

LOS ANGELES COUNTY SUPERIOR COURT  
JUVENILE DIVISION

# DEPENDENCY COURT TORT POLICY

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*THIS JUVENILE DEPENDENCY COURT PROTOCOL  
SUPERSEDES ALL PREVIOUS STATEMENTS REGARDING  
THE JUVENILE COURT TORT POLICY INCLUDING THE  
COURT POLICIES DATED OCTOBER 23, 1993, MARCH 28, 1994,  
AND OCTOBER 18, 2001.*

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**APPENDIX 1**

**REPORT OF CHILD’S INJURIES PURSUANT TO WELFARE AND INSTITUTIONS  
CODE SECTION 317, SUBDIVISION (e) [317(e) REFERRAL FORM]**

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## I. PURPOSE OF TORT POLICY

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This policy is designed to insure that children under the jurisdiction of the Los Angeles County Juvenile Dependency Court (Juvenile Court) are able to pursue potential tort claims, and that procedures are in place to ensure that they have competent legal representation, and their claims are handled efficiently. Further, the policy is designed to establish coordination between the Juvenile and Civil Courts to ensure that children are not disadvantaged by their status as dependents and that tort cases may provide the intended deterrent effect against neglect and intentional injury.

The legal authority for this policy is Welfare and Institutions Code (WIC) § 317(e). WIC § 317(e) requires a child's Dependency Court attorney to: "investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings." Section 317(e) further mandates the court to "take whatever appropriate action is necessary to fully protect the interests of the child."

This policy, which shall apply to any potential tort case against any party, establishes the exclusive procedures for referrals to and appointments of attorneys to represent dependent children pursuant to WIC § 317(e). Additionally, it is the intent of this policy to set forth all of the duties and obligations expected of a child's Dependency Court attorney, Guardian Ad Litem (GAL), and tort attorney concerning tort cases only. Moreover, this policy outlines the responsibilities of the court's Tort Funds Liaison<sup>1</sup> and the Los Angeles County Bar Association Lawyer Referral and Information Service (LACBA-LRIS).

The types of cases subject to referral under this policy include, but are not limited to, injuries and damages suffered from vehicular incidents, premises liability (such as slip and fall), product defects, medical malpractice, common carrier liability, emotional distress due to injury to principal caretaker, wrongful death of a parent or caretaker, intentional or negligent maltreatment by any caretaker, and general negligence.

It is the policy of the Juvenile Court to refer all such cases to LACBA-LRIS for screening, and referral to a panel specifically selected for handling potential tort claims referred pursuant to this policy. The tort panel shall be comprised of attorneys who have met the appropriate experience and training standards established by LACBA-LRIS and the Presiding Judge of the Juvenile Court (Presiding Judge), and who recognize the quasi-pro bono nature of this panel and the desire of the Juvenile Court to have cases of relatively small value pursued in order to protect the interests of all dependent children.

This policy is effective July 1, 2008.

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## II. REPORTING DEPENDENCY CHILD'S POTENTIAL TORT CASE TO THE JUVENILE COURT

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Relative caretakers are required by the Department of Children and Family Services (DCFS) Agency-Relative Caregiver Placement Agreement to immediately report injuries or illnesses not considered ordinary to the Children's Social Worker (CSW). Foster parents and group homes have similar obligations pursuant to regulation<sup>2</sup> and contract.

The CSW must inform the child's Dependency Court attorney of such injuries or illnesses within 72 hours (excluding non-judicial days) using the Notice to Child's Attorney Re: Case Status form.<sup>3</sup> If a CSW has knowledge of or observes, in his or her professional capacity, a child in protective custody, who the CSW knows, or reasonably suspects, has been a victim of child abuse, a report must be sent to the child's Dependency Court attorney within 36 hours.<sup>4</sup>

Pursuant to WIC § 317(e) and this policy, upon receipt of this information, the child's attorney shall investigate and report to the Presiding Judge of the Juvenile Court (Presiding Judge) any injury or condition of the child which could be the basis for a tort claim against any third party. The child's attorney has no affirmative obligation to report injuries to the Presiding Judge when:

1. The child is deceased. (However, claims can be filed for surviving dependent siblings.)
2. The child is released to a parent, and the injury occurs subsequent to the release.
3. The injury was allegedly caused by a parent or step-parent.
4. The child is AWOL. (In this circumstance, a 317(e) Report should be filed by the child's attorney upon notice that the child has returned to the DCFS placement.)

The child's Dependency Court attorney must use the form entitled "Report of Child's Injuries Pursuant to Welfare and Institutions Code § 317, subdivision (e)." (317(e) Report) Three typed copies must be sent to the Office of the Presiding Judge and one to the Dependency Court of record. The 317(e) Report must be filed as soon as possible, but no later than 30 days from receipt of notice of the child's injury. The 317(e) Report shall be filed sooner than 30 days, if necessary to avoid any statute of limitations issue, including the filing of government claims. Any such statute of limitations issue should be clearly noted. The child's Dependency Court attorney shall include in the 317(e) Report as much information, and substantiating documentation, as possible, and shall provide supplementary material to the Presiding Judge, as it becomes available, referencing the first filing. Where it has been determined that a case is of an exigent nature, the case shall be prominently designated as such on the front page of the 317(e) Report.

Separate 317(e) Reports shall be filed for each potential claim and for each child. Reports filed on behalf of siblings arising out of the same incident shall be cross referenced on the face of each report filed.

Failure to adhere to the reporting requirements may result in appropriate actions by the Presiding Judge including, but not limited to: monetary sanction, removal from the Dependency Court panel, and a report to the State Bar.

