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**2016 Edition**

# Representing Minors in Connecticut

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A Guide to Resources in the Law Library

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The Connecticut Judicial Branch [Family Matters Frequently Asked Questions](#) (FAQ) web page includes answers to questions on [Guardian ad Litem](#) and [Attorney for the Minor Child](#) issues. Also included in this FAQ page is a link to the [Code of Conduct for Attorney for the Minor Child and Guardian ad Litem](#).

*Prepared by Connecticut Judicial Branch, Superior Court Operations,  
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## **Guardian ad Litem (GAL)**

- "A **guardian ad litem**, often referred to as a GAL, is an individual the court appoints, either upon motion of a party or when the court determines a GAL is necessary. The court will consider the appointment of a GAL if the parties are unable to resolve a parenting or child related dispute. In such event, the court appoints a GAL to ensure the child's best interests are represented during the course of the parties' dispute. The GAL's role is different from that of an Attorney for a Minor Child (AMC). The GAL represents the child's best interests while the AMC represents the child's legal interests and supports the child's best interests." **"Guardian Ad Litem or Attorney for Minor Child in Family Matters", Judicial Branch publication [JDP-FM-224 \(New 6/14\)](#).**
- "Typically, the child's attorney is an advocate for the child, while the **guardian ad litem** is the representative of the child's best interests." [Newman v. Newman](#), 235 Conn. 82, 96, 663 A.2d 980 (1995).

## **Attorney for the Child**

- "... the **attorney for the child** is just that, an *attorney* arguing on behalf of his or her client, based on the evidence in the case and the applicable law." [Ireland v. Ireland](#), 246 Conn. 413, 438, 717 A.2d 986 (1998).
- "The primary role of any **counsel for the child** shall be to advocate for the child in accordance with the Rules of Professional Conduct, except that if the child is incapable of expressing the child's wishes to the child's counsel because of age or other incapacity, the counsel for the child shall advocate for the best interests of the child." Conn. Gen. Stat. [§ 46b-129a](#)(2)(C)

## **Next Friend**

- **Next friend**. "A next friend is a 'person who appears in a lawsuit to act for the benefit of ... [a] minor plaintiff ....' Black's **Law Dictionary (7th Ed.1999)**. 'It is well established that a child may bring a civil action only by a guardian or next friend, whose responsibility it is to ensure that the interests of the ward are well represented.' [Lowe v. City of Shelton](#), 83 Conn. App. 750, 755, 851 A.2d 118 (2004).
- "There are, however, 'certain exceptional circumstances'; [Cottrell v. Connecticut Bank & Trust Co.](#), [175 Conn. 257,] *supra*, 263; when a child 'may properly sue by next friend, notwithstanding the existence of such guardian . . . ." [Orsi v. Senatore](#), 230 Conn. 459, 466-467, 645 A.2d 986 (1994).

Table 1: Recent Public Acts Affecting Children and Juveniles

<b>Recent Public Acts Affecting Children and Juveniles</b>	
<b>Children and Juveniles</b>	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2015)</a> .
	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2014)</a> .
	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2013)</a> .
	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2012)</a> .
	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2011)</a> .
	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2010)</a> .
	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2009)</a> .

\* Source: Office of Legislative Research, *Acts Affecting*, <http://www.cga.ct.gov/olr/actsaffecting.asp> (Accessed on 3/4/16).

# Section 1: Guardian Ad Litem in Connecticut

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to the role of the guardian ad litem.

## **DEFINITIONS:**

- “A **guardian ad litem**, often referred to as a GAL, is an individual the court appoints, either upon motion of a party or when the court determines a GAL is necessary. The court will consider the appointment of a GAL if the parties are unable to resolve a parenting or child related dispute. In **such event, the court appoints a GAL to ensure the child’s best interests are represented during the course of the parties’ dispute. The GAL’s role is different from that of an Attorney for a Minor Child (AMC). The GAL represents the child’s best interests while the AMC represents the child’s legal interests and supports the child’s best interests.**” [“Guardian Ad Litem or Attorney for Minor Child in Family Matters”](#), Judicial Branch publication, JDP-FM-224.
- (a) **...In any proceeding** before a court of probate or the Superior Court including the Family Support Magistrate Division, whether acting upon an appeal from probate or otherwise, the judge or magistrate may appoint a guardian ad litem for any minor or incompetent, undetermined or unborn person, or may appoint one guardian ad litem for two or more of such minors or incompetent, undetermined or unborn persons, if it appears to the judge or magistrate that one or more persons as individuals, or as members of a designated class or otherwise, have or may have an interest in the proceedings, and that one or more of them are minors, incompetent persons or persons undetermined or unborn at the time of the proceeding. Conn. Gen. Stat. [§ 45a-132\(a\)\(1\)](#).
- **Immunity of state officers and employees from personal liability.** “(a) No state officer or employee shall be personally liable for damage or injury, not wanton, reckless or malicious, caused in the discharge of his or her duties or within the scope of his or her employment . . . .  
  
(b) For the **purposes of this section, (1) ‘scope of employment’** includes but is not limited to . . . (G) representation by an individual appointed by the Public Defender Services Commission, or by the court, as a **guardian ad litem or attorney** for a party in a neglect, abuse, termination of parental rights, delinquency or family with service needs proceeding; provided the actions described in subparagraphs (A) to (G), inclusive, of this subdivision arise out of the discharge of the duties or within the scope of employment of such officers or employees . . . .”

Conn. Gen. Stat. [§ 4-165](#). (Emphasis added.)

- “If the court, based on evidence before it, or counsel for the child, determines that the child cannot adequately act in his or her own best interests and the child’s wishes, as determined by counsel, if followed, could lead to substantial physical, financial or other harm to the child unless protective action is taken, counsel may request and the court may order that a separate guardian ad litem be assigned for the child . . .” Conn. Gen. Stat. [§ 46b-129a](#)(2)(D) [Chapter 815t - **Juvenile Matters**]
- “In any criminal proceeding involving an abused or neglected minor child, a guardian ad litem shall be appointed.” Conn. Practice Book [§ 44-20](#)(a) (2016 ed.).

### **STANDARDS & GUIDELINES:**

#### *Current:*

- Connecticut Judicial Branch
  - [Code of Conduct for Counsel for the Minor Child and Guardian Ad Litem](#)
- State of Connecticut, [Division of Public Defender Services](#)
  - [Performance Guidelines For Counsel In Family Matters](#)
  - [Performance Guidelines For Counsel In Juvenile Matters](#)
  - [Performance Guidelines For Counsel In Child Protection Matters](#)
- Connecticut Bar Association
  - [Court-Appointed Attorneys in Courts of Probate](#)

#### *Superseded:*

- Commission on Child Protection, State of Connecticut. **Connecticut Standards of Practice for Attorneys & Guardians Ad Litem Representing Children in Child Protection Cases**, v.68 *Conn. Law Journal* 3E (January 30, 2007).

*\*The Public Defender Services Commission shall constitute a successor to the Commission on Child Protection. All functions, powers and duties of the Commission on Child Protection are transferred to the Public Defender Services Commission...” P.A. 11-51, § 1(i).*

#### *Other:*

- [American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases](#) (A.B.A., 1996), *reprinted in* Jean Koh Peters, *Representing Children*

in Child Protective Proceedings: Ethical and Practical Dimensions, Appendix D3, page 1069 (3d ed., 2007).

- [American Bar Association Section of Family Law Standards of Practice for Lawyers Representing Children in Custody Cases](#) (August 2003).
- Connecticut Bar Association, Family Law Section. Committee on The Role of Counsel. *Counsel For Children: Guidelines For Courts And Counsel In Civil Custody Cases*, 56 [Conn. B.J.](#) 484 (1982).

