The child also may be subject to manipulation by the litigants, siblings or other adults. When ascertaining the child's preferences, the attorney for the child must be sensitive to and not

compound the child's conflicts and burdens.

3. The attorney for the child must advise the child, in terms the child can understand, of the nature of the proceedings, the child's rights, the role and responsibilities of the attorney for the child, the attorney-client privilege, the fact-finding process, and the possible outcomes. The attorney for the child's strategy should be developed with full consultation, in terms the child can understand, with the child. If the child is capable of a knowing, voluntary and considered judgment, the attorney for the child's position and goals must be discussed with the child, including the extent to which disclosure made by the child to the attorney for the child will be made known to the court and others.

D. Investigation

1. Upon being appointed, the attorney for the child must arrange to obtain and review the relevant court files, including pleadings, reports and prior orders, if any. The attorney for the child should examine the order of appointment to ensure that it includes a judicial authorization allowing the attorney for the child to obtain information directly from service providers involved with the child without obtaining permission from the litigants. If it does not, the attorney for the child should ask for an amended order of appointment allowing such access.
2. Where appropriate, the attorney for the child should ask litigants to sign release forms allowing the attorney for the child to obtain information directly from service providers involved with the children to supplement the order of the court. When representing an older child, the attorney for the child should request permission from the child before obtaining confidential information from the child's service providers.
3. The attorney for the child should become familiar with factors that the court considers important in determining the child's best interests.
4. The attorney for the child should obtain names and addresses of, and contact where appropriate, teachers and other persons who have had significant contact with the child and may have pertinent information regarding the child. The attorney for the child also should obtain and review copies of any records, reports or documents that may have relevant information regarding the child.
5. The attorney for the child should determine the quality of the relationship of the child with the parent figures and siblings and should try to ensure that the child's desire to maintain important relationships is met.

6. The attorney for the child should advise all attorneys, in writing, at the outset of proceedings, that the child should not be interviewed or examined by attorneys for, or experts retained by or on behalf of, the litigants, without the prior written consent of the attorney for the child. The attorney for the child should be present at any such interviews, but should not attend interviews conducted by neutral evaluators or experts if it would be inappropriate to do so.
7. The attorney for the child should request that the court order any services that would be helpful, such as mental health studies or other evaluations, or any reports resulting from such services.
8. The attorney for the child should consider whether domestic violence may have occurred and, if so, the impact on the child. If appropriate, the attorney for the child should apply for court orders to protect the child.
9. The attorney for the child should seek protective orders when other litigants attempt to access, by subpoena or otherwise, privileged and confidential communications made by the child.
10. The attorney for the child should participate in settlement negotiations and/or mediation to expedite resolution of the case.
11. The attorney for the child should review the rules of evidence, particularly those regarding relevance and hearsay, as well as relevant case law and statutes.
12. The attorney for the child should prepare evidence for trial. If necessary, the attorney for the child should subpoena the records and reports of physicians, therapists, schools, and teachers, and other relevant records. The attorney for the child should subpoena witnesses and prepare them for testifying at trial.

E. Pre-Trial Proceedings/Activities

1. The attorney for the child is not neutral and should take a position unless the child does not want the attorney for the child to do so.
2. The attorney for the child must actively participate in pre-trial conferences (formal or informal), as an advocate, in order to facilitate an acceptable resolution of the case.
3. The attorney for the child should, as would any attorney representing a party, assist in resolving issues of visitation, communication, etc.

4. The attorney for the child should seek temporary relief on behalf of the child to enable the child to retain a relationship with the litigants and avoid undue pressure.

F. The Trial

1. The attorney for the child must be present and take an active role during all hearings.
2. The attorney for the child must preserve client confidences.
3. The attorney for the child must avoid, where possible, attributing any statements or positions regarding custody or visitation directly to the child, unless the attorney for the child believes that the child has specifically authorized the attorney for the child to do so and the child understands the possible implications.
4. When appropriate, the attorney for the child must present independent evidence and witnesses, cross-examine witnesses, make opening and closing statements, make necessary motions and take steps necessary to preserve issues for appellate review.
5. The attorney for the child must be familiar with the relevant pleadings, records, reports, and evidence, and ensure that necessary witnesses testify and that relevant material is introduced into evidence.
6. (a) The attorney for the child must be fully involved in any discussion regarding the proposed testimony of the child. If it is determined that the child should testify, the attorney for the child should strongly advocate for that testimony to be taken in a legally acceptable and emotionally neutral setting such as a *Lincoln* hearing with only the attorney for the child, child, judge and court reporter present.