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### **III. EVALUATION OF 317(e) REPORT AND REFERRAL PROCESS BY PRESIDING JUDGE OF THE JUVENILE COURT**

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Upon receipt of the 317(e) Report, the Presiding Judge or his/her designee shall review the report and determine whether the injury merits a referral to LACBA-LRIS. In determining whether to make a referral, the Presiding Judge will consider damages, liability issues, proof issues, and sources of recovery. The Presiding Judge will always make a referral in the following instances:

1. The child has suffered chronic physical and/or emotional abuse.
2. The child suffered sexual abuse.

Other cases need not be referred under the following circumstances:

1. The abuse occurred on only one occasion and there was no significant injury or harm and the child did not receive medical treatment, except in cases of sexual abuse.
2. Court jurisdiction has been terminated.
3. The child is deceased. (However, a wrongful death claim for dependent sibling(s) may be referred.)
4. Potential damages are insufficient to pursue a claim.
5. There is no potential identifiable defendant.

The Presiding Judge will notify, in writing, the child's Dependency Court attorney, who filed the 317(e) Report whether or not the case has been referred to LACBA-LRIS or elsewhere. The attorney may contact the Presiding Judge and request reconsideration if he/she disagrees with the Presiding Judge's decision not to refer the case. In such case, the attorney shall provide the Presiding Judge with any available supplementary information, or documentation, in support of the request.

The Presiding Judge shall send two copies of the 317(e) Report to LACBA-LRIS. The information contained in the 317(e) Report is a confidential juvenile court record pursuant to Welfare and Institutions Code section 827 and California Rule of Court 5.552. LACBA-LRIS is authorized to receive the 317(e) Report and attachments pursuant to a blanket order of the Presiding Judge dated November 15, 2001. If the child's injury occurred in a licensed foster care home, a small family home, a relative placement, or a group home, in addition to referring the case to LACBA-LRIS, the Presiding Judge will make a report to DCFS.

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#### IV. LACBA-LRIS EVALUATION AND REFERRAL PROCEDURES

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Upon receipt of the 317(e) Report, LACBA-LRIS shall promptly refer it to the next available qualified tort panel attorney in the rotation. LACBA-LRIS shall only refer cases to attorneys specifically selected for its Dependency Court tort panel. The tort panel shall only be comprised of attorneys who have met the appropriate qualifications based on experience and training established by LACBA-LRIS and the Presiding Judge. LACBA-LRIS shall have the 317(e) reviewed by at least two qualified panel attorneys before rejecting it, unless, in its discretion, no further referral is warranted.

LACBA-LRIS shall inform the Presiding Judge of the status of all referrals within 30 days of receipt of the 317(e) Report, or as soon as practicable thereafter. The 30-day status reports should include the name of the attorney to whom the referral was made, the date of the referral, the attorney's decision as to whether to accept or reject the case, and, in the case of a rejection, the information regarding a subsequent referral. Unless an attorney requests an Investigatory Order or an Appointment Order, when the available referrals have been exhausted, the 30-day status report shall be marked "FINAL" and reflect that the case is rejected by LACBA-LRIS and returned to the Juvenile Court. If LACBA-LRIS does not or is unable to place the case, the 30-day status report shall include an explanation of why it was unable to do so.

The attorney will notify LACBA-LRIS of the need for an Investigatory Order or an Appointment Order from the Juvenile Court. Upon receipt of a request from LACBA-LRIS for an Investigatory or an Appointment Order, the Juvenile Court will issue the requested order. If an Appointment Order is requested, the Juvenile Court will fax a copy to Public Counsel.

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## V. TORT ATTORNEY PROCEDURES

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### A. Tort Attorney Procedures Upon Referral

#### 1. Initial Response

A tort attorney shall inform LACBA-LRIS within 21 days of receipt of the 317(e) Report by filing a 21-day status report whether the attorney accepts the case, would like to investigate the case, or rejects the case. Failure to timely respond to LACBA-LRIS regarding the attorneys' proposed action on the referral may be deemed an automatic rejection of the case and may constitute good cause for removal from the panel. Before rejecting a case, the tort attorney shall attempt to contact the child's Dependency Court attorney. Upon rejection of the case, the tort attorney shall return the 317(e) Report, attached documents, and the Referral Status Form to LACBA-LRIS.

If a tort attorney does not reject a case after the referral is made, the tort attorney has two options. The tort attorney may elect to pursue the case. If so, the procedures in Section V. A. 3. and V. B. of this policy must be followed. The other option is to further investigate the matter.

#### 2. Investigation

##### a. Investigation Order

If a tort attorney elects to further investigate the case, the court will provide the attorney with an "Order Granting Attorney Access to Dependent Child's Records for Purpose of Investigating Child's Personal Injury or Probate Claims Pursuant to Welfare and Institutions Code §§ 317(e), 827 and Rule 5.552 of the California Rules of Court; Waiver of Fees for Copying Juvenile Court Records Pursuant to Rule 3.361 of the California Rules of Court" (Investigation Order).

A tort attorney who receives an Investigation Order must complete the investigation within 60 days of receipt of the Investigation Order. The tort attorney may request from the Presiding Judge an additional 30 days to complete the investigation. Facts justifying the request must be provided to the Presiding Judge in writing. The Presiding Judge may grant additional time upon request where good cause is shown and there is no detriment to the child's claim.

The Investigation Order (Appointment Order also; see Section V, A, 3 of this policy) includes a fee waiver for copies of court records and DCFS records. DCFS shall only be required to provide copies of juvenile court records, if such records are not contained in the juvenile court file kept at the Juvenile Court. An Investigation Order shall expire in 60 days unless the Presiding Judge grants a 30-day extension following a written request. The Presiding Judge will inform LACBA-LRIS of the issuance of an Investigation Order and the date the order was issued.

##### b. Informal Discovery

###### i. File Review

Requests pursuant to an Investigation Order for Juvenile Court records maintained in DCFS shall be made to the Supervising Confidentiality Deputy with the Office of the County

Counsel. The telephone number of the County Counsel office is (323)526-6100. In accordance with the Juvenile Court's order, the Office of the County Counsel will provide juvenile records responsive to the tort attorneys request to the Juvenile Court via the Office of the Clerk, which shall make such records available for the tort attorney to view within 15 court days or as otherwise arranged by the parties. Documents and information protected by the attorney-client and attorney work product privilege shall be removed or redacted from the documents provided to the Superior Court.