### **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal, and posted [online](#).

- Connecticut Practice Book (2016)
- Chapter 25. Procedure in Family Matters
    - [§ 25-50](#). Case Management
    - [§ 25-62](#). Appointment of Guardian Ad Litem
  - Chapter 32a. Rights of Parties – **Neglected...Children and Termination of Parental Rights**
    - [§ 32a-1](#). Right to Counsel and to Remain Silent
  - **Chapter 33a. Petitions for Neglect...Termination of Parental Rights**
    - [§ 33a-7](#). Preliminary Order of Temporary Custody or First Hearing; Actions by Judicial Authority
  - Chapter 44. Procedure in Criminal Matters
    - [§ 44-20](#). Appointment of Guardian Ad Litem

### [Probate Court Rules of Procedure](#) (2015)

- Rule 13 Court-appointed Guardian Ad Litem
  - 13.1 Mandatory appointment of a guardian ad litem
  - 13.2 Discretionary appointment of a guardian ad litem
  - 13.3 Scope of appointment
  - 13.4 Termination of appointment
  - 13.5 Who may serve as guardian ad litem
  - 13.6 Duties of guardian ad litem
  - 13.7 Instruction and advice from court
  - 13.8 Guardian ad litem may appeal from court order

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2015)
- Chapter 53. Claims Against The State
    - [§ 4-165](#). Immunity of state officers and employees from personal liability.
  - Chapter 319. Department Of Children And Families
    - [§ 17a-77](#). Hearing. Notice to child, parents, guardian. Availability of records. Physicians, appointment; certificate; report. Right of child to be at hearing. Order for commitment. Transfer to other institutions. Recommitment. **Amended by P.A. 16-28, sec. 24.**
  - Chapter 319a. Child Welfare

[§ 17a-112](#). Termination of parental rights of child committed to commissioner. Cooperative postadoption agreements. Placement of child from another state. Interstate Compact on the Placement of Children. **Amended by P.A. 16-28, sec. 15; P.A. 16-70, sec. 1; P.A. 16-105, sec. 1, sec. 2.**

- Chapter 801b. Probate Court Procedure  
[§ 45a-132](#). Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons.  
[§ 45a-188](#). Timing of taking appeals by minors.
- Chapter 802c. Trusts  
[§ 45a-487e](#). Appointment of guardian ad litem by court, when. Powers.
- Chapter 802h. Protected Persons and Their Property  
[§ 45a-620](#). Appointment of counsel. Appointment of Guardian ad litem to speak on behalf of best interests of minor.  
[§ 45a-621](#). Appointment of guardian ad litem.
- Chapter 803. Termination of parental rights and adoption  
[§ 45a-708](#). Guardian ad litem for minor or incompetent parent.  
[§ 45a-715](#). (Formerly Sec. 45-61c). Petition to terminate parental rights. Cooperative postadoption agreements. **Amended by P.A. 16-7, sec. 7; P.A. 16-28, sec. 9.**  
[§ 45a-751b](#). Disclosure of identifying information. Consent required.
- Chapter 815. Court Proceedings in Family Relations Matters  
[§ 46b-12](#). Orders re appointment of counsel or guardian ad litem for a minor child in family relations matter.
- Chapter 815j. Dissolution of Marriage, Legal Separation and Annulment  
[§ 46b-47](#). Complaint for dissolution of marriage on ground of confinement for mental illness; procedure.  
[§ 46b-54](#). Appointment of counsel or guardian ad litem for a minor child. Duties. Best interests of the child.  
[§ 46b-62](#). Orders for payment of attorney's fees in certain actions.
- Chapter 815t. Juvenile Matters  
[§ 46b-129a](#). Examination by physician, psychiatrist or psychologist. Counsel and guardian ad litem. Testimony. Evidence.
- Chapter 815y. Paternity Matters  
[§ 46b-172a](#). Filing of claim for paternity by putative father. Child as party. Attorney General as party. Hearing. Three-judge court. Rights and responsibilities upon adjudication or acknowledgment of paternity. Claim for paternity after death of putative father.
- Chapter 887. Public Defender Services

## **LEGISLATIVE REPORTS:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

[§ 51-296](#). Designation of public defender for indigent defendant, codefendant. Legal services and guardians ad litem in family relations matters and juvenile matters. Contracts for legal services.

- Chapter 895. Civil Jurisdiction  
[§ 52-23](#). Order to guardian to convey ward's realty.
- Kevin E. McCarthy, [Guardians Ad Litem](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2013-R-0098 (February 6, 2013). **"You for a description of the training and oversight of guardians ad litem (gals) in child neglect and related cases (juvenile court) vs. those in divorce and related cases (family court) and the rationale for these differences. You also asked (1) whether family court gals have total immunity and, if so, why and (2) why family court gals do not conform to their state practice guidelines?"**
- Susan Price, [State Court Oversight of Guardians Ad Litem](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2013-R-0017 (May 2, 2013). **"You asked several questions about guardians ad litem (GAL) assigned to represent the best interests of children in divorce and custody matters..."**
- Susan Price, [Guardian Ad Litem Appointments](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2012-R-0416 (October 3, 2012). **"You asked several questions about guardian ad litem (GAL) assigned to represent the best interests of indigent children in Connecticut child protection matters."**
- Susan Price, [Guardian Ad Litem Programs: Connecticut and Massachusetts](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2007-R-0414 (August 8, 2007). **"You asked for a comparison of guardian ad litem programs in Connecticut and Massachusetts family courts."**
- George Coppolo, [Immunity-Attorneys Appointed in Child Custody Cases](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2004-R-0226 (February 20, 2004). **"You asked whether attorneys the Superior Court appoints to represent minor children in divorce and child custody cases are immune from liability in connection with such representation."**
- Robin K. Cohen, [Civil Commitment of Children](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2013-R-0102 (January 30, 2013). **"You asked for a concise summary of the law governing the civil commitment of mentally ill children."**
- Amy Calvo Macnamara, Aidan R. Welsh, and Cynthia Coulter George, editors, [Library of Connecticut Family Law Forms](#), Second Edition (2014).

## **FORMS:**

Form 5-017. *Plaintiff's Motion to appoint guardian ad litem for the Minor Child/Children, Pendente Lite*

- Michael J. Dale et al., [Representing the Child Client](#) (2011). App. 3F. *Petition of Minor Plaintiff for Appointment of Guardian Ad Litem; Acceptance; and Order of Court*
- [Official Court Webforms](#), Connecticut Judicial Branch.
  - JD-FM-219 - Guardian Ad Litem, Request for Status Conference
  - JD-FM-225 - Affidavit of Expenses of Counsel or Guardian Ad Litem for Minor Child or Children
  - JD-FM-232 - Periodic Review Worksheet - Fees Charged by Counsel or Guardian Ad Litem
  - JD-JM-100 - Notice of Appointment of Guardian Ad Litem (Juvenile Matters)
  - JD-JM-194 - Guardian Ad Litem Request For In-Court Judicial Review (Juvenile Matters)

