

**40-4-8 NMSA. Contested custody; appointment of guardian ad litem.**

- A. In any proceeding for the disposition of children when custody of minor children is contested by any party, the court may appoint an attorney at law as guardian ad litem on the court's motion or upon application of any party to appear for and represent the minor children. Expenses, costs and attorneys' fees for the guardian ad litem may be allocated among the parties as determined by the court.
- B. When custody is contested, the court:
- (1) shall refer that issue to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend mediation unless the court specifically finds that:
    - (a) the following three conditions are satisfied:
      - 1) the mediator has substantial training concerning the effects of domestic violence or child abuse on victims;
      - 2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering from an imbalance of power as a result of the alleged domestic violence; and
      - 3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between the parties resulting from the alleged domestic violence or child abuse;  
or
    - (b) in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence;
  - (2) may order, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling; and
  - (3) may use, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, auxiliary services such as professional evaluation by application of Rule 11-706 of the New Mexico Rules of Evidence or Rule 1-053 of the Rules of Civil Procedure for the District Courts.
- C. As used in this section:
- (1) "child abuse" means:

- (a) that a child has been physically, emotionally or psychologically abused by a parent;
- (b) that a child has been:
  - 1) sexually abused by a parent through criminal sexual penetration, incest or criminal sexual contact of a minor as those acts are defined by state law; or
  - 2) sexually exploited by a parent through allowing, permitting or encouraging the child to engage in prostitution and allowing, permitting, encouraging or engaging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law;
- (c) that a child has been knowingly, intentionally or negligently placed in a situation that may endanger the child's life or health; or
- (d) that a child has been knowingly or intentionally tortured, cruelly confined or cruelly punished; provided that nothing in this paragraph shall be construed to imply that a child who is or has been provided with treatment by spiritual means alone through prayer, in accordance with the practices of a recognized church or religious denomination, accredited practitioner of the church or denomination, is for alone a victim of child abuse within the meaning of this

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paragraph; and

- (2) "domestic violence" means one parent causing or threatening physical harm or assault or inciting imminent fear of physical, emotional or psychological harm to the other parent.