## **ii. Obtaining Copies**

Requests pursuant to an Investigation Order for specifically identified documents maintained by DCFS which are not contained in the juvenile court file should be made to the Supervising Confidentiality Deputy with the Office of the County Counsel at (323) 526-6100. The Office of the County Counsel shall provide the requested documents within 15 court days unless otherwise arranged with the tort attorney. Documents and information that are privileged or confidential pursuant to any state law or regulation, other than Welfare and Institutions Code section 827, shall be removed or redacted. The Office of the County Counsel will include a list of redacted documents, if any, along with the basis for the redaction. The tort attorney may file a petition pursuant to Welfare and Institutions Code section 827 to request access to redacted documents or information. Documents obtained pursuant to this process remain subject to objection in any subsequent civil legal proceeding.

Tort attorneys who require information involving OHCEU reports prior to March 2006, when that unit ceased operation, will request such information pursuant to Civil Discovery Act, Code of Civil Procedure, Sections 2015.5 et seq. since it is not part of the juvenile court record.

If a tort attorney is aware that sibling information is contained in the file and believes it to be relevant to the investigation, the tort attorney should immediately notify the Office of the County Counsel and file an 827 Petition requesting said information. This process will avoid unnecessary redaction of the requested information.

## **3. Rejection of a Referral**

Following the investigation of a potential tort claim pursuant to an Investigation Order, the tort attorney may reject the case. Upon deciding to reject the case, the tort attorney shall immediately notify LACBA-LRIS of the rejection by filing a "Status After Investigation Report" together with a letter detailing the specific reasons for the rejection. The report and rejection letter shall state whether the tort attorney has reviewed the juvenile court file, reviewed DCFS records, spoken to the child's Dependency Court attorney, and spoken to or met with the child. The tort attorney shall also send all documents obtained during the investigation to LACBA-LRIS. Failure to notify LACBA-LRIS in the manner prescribed within the required time frames set forth within Section V, A, 1 of this policy may constitute good cause for the removal from the tort panel and/or the imposition of sanctions by the Presiding Judge.

After a referral has been rejected by a tort attorney, LACBA-LRIS will determine whether to refer the case to another tort attorney. If LACBA-LRIS decides not to make another referral, it shall notify the Presiding Judge, who may request another referral (including any additional information or clarification), or may refer the matter to another attorney. All subsequent referrals shall include all documents obtained during the investigation by the previous attorney, along with the prior tort attorney's written basis for the rejection.

Once a referral matter is closed due to the rejection of the referral, the Presiding Judge shall send a letter to the child's Dependency Court attorney and the Dependency Court of record. The child's

Dependency Court attorney may contact the Presiding Judge if he/she disagrees with the decision not to refer a matter.

#### **4. Acceptance of a Case**

If the tort attorney decides to accept a case, the attorney shall inform LACBA-LRIS by attaching a letter requesting an Order Appointing Attorney for Child Pursuant to Welfare and Institutions Code § 317(e); Waiver of Confidentiality for Juvenile Court Records Pursuant to Welfare and Institutions Code §§ 317(e) and (f), 827 and Rule 5.552 of the California Rules of Court; Waiver of Fees for Copying Juvenile Court Records Pursuant to Rule 3.361 of the California Rules of Court (Appointment Order). All requests for appointment should include a list of all known potential defendants. All appointments are made on a contingency fee basis, with costs to be borne by the tort attorney pending recovery.<sup>5</sup> The Presiding Judge will send a copy of the appointment order to LACBA-LRIS and the child's Dependency Court attorney.

### **B. Tort Attorney Procedures Following Appointment**

Upon acceptance of the appointment, the tort attorney shall handle the case to completion by way of settlement or litigation, unless the Juvenile Court relieves the attorney for good cause, or has approved a substitution of attorney pursuant to the procedures set forth in this section of the tort policy.

The tort attorney may, but has no obligation to pursue an appeal post judgment. The tort attorney may contract with an appellate attorney with the client's permission.

Good cause to relieve a tort attorney includes, but is not limited to:

- The attorney's inability to adequately respond to the needs of the child;
- Conviction of a crime involving moral turpitude or any felony;
- Suspension of the attorney by the State Bar;
- Excessive refusals to move forward with cases, without showing good cause, after accepting referrals from LACBA-LRIS;
- A proper motion by the attorney for voluntary removal from the case;
- Notification from LACBA-LRIS that the attorney no longer qualifies for continued panel membership;
- Failure of the attorney to adhere to the requirements of this policy.

In addition to being relieved from a case, an attorney who fails to pursue a case after appointment may be subject to additional sanctions, including, but not limited to, removal from the tort panel and referral to the State Bar.

#### **1. Tort Attorney Being Relieved Prior to Commencement of Litigation**

All requests to be relieved, or for substitution, prior to commencement of litigation, must be in written motion to the Presiding Judge unless the Presiding Judge so moves on his/her own motion. The Presiding Judge will rule on the motion within 30 days. The child's GAL, if any, the child's Dependency Court attorney, and LACBA-LRIS shall receive notice of the motion by the moving attorney or the Presiding Judge, if set by the Presiding Judge.

In all cases where an attorney has been relieved, the proposed Juvenile Court Order filed by that attorney shall bear either of the following appropriate legends:



- a. No GAL has been appointed to date by the Juvenile Court in this matter. Applicable Statutes of Limitation relating to Government Tort Liability commence upon appointment of the initial GAL by the Juvenile Court for the purpose of filing civil actions. (See Government Code Section 911.4(c)(3).
- b. The Juvenile Court appointed a GAL for the purpose of filing civil actions on \_\_\_\_\_. A tort claim against \_\_\_\_\_ was filed on \_\_\_\_\_ (or) has not been filed to date.

The inclusion of the information noted above does not relieve any subsequently appointed tort attorney from the duty to verify the information.

## **2. Tort Attorney Being Relieved After Commencement of Litigation**

If a motion to be relieved or substituted is filed subsequent to the commencement of litigation, it shall be filed with the judicial officer who is presiding over the tort case. Notice of the motion shall be sent to the Presiding Judge. The GAL of the child shall notify the Presiding Judge and LACBARLRIS of the outcome of the hearing on the motion.