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

#### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Brown v. Brown](#), 132 Conn. App. 30, 38-39, 31 A.3d 55 (2011). "General Statutes § 45a-132 (d) provides in relevant part that 'if it appears to the judge or magistrate that it is for the best interests of a minor having a parent or guardian to have as guardian ad litem some person other than the parent or guardian, the judge or magistrate may appoint a *disinterested* person to be the guardian ad litem.' (Emphasis added.) 'Disinterested' is defined as 'unbiased by personal interest or advantage; not influenced by selfish motives.' Random House Webster's Unabridged Dictionary (2d Ed. 2001). Webster's Dictionary lists the following synonyms for the word 'disinterested': 'impartial,' 'neutral,' 'unprejudiced,' 'dispassionate,' and 'fair.' . . . 'It is well established that the role of the guardian ad litem is to speak on behalf of the **best interest of the child.**' [In re Tayquon H.](#), 76 Conn. App. 693, 704, 821 A.2d 796 (2003). We have adopted the following list of duties of the guardian ad litem among others: 'investigation of the facts necessary to get a clear picture of the child's situation, a determination of the child's best interest, frequent communication with the child and the court, *and the making of recommendations to the court through testimony.*'"
- [Buehler v. Buehler](#), 117 Conn. App. 304, 317, 978 A. 2d 1141 (2009). "The statutory authority for the award of counsel fees is found in General Statutes § 46b-62, which provides in relevant part: 'If, in any proceeding under this chapter and said sections, the court appoints an attorney for a minor child, the court may order the father, mother or an intervening party, individually or in any combination, to pay the reasonable fees of the attorney . . . .' This includes fees for the guardian ad litem. See [Lamacchia v. Chilinsky](#), 79

Conn.App. 372, 374, 830 A.2d 329 (2003).”

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- [Carrubba v. Moskowitz](#), 274 Conn. 533, 546-547, 877 A.2d 773 (2005). “Thus, even the advocacy role of the appointed attorney for the minor child may be reconciled with the attorney’s primary duty—to assist the court in serving the best interests of the child. Therefore, we see no reason to accord appointed attorneys for minor children a lesser level of immunity than that traditionally accorded to guardians ad litem, at least in the performance of those functions that are integral to the judicial process.”

Courts in other jurisdictions have almost unanimously accorded guardians ad litem absolute immunity for their **actions that are integral to the judicial process.”**

- [In re Christina M.](#), 90 Conn. App. 565, 579, 877 A.2d 941 (2005). “**We therefore reject the argument of the parents** that the trial court failed to fulfill its constitutional obligation to provide counsel for the daughters. In light of the record before it, the court properly appointed an attorney to represent the daughters’ legal interests. Until the court was asked also to appoint a guardian ad litem, that was all that **our constitution required the court to do.”** (Affirmed by [In re Christina M.](#), 280 Conn. 474, 908 A.2d 1073 (2006).
- [In re Joseph L.](#), 105 Conn. App. 515, 534, 939 A.2d 16 (2008). “**Whether a conflict exists between what is in the child’s best interest and what a child wants is essentially a question of fact for the court.** In addition to setting forth sufficient evidence to demonstrate a conflict, the respondents must also demonstrate that the alleged improper failure by the court to appoint a guardian ad litem affected the result of the trial. See [In re Brendan C.](#), 89 Conn. App. 511, 521, 874 A.2d 893, cert. denied, 275 Conn. 910, 882 A.2d 669 (2005).”
- [In re William H.](#), 88 Conn. App. 511, 870 A.2d 1102 (2005). “**Our second concern is the guardians’ role in the decision-making process of the court.** As a general rule, the role of a guardian ad litem is to represent the best interest of the child. See [In re Tayquon H.](#), 76 Conn. App. 693, 704, 821 A.2d 796 (2003). It would follow that in this case, the guardians’ role would have been to review the materials requested and to communicate to the court which materials they believed should or should not be released in light of the best interests of the children they represented. The guardians, however, premised their opinions as to what the court should or should not release on whether § 46b-124 precluded the requested disclosure.”
- [Shockley v. Okeke](#), 92 Conn. App. 76, 80-82, 882 A.2d 1244 (2004). “A change of name may be sought either in the

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Superior Court under General Statutes §§ 52-11 or 46b-1(6), or before the Probate Court under General Statutes § 45a-99. The only guidance on filing a change of name request for a minor is provided by Practice Book § 9-24, which by its terms governs an application for a name change brought by a minor child through his or her next friend under General Statutes § 52-11. As a general matter, a minor may bring suit only through a guardian or next friend. [Mendillo v. Board of Education](#), 246 Conn. 456, 460 n. 3, 717 A.2d 1177 (1998). Parents commonly serve as next friend. . . . To **serve as next friend, 'no previous appointment by the court** is required, and the prochein ami named in the writ is permitted to appear and prosecute in the infant's name, though if he is not a proper person or fails to properly discharge his duties, the court may remove him and appoint another person in his place." [McCarrick v. Kealy](#), 70 Conn. 642, 646, 40 A. 603 (1898). In addition, if the court is concerned that the child's interests are not adequately represented by a parent acting as next friend, it may appoint a guardian ad litem under General Statutes § 45a-132."

- [Lowe v. City of Shelton](#), 83 Conn. App. 750, 756-757, 851 A.2d 1183 (2004), certification denied 271 Conn. 915. **"Although there is no appellate case law in Connecticut** addressing whether parents, without the aid of an attorney, can represent the interest, as next friends, of their children, the courts in other jurisdictions that have addressed that issue have universally held that they may not do so. The reasoning of the United States Court of Appeals for the **Second Circuit is persuasive: 'The choice to appear pro se is not a true choice for minors who under state law . . . cannot determine their own legal actions. There is thus no individual choice to proceed pro se for courts to respect, and the sole policy at stake concerns the exclusion of non-licensed persons to appear as attorneys on behalf of others.'"** (quoting [Cheung v. Youth Orchestra Foundation of Buffalo](#), 906 F.2d 59, 61 (2d Cir.1990))
- [Oliver v. Oliver](#), 85 Conn. App. 57, 66, 855 A.2d 1022 (2004). **"The defendant argues that the court incorrectly permitted counsel for the minor child to offer his opinion on the ultimate issue of the child's best interest, thereby depriving the defendant of a fair trial. The defendant is mistaken."**
- [In re Tayquon H.](#), 76 Conn. App. 693, 821 A.2d 796 (2003). **"On the basis of those allied decisions and amplified by our understanding of the fundamental role of a guardian ad litem, we believe that as between a guardian ad litem and a natural guardian, the presumption should be that the court-appointed guardian ad litem is the proper person to speak for the child for the purposes of the litigation, barring a showing that he or she cannot properly fulfill the guardian ad**

litem role and that another is better suited to the role.”  
(p. 710)

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“It also is clear ... that the obligation of the person appointed as counsel is shaped by the Rules of Professional Conduct, which, in pertinent part, obligate counsel to abide by a **client’s decisions concerning the objectives of representation... It is when counsel perceives that this obligation is in conflict with the child’s actual best interest that counsel must bring that to the courts’ attention, and the court, in turn, must appoint a separate guardian ad litem to protect and to promote the child’s best interest in the process.**” (p. 703)

- [Schult v. Schult](#), 241 Conn. 767, 780, 699 A.2d 134 (1997). “... we conclude, that where the court has appointed both an attorney and a guardian ad litem to represent a child in a dissolution action, the attorney for the child may advocate a position different from that of the guardian ad litem so long as the trial court determines that it is in the best interests of the child to permit such dual, conflicting advocacy.”
- [Newman v. Newman](#), 235 Conn. 82, 96-97, 663 A.2d 980 (1995). “Typically, the child’s attorney is an advocate for the child, while the guardian ad litem is the representative of the child’s best interests. As an advocate, the attorney should honor the strongly articulated preference regarding taking an appeal of a child who is old enough to express a reasonable preference; as a guardian, the attorney might decide that, despite such a child’s present wishes, the contrary course of action would be in the child’s long term best interests, psychologically or financially.”
- [Orsi v. Senatore](#), 230 Conn. 459, 460, 467, 645 A.2d 986 (1994). “The dispositive issue raised by this certified appeal is whether a foster parent has standing to bring an action on behalf of his or her foster child even though that child has been represented by a court appointed guardian.” (p. 460)

“Because both a guardian and a guardian ad litem already had been appointed to represent Christopher’s interests in the removal proceedings, the trial court was required to determine whether exceptional circumstances existed to warrant Christopher’s representation by a next friend and, if so, whether the plaintiff was a proper person to serve in that capacity.” (p. 467)

- [Ridgeway v. Ridgeway](#), 180 Conn. 533, 540, 429 A.2d 801 (1980). “Under General Statutes §46b-54 the court ‘may’ appoint counsel to protect the interests of a minor child in a dissolution action if it deems it to be in the best interests of the children. The term ‘may’ imports discretion...”