(b) The attorney for the child should prepare the child for the *Lincoln* hearing and be familiar with the style of the judge conducting the hearing. If the child is to testify in open court, the attorney for the child must prepare the child to testify and should ask for the appropriate accommodations under the Family Court Act, and should ensure that the questioning of the child at the hearing by litigants' counsel or a pro se litigant, is conducted in an age-appropriate manner.
7. The attorney for the child should not be a witness.
8. The attorney for the child must not make written or oral recommendations but rather should take a position on behalf of the child.

G. Post-Trial

1. The attorney for the child must review proposed orders and make necessary objections.

H. Appeals

1. If there is an appeal, the attorney for the child must comply with the guidelines set forth in the appeals section of these guidelines.

APPEALS GUIDELINES FOR ATTORNEYS FOR THE CHILD

A. The Function of the Attorney for the Child

The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation.

In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child's position.

In other types of proceedings, where the child is the subject, the attorney 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 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.

B. Ethical Responsibilities of the Attorney for the Child

Every attorney must be guided by the Code of Professional Responsibility when representing children. Attorneys for children must represent children zealously within the bounds of the law and must seek any lawful objective of the child through reasonably available means (see DR 7-101). The attorney for the child,

therefore, has an ethical responsibility to zealously pursue an appeal when the child is adversely affected and the child wants to appeal. When the child is not capable of making a knowing, voluntary and considered judgment or where following the child's wishes would likely result in a substantial risk of imminent, serious harm to the child, the child's attorney has the additional responsibility to determine and implement decisions on behalf of the child.

C. Appointment Continues on Appeal

1. By statute, the attorney for the child's representation continues without further court order through any appeal unless the Appellate Division grants the application of the attorney for the child for substitution of appellate counsel and appoints another attorney (see Family Court Act § 1120). If the attorney for the child cannot represent the child on the appeal, the attorney must immediately request that the Appellate Division appoint another attorney.
2. Attorneys for children must request substitution if they do not have adequate experience with appeals or they do not have adequate time to devote to the appeal or for any other reason that would impede their zealous and thorough representation of the child on appeal. Attorneys for children are subject to discipline if they fail to prosecute an appeal. Requests for substitution should be directed to the Attorneys for Children Program office and include date-stamped copies of the notice of appeal and the order appealed from, and if the child is the appellant, proof of service of the notice of appeal.

D. The Right to Appeal

"An appeal may be taken as of right from any order of disposition and, in the discretion of the appropriate appellate division, from any other order under this act" (Family Court Act § 1112 [a]). Interlocutory appeals, i.e., appeals from interim or temporary orders, require the permission of the Appellate Division. To obtain the necessary permission the attorney for the child must file a motion or an order to show cause and must be prepared to show compelling circumstances.

The statutory exception to the requirement that a non-final order may be appealed only with permission is in abuse or neglect cases. In such cases, "an appeal from an intermediate or final order or decision in a case involving abuse or neglect may be taken as of right to the appellate division of the supreme court" (Family Court Act § 1112 [a]). Not only are such orders appealable as of right, but if the effect of an order is to discharge the child, the order shall be stayed if the Family Court or the Appellate Division finds that a stay is necessary to avoid imminent risk to the child's life or health.

A preference in accordance with CPLR 5521 is automatically afforded, without the necessity of a motion, for appeals under article 3, parts 1 and 2 of article 6 and articles 7, 10, and 10-A of the Family Court Act; and §§ 358-a, 383-c, 384, and 384-b of the Social Services Law (see Family Court Act § 1112).

E. Obligation to Advise the Child of the Right to Appeal

Upon the filing of orders issued pursuant to articles three, seven, ten and ten-A, and parts one and two of article 6 of the Family Court Act; and pursuant to §§ 358-a, 383-c, 384 and 384-b of the Social Services Law, the attorney for the child must promptly advise the child – and in JD and PINS proceedings - the parent or other person responsible (unless the parent or person responsible was the petitioner in the PINS proceeding) in writing of the right to appeal to the appropriate Appellate Division of the Supreme Court, the time limitations involved, the manner of instituting an appeal and obtaining a transcript, the possible reasons upon which an appeal may be based, and the nature and possible consequences of the appellate process. It is also the duty of the attorney for the child to ascertain whether the child wishes to appeal and, if so, to serve and file the necessary notice of appeal (see Family Court Act § 1121 [1], [2], [3]; § 354.2; § 760).