## **3. Appointment of Subsequent Attorneys**

If a tort attorney is relieved by the Presiding Judge or by the judicial officer who is presiding over the tort case, the Presiding Judge will appoint any new attorney to represent the child on the tort case in accordance with the requirements of Sections V, A, 3 and V, B of this policy. Notice of the new appointment shall be given to the child's Dependency Court attorney and the GAL.

If a new tort attorney is not appointed by the Presiding Judge, the Presiding Judge will so notify the child's Dependency Court attorney and the GAL. Upon such notice, the GAL is thereby relieved of his/her duties and obligations with respect to the child. The GAL and/or the child's Dependency Court attorney may contact the Presiding Judge, if either disagrees with the decision not to appoint a new attorney. If a case has already been filed, the GAL is relieved upon dismissal of the case, and not upon the relief of the tort attorney, or the non-appointment of another tort attorney.

## **4. Attorney Fee Arrangement**

This Tort Protocol shall constitute the essential terms of the retainer agreement between the tort attorney and their client. Fees for services provided by tort attorneys assigned to represent children in accordance with this Protocol shall be governed by the Los Angeles County Superior Court local rules. However, tort attorneys are encouraged to accept the representation of children on a pro bono basis.

Any effort to modify the terms governing the relationship between the child and the tort attorney after the child reaches majority, but remains subject to the jurisdiction of the Dependency Court, including, but not limited to, renegotiation of attorneys fees, shall require approval from the Civil Court. Such approval shall be sought by way of a written application which states the reasons for any changes sought in the attorney-client relationship, and must include declarations from the client and the Guardian ad Litem, if applicable, which demonstrate their understanding of, and their respective positions on, the changes sought.

Failure to follow this procedure shall be grounds for removal from the Dependency Court panel, referral of the matter to the State Bar, and/or any other action deemed necessary and appropriate by the Presiding Judge of the Juvenile Court.

Nothing in this provision shall preclude a tort attorney from entering into a contract, as required by law, which memorializes the existing terms of the attorney-client relationship after a child reaches the age of majority.

### **C. Final Obligations of the Tort Attorney**

Once an account has been opened for the child's funds, the tort attorney shall send a letter containing the terms of the recovery, the type of account in which the funds have been placed, the account number and address of the bank, and the name of the fiduciary and enclose a copy of any order for minor's compromise or other settlement documents, to the Tort Funds Liaison, the Dependency Court of record, the child's Dependency Court attorney, LACBA-LRIS and Public Counsel within 30 days of the opening of the account.

The Dependency Court, LACBA-LRIS, and Public Counsel will cooperate in sharing information regarding the status of all 317(e) referrals and related tort cases.

### **D. Non-LACBA-LRIS Attorneys**

A referral of a case to a Non-LACBA-LRIS attorney shall not be made by the Presiding Judge, unless that case has already been referred to and rejected by LACBA-LRIS. Where an attorney has been sought by a parent, guardian, or other person or entity to represent a dependent child in a potential tort action, that attorney is a Non-LACBA-LRIS attorney for purposes of this policy. In cases where there is a Non-LACBA-LRIS attorney, the Presiding Judge maintains jurisdiction and authority under Section 317(e) to determine whether to appoint that attorney to represent the child or to forward the child's potential tort case to LACBA-LRIS pursuant to this policy.

The Presiding Judge may at any time refer any matter to any attorney or entity which agrees to pursue the matter on a pro bono basis.

A Non-LACBA-LRIS attorney who has obtained a case from anyone but the Presiding Judge must:

- If litigation has not begun, send a letter to the Presiding Judge requesting appointment on the case, or
- If litigation is pending, file a motion with the Presiding Judge, including the appropriate notice to all parties, requesting appointment on the case.

The motion or letter should be submitted immediately upon learning of this policy. The declaration attached with the motion, or the letter, should explain how and when the case was obtained, the qualifications of the attorney, whether the attorney was aware of the existence of the tort policy prior to accepting the case, and any action taken on the case. Appointments shall not be made to attorneys who, despite their awareness of the existence of the policy, attempt to circumvent its intent by accepting and pursuing a case without prior Juvenile Court approval.

In cases where the Presiding Judge finds an attorney was not aware of the policy, the Presiding Judge shall make a determination whether to appoint the Non-LACBA-LRIS attorney in these instances on a case-by-case basis, considering various factors, including, but not limited to, the following:

- The present phase of the case. (For example, preliminary investigation, trial, settlement.)
- The attorney's skills, qualifications, and reputation.
- The nature of the case.

- The method by which the attorney obtained the case.
- Whether the attorney is a member or willing to become a member of LACBA-LRIS.
- Whether the attorney has malpractice insurance.

In all instances, the Presiding Judge shall consider the best interests of the child.

The Presiding Judge may issue an Order to Show Cause, directed to the attorney for the purpose of making the foregoing determination.

In the event that the Presiding Judge determines that the case shall remain with the Non-LACBA-LRIS attorney, the Presiding Judge shall issue the Appointment Order. The appointment will be contingent upon the attorney's agreement to comply with all of the requirements of this policy.

A Dependency Court attorney is prohibited from making any referral to a tort attorney in lieu of or in addition to filing a 317(e) Report. Violation of this prohibition will result in the Presiding Judge issuing an Order to Show Cause to consider sanctions, including but not limited to, relief from the case or all cases, and referral to the State Bar.

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## VI. GUARDIANS AD LITEM (GAL)

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All references to the Guardian Ad Litem ("GAL") in this document refer to the GAL appointed for a tort action pursuant to Code of Civil Procedure § 372.

### A. General Requirements

California law requires that a GAL be appointed for a dependent child who is the subject of a lawsuit. A GAL must be appointed before a tort attorney can negotiate, settle, and/or proceed with a legal action on behalf of a dependent child who has been removed from the custody of his/her parent(s), or guardian(s), and is under the age of 18, or otherwise has capacity issues necessitating the appointment of a GAL. If a dependent is over the age of 18 and does not lack legal mental capacity pursuant to Probate Code §§ 810 et seq., the dependency attorney may make a referral to Public Counsel for a volunteer trained as a GAL to provide support to the dependent in the tort action.