- [Cottrell v. Connecticut Bank & Trust](#), 175 Conn. 257, 264-265, 398 A.2d 307 (1978). “Although in the present case the interests of the plaintiff and those of the guardian ad litem are not clearly antagonistic, and, indeed, the failure of the guardian ad litem to bring an appeal may well be in the **plaintiff’s best interest**, a procedure initiated to protect her interests should not be utilized to hinder her in obtaining a review of any action involving her rights. Consequently, we hold that where, as here, those appointed to protect the interest of an incompetent fail to appeal from a decision in which the incompetent has a real interest, an action may be brought by a next friend in order that a court may review **the substantive issues involved.**”

**WEST KEY NUMBERS:**

- West Key Numbers: Infants  
VII. Actions  
(A) Role of Representative or Counsel
  - #1234. Guardian ad litem or next friend
  - # 1235. —In general
  - # 1236. —Nature or Status
  - # 1237. —Appointment in General
  - # 1238. —Necessity and grounds in particular actions or proceedings
  - # 1239. —Time for appointment
  - # 1240. —Proceedings for appointment
  - # 1241. —Eligibility and qualifications in general; bond
  - # 1242. —Conflict of interest
  - # 1243. —Resignation, removal, and successorship
  - # 1244. —Compensation and expenses
  - # 1245. —Rights and powers
  - # 1246. —Duties and liabilities
  - # 1247. —Liabilities on bonds

**ENCYCLOPEDIAS:**

- 42 [Am. Jur. 2d Infants](#) (2010).  
VI. Actions
  - B. Representation of Infant
    - 1. Representation in General ( §§ 146-147)
    - 2. Appointment of Representative
      - a. Necessity of Representation
        - (1) In General ( §§ 148-149)
        - (2) Appointment of Guardian Ad Litem ( §§ 151-154)
      - b. Qualification of Representative ( §§ 155-156)
      - c. Procedural Matters ( §§ 157-158)
    - 3. Nature of Office ( §§ 159-162)
    - 4. In Whose Name Actions Brought; Effect of Lack of Representation

- a. In General (§163)
  - b. Lack of Representation (§§ 164-168)
- 5. Powers, Duties, and Liabilities of Representative
  - a. In General (§§ 169-173)
  - b. Particular Matters (§§ 174-177)
  - c. Compensation and Liability of Representative
    - (1) Reimbursement or Compensation (§§ 178-181)
    - (2) Liabilities of Representatives (§§ 182-183)
  - d. Rights and Duties of Attorneys Representing Infants (§§ 184-188)
- 43 [C.J.S. \*Infants\*](#) (2014).
  - VIII. Actions
    - A. In General (§§ 398-406)
    - B. Representation of Infant by Guardian Ad Litem, Next Friend, and Attorney
      - 1. In General (§§ 407-418)
      - 2. Appointment of Representative (§§ 419-431)
      - 3. Compensation and Allowances for Representatives (§§ 432-436)
      - 4. Termination of Authority (§§ 437-439)

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Arnold H. Rutkin, Sarah Oldham, and Kathleen A. Hogan, Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).
  - Chapter 23. Evidentiary Matters and Trial
    - § 23: 10. Privileged communications in custody disputes
  - Chapter 42. Child custody and visitation
    - § 42: 21. Appointment of a Guardian ad litem
  - Chapter 45. Attorney fees & expenses
    - § 45: 16. Fees for counsel for minor child or guardian ad litem
- Arnold H. Rutkin, Gen. Ed., [Family Law and Practice](#) (2011).
  - Chapter 32. Child custody and visitation
    - § 32.01[4]. Expanding roles of the attorney in custody controversies
      - [a] **Child’s representatives**
        - [i] **Counsel’s role**
        - [ii] **Counsel’s duties**

- 2 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2012).
  - Chapter 12A. Legal representation of children in custody and visitation cases
    - § 12A.01. Introduction
    - § 12A.02. Appointment of the attorney-guardian ad litem
    - § 12A.03. Functions of the attorney-guardian ad litem
    - § 12A.04. Performing the functions of attorney-guardian ad litem: A general guide
  
- 1 Donald T. Kramer, [Legal Rights of Children](#) (Rev. 2d ed. 2005).
  - Chapter 2. Child custody
    - § 2:31. Counsel or guardian *at litem* for the child
  - Chapter 12. The Guardian *ad litem*
    - § 12:1. The guardian *ad litem* or next friend: Background
    - § 12:2. —Provisions for guardians *ad litem* in procedural rules and statutes
    - § 12:3. The parent as the “duly appointed representative**
    - § 12:4. Rules and circumstances requiring appointment of guardian *ad litem*
    - § 12:5. Authority and responsibilities of a guardian *ad litem*
    - § 12:6. Payment of fees and expenses to guardians *ad litem*
    - § 12:7. Guardian ad litem’s immunity from suit and harassment**
  
- 2 Donald T. Kramer, [Legal Rights of Children](#) (Rev. 2d ed. 2005).
  - Chapter 16. Child abuse
    - § 16:31. The attorney or guardian *ad litem* for the child
    - § 16:32. Immunity of guardian
  
- Ann M. Haralambie, [Handling Child Custody, Abuse and Adoption Cases](#) (3d ed. 2009).
  - § 4:26. Independent Representation for the Child [Dissolution of Marriage]
  - §§ 11.1-11.14. Guardianship [Custody Incident to Dissolution of Marriage]
  - §§ 21:4-21:5. Trial Techniques
  
- 1 Michael J. Dale et al., [Representing the Child Client](#) (2011).
  - § 4.06. The right to counsel for children in dependency proceedings
    - [1] The right to independent counsel
      - [a] Guardian *Ad Litem*

- 2 Michael J. Dale et al., [Representing the Child Client](#) (2011).  
§ 9.02[5]. Guardian Ad Litem (distinguished from the role of an attorney)

**LAW REVIEWS & ARTICLES:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Nicole A. Carnemolla, Note, *Raising the Bar for Child Advocates in Connecticut's Family Court*, 33 Quinnipiac Law Review 411 (2015).
- Carolyn Wilkes Kaas and Sharon Wicks Dornfeld, *Serving as a AMC after Carrubba v. Moskowitz*: What Every Judge and Lawyer should know, Connecticut Family Lawyer, Issue 2 (June 2007).
- Robert Solomon, *Staying in Role: Representing Children in Dependency and Neglect Cases*, 70 [Conn. B.J.](#) 258 (1996).
- Edward Sokolnicki, *Attorney as Guardian Ad Litem for a Child in Connecticut*, 5 [Conn. Prob. L.J.](#) 237 (1991).
- Wilhelm, Hemenze & Fowler, *The Role of the Guardian Ad Litem in Probate Proceedings*, 65 [Conn. B.J.](#) 462 (1991).
- Bibliography: [Quality of Legal Representation](#), Center for Children's Advocacy.