Before an appeal is considered, the attorney for the child must explain to the child and his parents (unless the parents are parties) in language the child can understand, the disposition and its consequences, including the right to and possibility of post-trial motions or requests for new hearings, the consequences of possible violations of the dispositional order, and the continuing jurisdiction of the court. As stated above, the child and the child's parents (unless the parents are parties) must be advised of the right to appeal. The possibility of appeal should be explored fully, including possible grounds. Where the child wants to appeal, after the attorney for the child files the notice of appeal, the attorney for the child, among other things, should order the transcripts, obtain interim relief if appropriate and, unless another attorney for the child has been appointed by the Appellate Division, assemble the record and perfect the appeal.

F. Statutory Obligations and Best Practices

1. If the child is the appellant, the attorney for the child must order the transcripts as soon as possible using a minute order form. Transcripts must be completed within thirty days from receipt of the request. The attorney for the child must be aware of time limits imposed on production of transcripts and take appropriate action when necessary (see Family Court Act § 1121 [7]).
2. An attorney for the child who is substituted on appeal must become fully familiar with all prior proceedings in the case, including any in camera

proceedings. In such cases, travel to the Appellate Division in order to review the in camera transcript is ordinarily required. If the attorney for the child on the appeal was not the attorney for the child during the proceeding, appellate counsel should meet with the child if possible, and should establish a relationship with the child and advise the child of the role of appellate counsel. Where the child is capable of a knowing, voluntary and considered judgment, the attorney for the child must follow the child's wishes regarding the child's position on the appeal, unless to do so would likely result in a substantial risk of imminent, serious harm to the child. Substituted appellate counsel should consult with the attorney who represented the child in the underlying proceeding to determine the position of the prior attorney for the child, why that position was taken, and to gain as much insight as possible into the case.

3. The attorney for the child should ensure that the appeal is heard in a timely fashion. If the child is an appellant, the attorney for the child should perfect the appeal as soon as possible, generally within 60 days of receipt of the transcripts (see Family Court Act § 1121 [7]). When the child is not the appellant, and the appellant fails to comply with the statutory time requirements for perfecting the appeal, the attorney for the child should consider a motion to dismiss. The attorney for the child should cooperate with counsel for the appellant in certifying or stipulating to the record on appeal, making certain that all necessary materials are included. The attorney for the child should respond in a timely and appropriate fashion to all motions served by either party, e.g., motion for an extension of time.
4. The attorney for the child must prepare and file a brief on behalf of the child in a timely fashion. Letters in lieu of brief are not authorized by Appellate Division rules and should not be used. "Adopting" parts of another's brief is rarely justified, and "joining" another party's brief would appear to be inconsistent with the absolute independence representation of the child requires.
5. Particularly where the child is the appellant, the attorney for the child should be mindful of the court's calendar and the duration of the order appealed from, and must not allow an appeal to be mooted by the passage of time.
6. If an appeal will not be perfected – in cases, for example, where the child does not want to pursue the appeal or where the appeal has been rendered moot by a subsequent order - the attorney for the child must file the child's signed consent to withdraw the appeal or move to be relieved and to have the appeal dismissed as moot or abandoned. Please note that Appellate Division rules require attorneys to notify the Court immediately when there is a settlement of any appeal or proceeding or

issue therein or if any appeal, proceeding or issue therein has been rendered moot (see 22 NYCRR 1000.18 [c]).

7. In general, the attorney for the child is expected to attend oral argument. If the attorney for the child does not attend oral argument, for example if the appellant's attorney has submitted and the attorney for the child believes attendance is unnecessary under the circumstances, the attorney for the child will be expected to attach an explanatory affirmation to the voucher.
8. Where the child is of sufficient maturity, the attorney for the child must inform the child of the outcome of the appeal. The attorney for the child should carefully explain the practical effect of the decision on the child.
9. The attorney for the child must prepare an appropriate response to any motion for reargument or where another party requests post-appeal relief. The attorney for the child must file, where appropriate, an application for leave to appeal to the Court of Appeals.
10. The attorney for the child must be aware of and comply with the "special procedures" found in § 1121 of the Family Court Act and with the rules governing appeals of the Fourth Department and the Court of Appeals.