This policy contains the exclusive procedure to appoint a GAL for a child under the jurisdiction of the Dependency Court who is the subject of a tort claim. A GAL does not need to be an attorney. A GAL shall have a basic understanding of the Dependency Court system in accordance with guidelines established by the Presiding Judge, LACBA-LRIS, and Public Counsel. A GAL may not be a non-custodial parent, CSW, foster parent, or the Dependency Court attorney for the parent or the child. Any other relationship of the GAL to any party or attorney on the case must be disclosed to the Presiding Judge prior to the appointment of the GAL.

### B. Procedure to Obtain a GAL

After the appointment of a tort attorney by the Presiding Judge, the appointed attorney shall fax or mail a request for a GAL, along with a copy of the 317(e) Report, including any attachments, a list of potential defendants, and information regarding time constraints, to Public Counsel. The request for a GAL should be sent to the attention of the GAL Program, Public Counsel, P.O. Box 76900, Los

Angeles, CA, 90076-0500 or faxed to the attention of the GAL Program at (213) 385-9089. Public Counsel will make all reasonable efforts to identify a GAL in 30 days or less.

Once a GAL is identified, Public Counsel will contact the tort attorney and provide the tort attorney with the GAL's contact information. If the tort attorney decides not to pursue the appointment of the GAL due to adoption or return of the child to the custody of the parent, the tort attorney must notify the GAL and Public Counsel immediately.

The tort attorney shall be responsible for preparing the Judicial Council's Application and Order for Appointment of Guardian Ad Litem-Civil, Form CIV-010, and obtaining the GAL's signature. If a dependent child is 14 years of age or older, the child must consent to the appointment of the GAL.<sup>6</sup> In such cases, the tort attorney must make arrangements with the child and GAL to obtain the required signatures. Once the forms have the requisite signatures, the tort attorney will file the form with the Presiding Judge.

Once the Presiding Judge approves the petition for appointment of a GAL, the clerk in Department 400 will send a conformed copy of the GAL appointment order to the tort attorney. The tort attorney shall immediately provide a copy of the order to the GAL, Public Counsel, the child's Dependency Court attorney, and the child's social worker, through his or her attorney.

If the petition is not approved by the Presiding Judge, or the tort attorney decides not to pursue the appointment of the GAL identified by Public Counsel, due to adoption or return of the child to the custody of the parent, the tort attorney must notify the GAL and Public Counsel immediately.

### **C. Duties of the GAL**

Every GAL appointed for a dependent child is subject to the following duties and obligations, as appropriate in the case. Every GAL must:

1. act in the best interests of the child;
2. maintain contact with the child on an ongoing basis;
3. communicate with the child's Dependency Court attorney, the tort attorney, the social worker, and current caregiver, as appropriate;
4. provide periodic updates on the status of their case to Public Counsel and/or the Dependency Court;
5. familiarize themselves with the facts of the case sufficiently to sign verifications for discovery;
6. sign verifications for discovery responses under penalty of perjury, as appropriate;
7. make best efforts to ensure that the child's claim is being diligently and competently pursued;
8. discuss all settlement offers with the tort attorney;
9. sign all legal documents in the case on behalf of the child;
10. provide support to the child throughout the litigation process, as appropriate, which may include assistance in preparing the child to testify;
11. be present at any formal settlement conferences, or alternative dispute resolution proceedings, as directed by the tort attorney;
12. authorize or reject settlement offers;
13. attend the child's compromise hearings;
14. approve how the settlement of judgment award will be handled for the child including, but not limited to, the selection of a fiduciary;
15. consult with the post-settlement fiduciary regarding his or her responsibilities under the Tort Policy; and

16. continue to represent the child's interests as the GAL, if Dependency Court jurisdiction terminates before resolution of the tort case, and GAL duties have not otherwise terminated.

Expenses incurred by a GAL may be reimbursed at the Civil or Probate Court's discretion pursuant to Probate Court § 1003 (c).

The Presiding Judge shall have continuing exclusive jurisdiction to remove a previously appointed GAL and to appoint a successor GAL. Whenever removal or replacement of a GAL is sought, it shall be the obligation of the tort attorney to file the motion in Department 400, to give notice of such requests and any resulting orders to all parties due notice, to obtain certified copies of any and all such orders from the clerk in Department 400, and to file such certified copies with the appropriate Civil Court filing window, so that it may become a part of the Civil Court file and records.

#### **D. Duties of the GAL When Child Changes Legal Status**

Any time that the dependent child's placement changes, such as the child is moved to a new foster or group home, the child is detained through the juvenile delinquency system, or his/her whereabouts are unknown, the child's Dependency Court attorney will inform the GAL, the legal guardian, or parent, and provide any new contact information for the child to the GAL, their caretaker, or parent. The dependency court attorney will also inform the GAL, if Dependency Court jurisdiction has been terminated for the child. This includes, but is not limited to, situations where the child has been returned to the legal custody of the parent, the child has been adopted, or a legal guardian has been appointed.

1. If Dependency Court jurisdiction is terminated for a child under the age of 18, the GAL will be responsible for contacting the child's parent/legal guardian and informing them of the details of the tort case, the status of the case, and the GAL's role and efforts in the case to date. The GAL shall also inform the parent/legal guardian of their right to seek to be appointed GAL in the case, and shall provide the parent/legal guardian with an application and order for appointment of Guardian Ad Litem (CIV-010).
  - i. If the parent/legal guardian wishes to be substituted as GAL, the parent/legal guardian shall file an Application and Order for Appointment of Guardian Ad Litem (CIV-010) with the Presiding Judge. The GAL may oppose the application, if the GAL believes that the substitution would not be in the child's best interest.
  - ii. If a child is 14 years of age or older, the child must consent to the appointment of any new GAL.
  - iii. After appointment of a new GAL, the former GAL may continue to act in an advisory role at the request of the new GAL.
2. Following the procedures in Section D above, if a dependent turns 18 while a tort case is still pending, and the GAL determines that the dependent is competent, the GAL will inform the dependent of the details of the tort case, the status of the case, and the GAL's role and efforts in the case to date. If the dependent wishes to have the GAL removed from the case, the GAL will file a petition to be relieved with the Presiding Judge. The former GAL may continue to act in an advisory role at the dependent's request.

