

10-313.1. Representation of multiple siblings.

A. Initial appointment.

(1) In the same or related abuse and neglect proceedings, the court may appoint the same attorney to represent the best interests of the children in a sibling group who are under the age of fourteen (14) as guardian *ad litem*, pursuant to Section 32A-1-7 NMSA 1978, and to represent the children in the sibling group who are fourteen (14) years of age or older as attorney, pursuant to Section 32A-1-7.1 NMSA 1978.

(2) Except as provided in Subparagraph (3) below, an attorney must decline to represent one or more siblings in the same or related abuse and neglect proceedings, and the court must appoint a separate attorney to represent the sibling or siblings, if, at the outset of the proceedings, a concurrent conflict of interest exists. Such conflict of interest exists if the representation of one child will be directly adverse to another child or there is a significant risk that the representation of one or more of the children will be materially limited by the attorney's responsibilities to another client, a former client or a third person, or by a personal interest of the attorney.

(3) Notwithstanding the existence of a concurrent conflict of interest, an attorney may represent a child if each of the following conditions is met:

(a) the attorney reasonably believes that the attorney will be able to provide competent and diligent representation to each affected sibling;

(b) the representation is not prohibited by law;

(c) the representation does not involve the assertion of a claim by one sibling against another sibling represented by the same attorney in the same proceeding;

(d) the representation does not involve cases in which there exists either evidence or an allegation that one of the siblings has abused or is likely to abuse another of the siblings; and

(e) any sibling age fourteen (14) or over who is to be represented by the attorney gives informed consent, confirmed in writing, pursuant to Rule 16-107 NMRA, and the attorney determines that the representation does not adversely affect the representation of the best interests of any of the younger siblings.

B. Withdrawal from continued representation.

(1) An attorney representing siblings has an ongoing duty to evaluate the interests of each sibling and assess whether there is a conflict of interest.

(2) It is not necessary for an attorney to withdraw from representing some or all of the siblings if there is merely a possibility that a conflict of interest will develop.

(3) If an attorney believes that a conflict of interest existed at appointment or has developed during representation, the attorney must take the necessary action to ensure that the siblings' interests are not prejudiced. Such action may include notifying the court or requesting to withdraw.

(4) If an actual conflict of interest arises, and one or more siblings fourteen (14) or over and represented by the attorney will not waive the conflict or the continued representation of all of the siblings by the same attorney is not in the interest of the younger siblings, the attorney may continue to represent one or more siblings if each of the following conditions is met:

(a) the attorney has successfully withdrawn from the representation of the siblings whose interests conflict with those of the sibling or siblings the attorney continues to represent;

(b) the attorney has exchanged no confidential information relevant to the

conflicting issue with any sibling whose interests conflict with those of the sibling or siblings the attorney continues to represent; and

(c) continued representation of one or more siblings would not otherwise prejudice the other sibling or siblings formerly represented by the attorney.

C. **Circumstances not a conflict.** Each of the following circumstances, standing alone, does not demonstrate a conflict of interest:

(1) the siblings are of different ages;
(2) the siblings have different parents;
(3) there is a purely theoretical or abstract conflict of interest among the siblings;
(4) the attorney previously represented one or more of the siblings in another proceeding;

(5) some of the siblings are more likely to be adopted than others;
(6) the siblings have different permanency plans;
(7) the siblings express conflicting desires or objectives, but the issues involved are not material to the case; or

(8) the siblings give different or contradictory accounts of the events, but the issues involved are not material to the case.

[Adopted by Supreme Court Order No. 10-8300-013, effective May 10, 2010.]

Committee Commentary. — This rule is intended to guide attorneys in their application of Rule 16-107 NMRA of the Rules of Professional Conduct, as amended in 2008, to their work as attorneys for children in abuse and neglect cases in Children’s Court. The model of representation in these cases is unusual in that attorneys and children age fourteen (14) have a traditional attorney-client relationship while attorneys appointed for children under the age of fourteen (14) serve as guardians *ad litem* (GAL) and represent the child’s best interest. The statute also contemplates that the attorney appointed as GAL for the younger child will become the child’s attorney in the traditional sense when the child turns fourteen (14). *See* NMSA 1978, § 32A-4-10.

Before this approach was adopted in 2005, courts appointed a single attorney to represent all of the siblings in a case. Since the approach was adopted, there has been some confusion over the representation of siblings when some are fourteen (14) or older and some are younger. However, the value of preserving connections for children in foster care, together with the importance of the sibling relationship, argue for a single attorney to represent siblings to the greatest extent possible. The committee hopes that this rule will assist judges and attorneys in evaluating and resolving possible conflicts in these cases.

[Adopted by Supreme Court Order No. 10-8300-013, effective May 10, 2010.]