## Section 2: Attorney for the Minor Child

A Guide to Resources in the Law Library

### **SCOPE:**

Bibliographic resources relating to the role of the attorney for a minor child (AMC) in legal proceedings and how this role differs from that of the guardian ad litem (GAL).

### **DEFINITIONS:**

- “The judicial authority may appoint an attorney for a minor child in a family matter. . . The judicial authority may order compensation for services rendered by an attorney for a minor child.” **Connecticut Practice Book § 25-62A** (2016).
- “Typically, the **child’s attorney** is an advocate for the child, while the guardian ad litem is the representative of the **child’s best interests.**” [Newman v. Newman](#), 235 Conn. 82, 96, 663 A.2d 980 (1995).
- “... the **attorney for the child** is just that, an *attorney* arguing on behalf of his or her client, based on the evidence in the case and the **applicable law.**” [Ireland v. Ireland](#), 246 Conn. 413, 438, 717 A.2d 986 (1998).
- “**Representation by Counsel.** Counsel shall represent the minor child’s legal interest and consider the child’s best interests. Counsel’s role when representing a child should mirror as closely as possible counsel’s role when representing an unimpaired adult.” [Code of Conduct for Counsel for the Minor Child and Guardian Ad Litem](#), I. (a) (Connecticut Judicial Branch).
- “The primary role of any **counsel for the child** shall be to advocate for the child in accordance with the Rules of Professional Conduct, except that if the child is incapable of expressing the child’s wishes to the child’s counsel because of age or other incapacity, the counsel for the child shall **advocate for the best interests of the child.**” Conn. Gen. Stat. [§ 46b-129a](#)(2)(C) [Chapter 815t. **Juvenile Matters**]

### **STANDARDS & GUIDELINES:**

#### *Current:*

- Connecticut Judicial Branch
  - [Code of Conduct for Counsel for the Minor Child and Guardian Ad Litem](#)
- State of Connecticut, [Division of Public Defender Services](#)
  - [Performance Guidelines For Counsel In Family Matters](#)
  - [Performance Guidelines For Counsel In Juvenile Matters](#)
  - [Performance Guidelines For Counsel In Child Protection Matters](#)

- Connecticut Bar Association
  - [Court-Appointed Attorneys in Courts of Probate](#)

*Superseded:*

- Commission on Child Protection, State of Connecticut. **Connecticut Standards of Practice for Attorneys & Guardians Ad Litem Representing Children in Child Protection Cases**, v.68 *Conn. Law Journal* 3E (January 30, 2007).

*\*The Public Defender Services Commission shall constitute a successor to the Commission on Child Protection. All functions, powers and duties of the Commission on Child Protection are transferred to the Public Defender Services Commission...” P.A. 11-51, § 1(i).*

*Other:*

- [American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases](#) (A.B.A., 1996), *reprinted in* Jean Koh Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*, Appendix D3, page 1069 (3d ed., 2007).
- [American Bar Association Section of Family Law Standards of Practice for Lawyers Representing Children in Custody Cases](#) (August 2003).
- Connecticut Bar Association, Family Law Section. Committee on The Role of Counsel. *Counsel For Children: Guidelines For Courts And Counsel In Civil Custody Cases*, 56 [Conn. B.J.](#) 484 (1982).

**COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal, and posted [online](#).

Connecticut Practice Book (2016)

- [§ 25-24](#). *Motion for appointment of counsel for minor child.*
- [§ 25-62A](#). Appointment of Attorney for a Minor Child
- [§ 30-3](#). Advisement of Rights (*Juvenile matters*).
- [§ 32a-1](#). Right to Counsel and to Remain Silent (*Juvenile matters*).
- [§ 67-13](#). Briefs in Family and Juvenile Matters and Other Matters involving Minor Children (*Rules of Appellate Procedure*)

**RULES OF PROFESSIONAL CONDUCT:**

Connecticut Practice Book (2016)

- [Rule 1.14](#). Client with Impaired Capacity.  
“(a) When a client’s capacity to make or communicate adequately considered decisions in connection with a representation is impaired, whether because of minority, mental impairment or for some other reason, the lawyer

shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

Conn. Gen. Stat. (2015)

Chapter 319. Department of Children and Families

- [§ 17a-16](#). Application for commitment of mentally ill child. Jurisdiction. Transfer to Superior Court. Appointment of Counsel. Three-judge court, powers.  
**Amended by P.A. [16-28](#), sec. 22.**

Chapter 802h. Protected Persons and Their Property

- [§ 45a-620](#). Appointment of counsel. Appointment of Guardian ad litem to speak on behalf of best interests of minor (**Probate Court**).

Chapter 815j. Dissolution of Marriage, Legal Separation and Annulment

- [§ 46b-54](#). Appointment of counsel or guardian ad litem for a minor child. Duties. Best interests of the child.
- [§ 46b-62](#). **Orders for payment of attorney’s fees and fees of guardian ad litem in certain actions.** Limitations on orders for payment of fees to counsel or guardian ad litem for a minor child. Methodology for calculating fees on sliding-scale basis.

Chapter 815t. Juvenile Matters

- [§ 46b-129a](#). Examination by physician, psychiatrist or psychologist. Counsel and guardian ad litem. Testimony. Evidence.
- [§ 46b-136](#). Appointment of attorney to represent child or youth and parent or guardian.

## **FORMS:**

- Connecticut Network for Legal Aid, [Does Your Child Need a Lawyer?](#) (August 2013).

[Motion for Appointment of Counsel for Minor Children](#)

[http://ctlawhelp.org/files/motion\\_appointment\\_minor\\_children.pdf](http://ctlawhelp.org/files/motion_appointment_minor_children.pdf)

- Amy Calvo Macnamara, Aidan R. Welsh, and Cynthia Coulter George, editors, [Library of Connecticut Family Law Forms](#), Second Edition (2014).
  - Form 5-018. Motion for Appointment of Attorney for the Minor Child/Children
  - Form 5-024. Motion to Appoint Mental Health Professional for the Minor Child/Children
- Mary Ellen Wynn & Ellen B. Lubell, [Handbook of Forms for the Connecticut Family Lawyer](#) 163 (1991)
  - Form VIII-A-3. Motion for Appointment of Counsel for Minor Children
- [Official Court Webforms](#), Connecticut Judicial Branch.
  - o JD-FM-225 - Affidavit of Expenses of Counsel or Guardian Ad Litem for Minor Child or Children

- o JD-FM-232 - Periodic Review Worksheet - Fees Charged by Counsel or Guardian Ad Litem

**CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Perry v. Perry](#), 312 Conn 600, 95 A.3d 500 (2014).  
**“Without attempting to limit the trial court's examination** of all of the available facts and circumstances regarding whether to authorize an appeal by minor children from a trial court support order, we suggest the following as some of those factors: the nature of the particular trial court order at issue; whether there is likely to be an appeal of the order, irrespective of that requested by the minor children; the desires of the parent who would otherwise be an appellant but who does not intend to file such an appeal, and the reasons for that intention; whether the particular risks that underlie the general rule are likely to be realized by permitting such an appeal in the particular case; the potential for conflicts to arise between the best interests of the children and their desire to prosecute the appeal; the good faith of the attorney making the request for such an appeal on behalf of the children; the degree to which an appeal will unduly drain resources that could be better spent on the children; and whether there is any reasonable basis for such an appeal. We emphasize that this list is not exhaustive. The range of factors to be considered by the trial court is limited only by the applicable standard of the best interests of the children.”  
 [pp. 616-617]  
  