3. Following the procedures in Section D above, if a GAL determines that a dependent, who is over the age of 18, is incompetent to act on his or her own behalf in the tort litigation, the GAL shall petition the Presiding Judge, or, if a case has already been filed, the Civil Court judicial officer, for permission to remain as GAL on the case.

#### **E. Termination of Duties of GAL**

The duties of a GAL terminate, when any of the following occurs:

1. The tort case is resolved by settlement, or an award, at trial, and the funds belonging to the dependent child are placed in a protected account pursuant to an Order to Deposit or other order of a judicial officer.
2. The tort attorney is relieved, and the Presiding Judge notifies the GAL that substitute counsel will not be appointed.
3. Any time that the GAL determines that going forward with the case would not be in the best interests of the dependent child. If the minor is still under the jurisdiction of the Juvenile Court, the GAL shall notify the Presiding Judge, in writing, of his determination and the basis for the determination. The Presiding Judge may request a hearing to review the appropriateness of the GAL's determination.
4. The GAL is relieved.

If the dependent child is still under the jurisdiction of the Juvenile Court, the Presiding Judge shall issue an order relieving the GAL. However, if the dependent child is no longer under the jurisdiction of the Juvenile Court, the duties of the GAL shall automatically terminate.

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## **VII. RESOLUTION OF DISPUTES BETWEEN TORT ATTORNEY AND GAL**

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If a dispute arises between a tort attorney and a GAL, either the GAL or tort attorney shall bring the complaint or dispute to the attention of the GAL Program at Public Counsel. Public Counsel will then attempt to resolve the complaint or dispute informally.

If Public Counsel is unable to resolve the complaint or dispute informally, the GAL or tort attorney will then make a written motion to resolve the dispute pursuant to the procedures set forth in this section.

#### **A. Prior to the Commencement of Litigation**

All requests to settle disputes prior to the commencement of litigation must be in written motion according to motion practice under the Code of Civil Procedure to the Presiding Judge, unless the Presiding Judge so moves on his/her own motion. The Presiding Judge will rule on the motion within 30 days. Based on the information presented, if unable to resolve the dispute, the Presiding Judge may relieve either the GAL or the tort attorney.

The moving party will notice the child's Dependency Court attorney, LACBA-LRIS, and Public Counsel, as well as the responding party, of the motion and hearing outcome. The Presiding Judge will either set a hearing or rule on the matter. If a hearing is set, the Presiding Judge may delegate the matter.

#### **B. After Commencement of Litigation**

All requests to settle disputes after litigation has commenced must be in written motion filed with the judicial officer presiding over the tort case. Notice of this motion shall be sent to the Presiding Judge. The judicial officer presiding over the tort case may relieve either the GAL, or the tort attorney, if the judicial officer is unable to resolve the dispute.

The child's Dependency Court attorney, LACBA-LRIS, and Public Counsel shall receive notice of the motion and hearing outcome by the moving party.

#### **C. Replacement of tort attorney or GAL**

If either the tort attorney or the GAL is removed pursuant to this section, the remaining party shall immediately contact the Presiding Judge to appoint a new tort attorney or GAL in accordance with this policy.

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### **VIII. PLACEMENT AND PROTECTION OF MONETARY RECOVERIES**

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Upon settlement or judgment in a child's case, the GAL and tort attorney shall propose a plan for the placement and protection of funds awarded to the child. The GAL and tort attorney shall take into consideration the child's age, special needs, potential disqualification of public benefits, and access to a stable adult who can track the child for the purpose of ensuring that the funds are properly disbursed to the child in accordance with the selected plan. The GAL and the tort attorney shall consult the training manual developed by LACBA-LRIS and the Dependency Court, California Rules of Court, Rule 7.903, and Local Rules 10.186 et seq.

While the GAL and tort attorney should agree on the plan for the placement and protection of the child's funds, the final determination is made by the GAL, with the advice of the tort attorney, and subject to the approval of the Probate Court when there is no civil action pending or the Civil Court when there is a civil action pending. The tort attorney is responsible for establishing the appropriate financial arrangement and completing the necessary paperwork.

The following options shall be considered, in this order, for the placement and protection of the child's award:

1. Special needs trust.
2. Probate Code § 3611 (g) trust.
3. Annuity.
4. Blocked account (federally insured account).

In cases where a structured settlement/annuity is opened on behalf of a minor, the tort attorney shall require the contract to contain in 12 point, bold face type, the following language:

The subject minor is or was a dependent minor under jurisdiction of the Dependency Court located at 201 Centre Plaza Drive, Suite 3, Monterey Park, CA 91754. In the event that a check or payment to an annuitant is returned unclaimed within 30 days, or un-negotiated within 90 days, notice will be given by the financial institution to the Dependency Court within 15 days. This notice is to be sent to the attention of the Tort Funds Liaison at the above address and shall include the name of the minor and the annuity contract number.

In the case of a blocked account (federally insured account), the tort attorney shall provide the bank with instruction to contact the Dependency Court Tort Funds Liaison, when the fiduciary cannot be located. In the case where an annuity is purchased, the tort attorney shall provide the annuity company with instructions to contact the Dependency Court Tort Funds Liaison, when the fiduciary cannot be located.

It is the strong preference of the Juvenile Court that there be a fiduciary appointed to administer the settlement proceeds who will have an ongoing responsibility to ensure that the proceeds are turned over to the child upon the age of majority. The GAL, the tort attorney, and the child's Dependency Court attorney, shall participate in the selection of a post settlement fiduciary (fiduciary), such as a trustee, to oversee the administration of the child's funds. The fiduciary must have an understanding of the child's special needs (if any) and the ability to work with the Dependency Court, the Dependency Court attorney, and the Tort Funds Liaison (see below). The final determination of a fiduciary is to be made by the GAL, with the advice of the tort attorney, and subject to the approval of the Probate Court, when no civil action is pending or the Civil Court, when there is a civil action pending.

When selecting a fiduciary, **priority will be given to the Los Angeles County Public Guardian. If the Public Guardian is unable or unwilling to serve**, the following persons shall be considered:

1. The GAL on the tort case;
2. A responsible parent, guardian or relative;
3. CASA, if already appointed;
4. A registered professional fiduciary;
5. Where no other options are feasible, a volunteer fiduciary recommended by the Professional Fiduciary Association of California (PFAC).

The GAL shall provide the fiduciary with a packet of relevant documents including the tort policy, contract information, and materials developed by Public Counsel. **If a fiduciary other than the Public Guardian is selected**, the GAL and the tort attorney will meet with the fiduciary to explain his or her responsibilities under the tort policy.

Once the fiduciary is appointed by the Civil Court or Probate Court, the fiduciary shall:

1. Contact the child annually to determine the child's whereabouts, if the child is still under Dependency Court Jurisdiction.
2. If the child's whereabouts become unknown, then contact the Tort Funds Liaison to assist in determining the child's whereabouts.
3. Prepare and send an annual report to the Tort Funds Liaison regarding the status of the child's funds, and report any changes to the child's address, even if the child is no longer under Dependency Court Jurisdiction.
4. Contact the child six months before the child's 18<sup>th</sup> birthday to inform the child of the funds, to assist the child in accessing the funds, and to counsel the child regarding responsible use of the funds.



The fiduciary cannot withdraw or terminate services without Probate Court approval. If a petition to terminate trusteeship is filed, when there is a need for a successor trustee, the fiduciary shall notify the Tort Funds Liaison. The Tort Funds Liaison shall find a new fiduciary.<sup>7</sup>

If a new Dependency Court attorney is appointed, or if jurisdiction of the Dependency Court case is terminated, The Tort Funds Liaison shall immediately notify the fiduciary.

The Dependency Court shall appoint an individual to be the Tort Funds Liaison. Until the funds have been disbursed, the Tort Funds Liaison will maintain records of all children, who recover an award through the 317(e) process, even if the child is no longer under the jurisdiction of the Dependency Court, or is over the age of 18. The records must contain a copy of the Order for Minor's Compromise, settlement account, the fiduciary's contact information, the fiduciary's regular accounting to the Tort Funds Liaison, and the last known residence of the child. The Tort Funds Liaison will also monitor the child's whereabouts, and report to the Dependency Court, if necessary.

Once the Dependency Court receives written notice that a fiduciary has been appointed for the child, the Court shall order DCFS to provide the fiduciary and the Tort Funds Liaison with notice of all changes of placements.

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## IX. PROCEDURES ON TERMINATION OF DEPENDENCY COURT JURISDICTION

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### A. Prior to the Appointment of a Tort Attorney

If Dependency Court jurisdiction is terminated prior to the appointment of a tort attorney, the child's Dependency Court attorney shall notify the Presiding Judge of the termination, and send the 317(e) Report with a letter of explanation to the child's caretaker, if there is one, to the child's parent(s), if the child is under parental care, or to the child, if the child is 18 years of age or older. The Presiding Judge will notify LACBA-LRIS of the termination of jurisdiction. If jurisdiction is terminated because the child has been declared a ward pursuant to Welfare and Institutions Code section 602, the procedures stated in this policy shall remain in effect.

### B. After the Appointment of a Tort Attorney

If Dependency Court jurisdiction terminates following the appointment of a tort attorney, the attorney-client relationship established between the child and the tort attorney shall continue. The child's Dependency Court attorney shall notify the Presiding Judge, and the tort attorney, of the termination of jurisdiction, the reasons, and where and with whom the child is residing. If jurisdiction is terminated because the child has been declared a ward pursuant to Welfare and Institutions Code § 602, the procedures stated in this policy shall remain in effect. In all other cases, the Presiding Judge will notify the GAL, who shall inform all relevant persons of the ongoing tort proceedings.

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## X. GLOSSARY

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**ANNUITY**

A fixed sum of money that is payable periodically; a right to receive fixed payments periodically for a specified duration.

**APPOINTMENT ORDER**

Order issued by the Presiding Judge of the Juvenile Court appointing an attorney to represent a dependent child in a civil/tort action.

**CHILD**

A Dependent Child (as defined below) of the Juvenile Court or former Dependent Child, even if now over 18 years of age, who was the subject of a 317(e) tort referral.

**CHILDREN'S LAW CENTER (CLC) OF LOS ANGELES**

A non-profit corporation whose attorneys represent children in dependency court matters.

**CIVIL COURT**

A trial court that hears disputes arising from common law and civil statutes.

**COUNTY COUNSEL, Office of**

The government entity responsible for representing DCFS in all matters brought before the Dependency Court.

**COURT-APPOINTED SPECIAL ADVOCATE (CASA)**

Community volunteers, who are trained and supervised through a court program to advocate and report to the court on behalf of a child. Volunteers are appointed by the court to advocate and make recommendations regarding particular children.

**CSW**

Children's Social Worker employed by the Department of Child and Family Services as defined below.

**DEPARTMENT OF CHILD AND FAMILY SERVICES (DCFS)**

A department of the County of Los Angeles dedicated to providing a comprehensive child protection system of prevention, preservation and permanency to ensure that children in Los Angeles County grow up safe, physically and emotionally, educated, and in permanent homes.

**DCFS FILE**

Part of the Juvenile Court file in the custody of the Department of Children and Family Services. Often this file contains additional information that is not included in the legal file maintained by the Juvenile Court.

**DEPENDENT CHILD**

A child under the jurisdiction of the Juvenile Court pursuant to California Welfare and Institutions Code ("WIC") § 300.

**DEPENDENCY COURT ATTORNEY**

An attorney appointed to represent either a WIC § 300 dependent child or the child's parent/guardian.