**“We conclude that the language of the statute is plain and unambiguous.** Section 46b-62 only allows for the payment of the fees for the attorney for the minor child. The statute does not contain any language regarding counsel hired by the attorney for the minor child. Indeed, the language of §46b-62 does not even seem to contemplate that an attorney for a minor child may hire his or her own counsel during any **proceedings under the statute.**”  
 [p. 624]
- [Gross v. Rell](#), 304 Conn. 234, 266-267, 40 A.3d 240 (2012).  
**“In [Carrubba](#), we acknowledged ‘the dual responsibilities of the court-appointed attorney for a minor child both to safeguard the child's best interests and to act as an advocate for the child’; id., 539; but concluded that, ‘[b]ecause . . . [§ 46b-54] provides that the appointment is for the purpose of promoting the best interests of the child, the representation of the child must always be guided by that overarching goal, despite the dual role required of the attorney for the minor child. Thus, the appointed attorney's duty to secure the best interests of the child dictates that she must be more objective than a privately retained attorney. Furthermore, because the overall goal of serving the best interests of the child always guides the representation of the child, the dual obligations imposed on**

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the attorney for a minor child, namely, to assist the court in serving the best interests of the child and to function as the child's advocate, are not easily disentangled. In other words, the duty to secure the best interests of the child does not cease to guide the actions of the attorney for the minor **child, even while she is functioning as an advocate.**' *Id.*, 544-45. Because the primary role of the attorney in this context is to **'assist the court in determining and serving the best interests of the child'**; *id.*, 546; **the attorney is entitled to quasijudicial immunity."**

- [Carrubba v. Moskowitz](#), 274 Conn. 533, 537, 877 A.2d 773 (2005). **"We agree with the Appellate Court that the defendant was entitled to immunity, but we disagree as to the proper scope of the immunity. We conclude that attorneys appointed by the court pursuant to § 46b-54 are entitled to absolute, quasi-judicial immunity for actions taken during or, activities necessary to, the performance of functions that are integral to the judicial process."**
- [In re Christina M.](#), 90 Conn. App. 565, 579, 877 A.2d 941 (2005). **"We therefore reject the argument of the parents that the trial court failed to fulfill its constitutional obligation to provide counsel for the daughters. In light of the record before it, the court properly appointed an attorney to represent the daughters' legal interests. Until the court was asked also to appoint a guardian ad litem, that was all that our constitution required the court to do."** (Affirmed by [In re Christina M.](#), 280 Conn. 474, 908 A.2d 1073 (2006).
- [Lambert v. Donahue](#), 78 Conn. App. 493, 827 A.2d 729 (2004). "Pursuant to § 46b-54, the appointment of an attorney to represent a minor child rests within the sound discretion of the court. Lambert has presented nothing on appeal that convinces us that the court clearly abused its discretion by not appointing an attorney in this matter."
- [In re Tayquon H.](#), 76 Conn. App. 693, 703, 821 A.2d 796 (2003). **"It also is clear ... that the obligation of the person appointed as counsel is shaped by the Rules of Professional Conduct, which, in pertinent part, obligate counsel to abide by a client's decisions concerning the objectives of representation... It is when counsel perceives that this obligation is in conflict with the child's actual best interest that counsel must bring that to the courts' attention, and the court, in turn, must appoint a separate guardian ad litem to protect and to promote the child's best interest in the process."**
- [Ireland v. Ireland](#), 246 Conn. 413, 483-439, 717 A.2d 676 (1998). "... the attorney for the child is just that, an **attorney**, arguing on behalf of his or her client, based on the evidence in the case and the applicable law. The attorney is

not, however, a witness, whether quasi-expert or otherwise. Thus, an attorney for a minor child shall be heard in a similar manner as most other attorneys are **heard, ...**"

- [Newman v. Newman](#), 235 Conn. 82, 96-97, 663 A.2d 980 (1995). **"Typically, the child's attorney is an advocate for the child, while the guardian ad litem is the representative of the child's best interests. As an advocate, the attorney should honor the strongly articulated preference regarding taking an appeal of a child who is old enough to express a reasonable preference; as a guardian, the attorney might decide that, despite such a child's present wishes, the contrary course of action would be in the child's long term best interests, psychologically or financially."**
- [Schult v. Schult](#), 241 Conn. 767, 780, 699 A.2d 134 (1997). **"... we conclude, that where the court has appointed both an attorney and a guardian ad litem to represent a child in a dissolution action, the attorney for the child may advocate a position different from that of the guardian ad litem so long as the trial court determines that it is in the best interests of the child to permit such dual, conflicting advocacy."**
- [G.S. v. T.S.](#), 23 Conn. App. 509, 516, 582 A.2d 467 (1990). **"In this case, where custody is hotly contested, where, prior to trial, the court is made aware of allegations of child abuse and sexual molestation,... it is an abuse of discretion not to appoint counsel for the minor children."**
- [Weinstein v. Weinstein](#), 18 Conn. App. 622, 628, 561 A.2d 443 (1989). **"No authority is given to court appointed counsel to issue orders affecting the parties or their children or to resolve, in quasijudicial fashion, disputes between the parties concerning their children."**
- [Ridgeway v. Ridgeway](#), 180 Conn. 533, 429 A.2d 801 (1980). **"Under General Statutes §46b-54, the court 'may' appoint counsel to protect the interests of a minor child in a dissolution action if it deems it to be in the best interests of the children. The term 'may' imports discretion..."**

**ENCYCLOPEDIAS:**

- 42 [Am. Jur. 2d Infants](#) (2010).
  - VI. Actions
    - B. Representation of Infant
      - 1. Representation in General ( §§ 146-147)
      - 2. Appointment of Representative
        - a. Necessity of Representation
          - (1) In General ( §§ 148-149)
          - (2) Appointment of Guardian Ad Litem ( §§ 151-154)
        - b. Qualification of Representative

- (§§ 155-156)
    - c. Procedural Matters
      - (§§ 157-158)
  - 3. Nature of Office
    - (§§ 159-162)
  - 4. In Whose Name Actions Brought; Effect of Lack of Representation
    - a. In General
      - (§163)
    - b. Lack of Representation
      - (§§ 164-168)
  - 5. Powers, Duties, and Liabilities of Representative
    - a. In General
      - (§§ 169-173)
    - b. Particular Matters
      - (§§ 174-177)
    - c. Compensation and Liability of Representative
      - (1) Reimbursement or Compensation
        - (§§ 178-181)
      - (2) Liabilities of Representatives
        - (§§ 182-183)
    - d. Rights and Duties of Attorneys Representing Infants
      - (§§ 184-188)
- 43 [C.J.S. \*Infants\*](#) (2014).
  - VIII. Actions
    - A. In General
      - (§§ 398-406)
    - B. Representation of Infant by Guardian Ad Litem, Next Friend, and Attorney
      - 1. In General
        - (§§ 407-418)
      - 2. Appointment of Representative
        - (§§ 419-431)
      - 3. Compensation and Allowances for Representatives
        - (§§ 432-436)
      - 4. Termination of Authority
        - (§§ 437-439)
- Arnold H. Rutkin and Kathleen A. Hogan, Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).
  - Chapter 18. Process
    - § 18: 10. Service on parties who are incompetent or incarcerated; Service on third parties
  - Chapter 23. Evidentiary Matters and Trial
    - § 23: 10. Privileged communications in custody disputes
  - Chapter 42. Child custody and visitation
    - § 42: 19. Appointment of counsel for the minor children
    - § 42: 20. Role of counsel for a minor child