**FOSTER PARENT**

An individual whose home is licensed or approved as a foster family home, small family home, or certified for 24-hour care of children and who assumes the responsibility for caring for children under the jurisdiction of the Juvenile Court who have been removed from their parents or legal guardians.

## **GROUP HOME**

An alternative to traditional in-home foster care for children in which a number of unrelated children live for varying periods of time. More specialized therapeutic or treatment group homes have specially-trained staff to assist children with emotional and behavioral difficulties. The make-up and staffing of the group home may be adapted to meet the unique needs of its residents.

## **GUARDIAN AD LITEM (GAL)**

A guardian appointed by the Presiding Judge of the Juvenile Court to represent the interests of a child in a tort action. A GAL is not necessarily an attorney.

## **INVESTIGATION ORDER**

An order granted by the Presiding Judge of the Juvenile Court permitting a tort panel attorney to further investigate the potential tort claim of a child. Such an order allows the tort panel attorney access to the child's juvenile records and includes a fee waiver for copies of the Juvenile Court and DCFS records. The Investigation Order is valid for 60 days.

## **JUVENILE COURT**

The Los Angeles Juvenile Court is made up of three distinct types of proceedings: the Dependency, Delinquency, and Informal Juvenile and Traffic Courts, and is headed by the Presiding Judge of the Juvenile Court. All references to the Juvenile Court in this policy are the Los Angeles County Juvenile Dependency Court. Dependency proceedings involve the protection of children who have been or are at risk of being seriously abused, neglected or abandoned.

## **JUVENILE RECORDS**

Pursuant to California Rules of Court, Rule 5.552, juvenile records include: All documents filed in a Dependency Court case, reports to the court by Children's Social Workers (CSWs) and court-appointed special advocates (CASA), documents made available to CSWs and CASAs in preparation of reports to the court, documents relating to a child, which are maintained in the office files of the Department of Children and Family Services (DCFS) and CASAs, transcripts, records, or reports relating to matters prepared or released by the court or DCFS, and documents, video or audio tapes, photographs, and exhibits admitted into evidence at Dependency Court hearings. As these files are confidential, individuals seeking access may be required to submit petitions for access under California Welfare and Institutions Code § 827.

## **LACBA-LRIS**

Los Angeles County Bar Association Lawyer Referral and Information Service; this organization refers dependency tort cases to the panel of tort attorneys.

## **NON-LACBA-LRIS ATTORNEY**

Attorney sought by a parent, guardian, or other person or entity to represent a Dependent Child in a potential tort action who is not a tort attorney on the LACBA-LRIS panel.

## **OUT OF HOME CARE EVALUATION UNIT (OHCEU)**

A unit formerly responsible for evaluating all out-of-home care facilities (such as foster family agencies, foster family homes, group homes and small family homes.) Specifically, this unit investigated claims of child abuse or neglect alleged against an out-of-home caregiver of any DCFS-placed child. (Unit no longer exists.)

## **PRESIDING JUDGE**

All references to the Presiding Judge in this policy refer to the Presiding Judge of the Juvenile Court.

## **PROBATE COURT**

A special court that has jurisdiction over proceedings incident to the settlement of a decedent's estate and over the estates of juveniles and those determined unable to take proper care of their property or themselves. In such cases, the court may appoint a committee, conservator, or a guardian.

## **PUBLIC COUNSEL**

A non-profit law firm that provides free legal services to indigent and underrepresented children and adults throughout Los Angeles County. Public Counsel recruits, trains and identifies for the court Guardians Ad Litem for dependent children with pending tort claims.

## **REFERRAL STATUS FORM**

Form sent by a Dependent Child's CSW to the child's Dependency Court attorney describing any changes regarding the child's placement or services provided to the child.

## **STATUS AFTER INVESTIGATION REPORT**

The report a tort panel attorney is obligated to send to LACBA-LRIS, and the Juvenile Court, in which the tort attorney describes the outcome of any investigation made pursuant to an Investigation Order. The tort attorney must also inform LACBA-LRIS and the Juvenile Court whether he/she intends to pursue the case.

## **TORT ATTORNEY**

An attorney the Juvenile Court has appointed to either investigate or represent the interests of a child in regard to a tort action. Such appointment is made pursuant to WIC § 317(e).

## **TORT PANEL**

A panel of attorneys who receive referrals regarding the potential tort claims of children. In order to join the panel an attorney must meet the appropriate experience and training standards established by LACBA-LRIS and the Presiding Judge.

## **WIC § 317(e) REPORT**

A report filed by a child's Dependency Court attorney describing injuries or damages suffered by the child. The report contains a statement of injury to the child and the person or entity that is responsible for the injury. The report is filed with the Presiding Judge of the Juvenile Court. The Presiding Judge then refers all potentially viable tort cases to the LACBA-LRIS tort panel. (See form under Appendix 1).

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## **XI. ENDNOTES**

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<sup>1</sup> The Tort Funds Liaison position is currently open due to a lack of funding. While the position remains open, the duties of the Tort Funds Liaison will be performed by the designated Juvenile Court research attorney. In addition, the duties may change depending on the role of the Public Guardian's Office. (See Tort Policy Section VIII, Placement and Protection of Monetary Recoveries.)

<sup>2</sup> See CA Code of Regulations (CCR) Title 22, Sections 89261, 89361 and CA Health and Safety Code Sections 1530, 1530.5, 1531 for foster family homes. See CCR Title 22, Section 84061 and CA Health and Safety Code Sections 1522.41(j) and 1530 for group homes.

<sup>3</sup> See Amended Blanket order Re: Notice to Children's Counsel, April 7, 2003, DCFS Procedural Guide 0300-506.08 Communications with a Child's Attorney; DCFS Form 5402, and Notice to Child's Attorney Re: Child's Case Status.

<sup>4</sup> See Penal Code section 11166.1(b).

<sup>5</sup> See Local Rule 10.187(e).

<sup>6</sup> See Code of Civil Procedure § 373(a).

<sup>7</sup> Note: this language may change, if the Public Guardian's Office assumes the role of trustee.