**TEXTS & TREATISES:**

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Chapter 45. Attorney fees & expenses  
§ 45:16. Fees for counsel for minor child or guardian  
ad litem

- 3 Arnold H. Rutkin, Gen. Ed., [Family Law and Practice](#) (2013).  
Chapter 32. Child custody and visitation  
§ 32.01[4]. Expanding roles of the attorney in  
custody controversies  
    [a] Child's representatives  
        [i] Counsel's role  
        [ii] Counsel's duties
- 2 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2014).  
Chapter 12A. Legal representation of children in custody  
and visitation cases  
    § 12A.01. Introduction  
    § 12A.02. Appointment of the attorney-guardian ad  
litem  
    § 12A.03. Functions of the attorney-guardian ad litem  
    § 12A.04. Performing the functions of attorney-  
guardian ad litem: A general guide
- 1 Donald T. Kramer, [Legal Rights of Children](#) (Rev. 2d ed.  
2005).  
Chapter 2. Child custody  
    § 2:31. Counsel or guardian *ad litem* for the child
- 2 Donald T. Kramer, [Legal Rights of Children](#) (Rev. 2d ed.  
2005).  
Chapter 16. Child abuse  
    § 16:31: The attorney or guardian *ad litem* for the  
child
- Ann M. Haralambie, [Handling Child Custody, Abuse and Adoption Cases](#) (3d ed. 2009).  
    § 4:26. Independent Representation for the Child  
    [Divorce Actions]  
    §§ 12:25. Independent Representation for the Child  
    [Dependency and Neglect Actions]  
    §§ 21:05. Representing the Child [Trial Techniques]
- Michael J. Dale et al., [Representing the Child Client](#) (2011).  
    § 4.06. The right to counsel for children in dependency  
proceedings  
Chapter 9: Practical considerations in representing  
children

**LAW REVIEWS:**

Public access to law  
review databases is  
available on-site at  
each of our [law  
libraries](#).

- Nicole A. Demers, **Casenote: "An Attorney is an Attorney is an Attorney,"** Except when that Attorney is also a Guardian Ad Litem: An Analysis of the Connecticut Appellate Court Decision in Carrubba v. Moskowitz Regarding Immunity. 24

[Quinnipiac L. Rev.](#) 847 (2006).

- Carolyn Wilkes Kaas and Sharon Wicks Dornfeld, ***Serving as a AMC after Carrubba v. Moskowitz***: What Every Judge and Lawyer should know, Connecticut Family Lawyer, Issue 2 (June 2007).

# Section 3: Removal of a Guardian Ad Litem or Attorney for the Minor Child

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to the removal of a guardian ad litem or attorney for the minor child, and standing to seek removal of a guardian ad litem or attorney for the minor child.

## **DEFINITIONS:**

- **Probate Court Procedures:** "The guardian ad litem may be removed by the judge or magistrate which appointed the guardian ad litem, without notice, whenever it appears to the judge or magistrate to be in the best interests of the ward or wards of the guardian." Conn. Gen. Stat. [§ 45a-132\(f\)](#).

## **STANDARDS & GUIDELINES:**

### *Current:*

- Connecticut Judicial Branch
  - [Code of Conduct for Counsel for the Minor Child and Guardian Ad Litem](#)
- State of Connecticut, [Division of Public Defender Services](#)
  - [Performance Guidelines For Counsel In Family Matters](#)
  - [Performance Guidelines For Counsel In Juvenile Matters](#)
  - [Performance Guidelines For Counsel In Child Protection Matters](#)
- Connecticut Bar Association
  - [Court-Appointed Attorneys in Courts of Probate](#)

### *Superseded:*

- Commission on Child Protection, State of Connecticut. **Connecticut Standards of Practice for Attorneys & Guardians Ad Litem Representing Children in Child Protection Cases**, v.68 *Conn. Law Journal* 3E (January 30, 2007).

*\*The Public Defender Services Commission shall constitute a successor to the Commission on Child Protection. All functions, powers and duties of the Commission on Child Protection are transferred to the Public Defender Services Commission..."* P.A. 11-51, § 1(i).

### *Other:*

- [American Bar Association Standards of Practice for Lawyers](#)

[who Represent Children in Abuse and Neglect Cases](#) (A.B.A., 1996), *reprinted in* Jean Koh Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*, Appendix D3, page 1069 (3d ed., 2007).

- [American Bar Association Section of Family Law Standards of Practice for Lawyers Representing Children in Custody Cases](#) (August 2003).
- Connecticut Bar Association, Family Law Section. Committee on the Role of Counsel. *Counsel for Children: Guidelines for Courts and Counsel in Civil Custody Cases*, 56 [Conn. B.J.](#) 484 (1982).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

Conn. Gen. Stat. (2015)

Chapter 801b. **Probate Court** Procedure

- [§ 45a-132](#). Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons.

Chapter 815. **Court Proceedings in Family Relations Matters**

- [§ 46b-12c](#). Motion for removal of counsel or guardian ad litem for a minor child.

Chapter 815t. **Juvenile Matters**

- [§ 46b-129a](#). Examination by physician. Appointment of counsel and guardian ad litem.
- [§ 46b-136](#). Appointment of attorney to represent child or youth and parent or guardian.

### **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal, and posted [online](#).

Connecticut Practice Book (2016)

- [§ 25-62](#). Appointment of Guardian Ad Litem (*family matters*)
- [§ 25-62A](#). Appointment of Attorney for a Minor Child (*family matters*)
- [§ 44-20](#). Appointment of Guardian Ad Litem (*criminal case*)

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [In re Christina M.](#), 280 Conn. 474, 485, 908 A.2d 1073 (2006). "This case does not implicate merely the inability of the respondents' children to raise their own claims, such that we must consider whether the respondents have standing to vindicate their children's rights on that basis . . . Rather, the respondents have a direct, personal stake in the outcome of the termination proceeding. See [In re Elizabeth M.](#), 232 Cal. App. 3d 553, 565, 283 Cal. Rptr. 483 (1991) ("father has standing to assert his child's right to independent counsel, because independent representation of the children's interests impacts upon the father's interest in the parent-child relationship"). Theirs is not an abstract concern. Inadequate representation of the children, either as a guardian ad litem or as their counsel, could harm the respondents because those roles help shape the court's view

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- of the best interests of the children, which serves as the basis upon which termination of parental rights is determined. See General Statutes §§ 17a-112 (j) and 45a-132 (b).” [Emphasis added.]
- [Shockley v. Okeke](#), 92 Conn. App. 76, 82, 882 A.2d 1244 (2005). “In addition, if the court is concerned that the child's interests are not adequately represented by a parent acting as next friend, it may appoint a guardian ad litem under General Statutes § 45a-132.”
  - [Fish v. Fish](#), 90 Conn. App. 744, 762-763, 881 A.2d 342 (2005). “**It is a sound exercise of the court's discretion** in high conflict custody disputes to have the guardian ad litem remain appointed on a kind of standby basis to aid in the implementation of court orders even after the specific proceedings have closed. The breadth of the statutory language, which allows a court to remove a guardian ad litem ‘**whenever it appears to the judge . . . to be in the best interests’** of the child; General Statutes § 45a-132(f); satisfies us that the court acted within **its broad discretion.**” *Affirmed in part and reversed in part by [Fish v. Fish](#), 285 Conn. 24, 939 A.2d 1040 (2008).*
  - [Taff v. Bettcher](#), 35 Conn. App. 421, 646 A.2d 875 (1994). “Our case law is also clear that a person cannot gain standing by asserting the due process rights possessed by another individual.” (p. 425)  
“We must next determine whether a parent, who certainly has legal duties with respect to her child, can dictate how the best interests of her child should be legally represented in a court proceeding. We conclude that she cannot.” (p. 426)
  - [Strobel v. Strobel](#), 64 Conn. App. 614, 620, 781 A.2d 356 (2001), *cert. denied*, 258 Conn. 937 (2001). “The defendant did not claim that her request was made to prevent prejudice to her own case... The defendant, therefore, has no standing to pursue her claim that the court improperly denied her motion to disqualify her child’s counsel. See [Taff v. Bettcher](#), *supra*, 428.”
  - [Lord v. Lord](#), 44 Conn. App. 370, 375, 689 A.2d 509 (1997), *cert. denied*, 241 Conn. 913 (1997), *cert. denied*, 522 U.S. 1122 (1998). “The defendant has no standing to raise a claim on behalf of the minor child, who is represented by a court-appointed attorney to protect the child’s best interest. The defendant’s motion to dismiss the attorney appointed by the court to represent the child claimed that the attorney negligently and incompetently represented the minor child. The defendant did not claim, nor did he demonstrate to the trial court, that his request was made to prevent prejudice to his own case.”

- Wilkinson v. Weigand, Superior Court, Judicial District of Hartford at Hartford, No. FA92-51785 (July 10, 1999). "The statutory scheme for the appointment of guardians ad litem in family, juvenile (and probate) matters does not include any provision for another party, including the parent, to **challenge the individual who is appointed to that position...** In the context of these considerations, the court finds that the **Taff standard for standing has not been met ... and that she lacks standing to assert the termination of Ms. Benedict's appointment as either attorney for the children or guardian ad litem for the children."**

**WEST KEY NUMBERS:**

- Infants  
# 1234. Guardian ad litem or next friend.  
# 1243. Termination of authority and appointment of successor

**ENCYCLOPEDIAS:**

- 42 Am. Jur. 2d *Infants* (2010).  
VI. Actions  
    B. Representation of Infant  
        3. Nature of Office  
            § 162 Termination of authority to represent
- 43 C.J.S. *Infants* (2014).  
VIII. Actions  
    B. Representation of Infant by Guardian Ad Litem, Next Friend, and Attorney  
        4. Termination of Authority  
            (§§ 437-439)

**ARTICLES:**

- Steve Dembo, *Standing to Seek Disqualification of Guardian Ad Litem or Attorney for the Minor Child in a Family Court Proceeding*, Connecticut Family Lawyer, Issue 2 (June 2007).

# Section 4: Next Friend in Connecticut

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to the role of the next friend as opposed to guardian ad litem and counsel for the child.

## **DEFINITIONS:**

- **Next Friend:** "A next friend is a 'person who appears in a lawsuit to act for the benefit of ... [a] minor plaintiff ....' Black's Law Dictionary (7th Ed. 1999)." [Lowe v. City of Shelton](#), 83 Conn. App. 750, 755, 851 A.2d 118 (2004).
- "It is well established that a child may bring a civil action only by a guardian or next friend, whose responsibility it is to 'ensure that the interests of the ward are well represented.' [Cottrell v. Connecticut Bank & Trust Co.](#), 175 Conn. 257, 261, 398 A.2d 307 (1978); [Collins v. York](#), 159 Conn. 150, 153, 267 A.2d 668 (1970)." [Orsi v. Senatore](#), 230 Conn. 459, 466-467, 645 A.2d 986 (1994).
- **Guardian vs. Next Friend:** "When a guardian has been appointed to protect the interests of a child, the guardian is usually the proper person to bring an action on behalf of the child. *Williams v. Cleaveland*, 76 Conn. 426, 434, 56 A. 850 (1904)." [Orsi v. Senatore](#), 230 Conn. 459, 467, 645 A.2d 986 (1994).
- **Exceptional Circumstances:** "There are, however, 'certain exceptional circumstances'; [Cottrell v. Connecticut Bank & Trust Co.](#), [175 Conn. 257 (1978)]supra, 263; when a child 'may properly sue by next friend, notwithstanding the existence of such guardian, as when the guardian is absent, or is unwilling or unable to institute or prosecute the required action or appeal, and especially when, though declining to take such action himself, he does not forbid such proceeding, or when he is disqualified by interest hostile to that of the infant, or is for other reasons an improper or unsuitable person to prosecute such actions on behalf of the ward.' *Williams v. Cleaveland*, [76 Conn. 426 (1904)] supra, 432." Although generally a person who brings an action as next friend need not obtain prior authorization from the court to do so; *id.*, 433; *McCarrick v. Kealy*, 70 Conn. 642, 646, 40 A. 603 (1898); the court must determine whether the person seeking to represent the child as next friend is a proper or suitable person to make a claim on behalf of the child. *Williams v. Cleaveland*, supra, 433-34; *McCarrick v. Kealy*, supra, 646. (Internal quotation marks omitted.) [Orsi v. Senatore](#), 230 Conn. 459, 466-67, 645 A.2d 986 (1994)." [Newman v. Newman](#), 235 Conn. 82, 95 (1995).

## **STATUTES:**

- Conn. Gen. Stat. (2015)
- Chapter 319. Department of Children and Families  
[Commitment of mentally ill child]

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

[§ 17a-77](#)(f). Hearing. Notice to child, parents, guardian. Availability of records. Physicians, appointment; certificate; report. Right of child to be at hearing. Order for commitment. Transfer to other institutions. Recommitment.  
**Amended by P.A. [16-28](#), sec. 24.**

- Chapter 319i. Persons with psychiatric disabilities  
[§ 17a-511](#)(a). Transfer of patients by agreement

### **COURT RULES:**

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal, and posted [online](#).

- Connecticut Practice Book (2016)
- Chapter 9. Parties  
[§ 9-24](#). Change of Name by Minor Child.  
In all proceedings for change of name under General Statutes § 52-11, brought by a minor child through his or her next friend, the parents of such child, not named as next friends, shall be necessary parties and shall be cited in, in such manner as shall be ordered by the court or a judge thereof. [Emphasis added]

### **RULES OF PROFESSIONAL CONDUCT:**

- Connecticut Practice Book (2016)
- [Rule 1.14](#). Client with Impaired Capacity (Commentary)

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Shockley v. Okeke](#), 92 Conn. App. 76, 80-82, 882 A.2d 1244 (2004). "A change of name may be sought either in the Superior Court under General Statutes §§ 52-11 or 46b-1(6), or before the Probate Court under General Statutes § 45a-99. The only guidance on filing a change of name request for a minor is provided by Practice Book § 9-24, which by its terms governs an application for a name change brought by a minor child through his or her next friend under General Statutes § 52-11. As a general matter, a minor may bring suit only through a guardian or next friend. [Mendillo v. Board of Education](#), 246 Conn. 456, 460 n. 3, 717 A.2d 1177 (1998). Parents commonly serve as next friend. . . . To **serve as next friend, 'no previous appointment by the court is required, and the prochein ami named in the writ is permitted to appear and prosecute in the infant's name, though if he is not a proper person or fails to properly discharge his duties, the court may remove him and appoint another person in his place.'** [McCarrick v. Kealy](#), 70 Conn. 642, 646, 40 A. 603 (1898). In addition, if the court is concerned that the child's interests are not adequately represented by a parent acting as next friend, it may appoint a guardian ad litem under General Statutes § 45a-132."
- [Lowe v. Shelton](#), 83 Conn. App. 750, 851 A.2d 1183 (2004). "As nonattorneys, the plaintiffs parents lacked authorization to maintain this appeal without the appearance of an attorney. '[B]ecause pro se means to appear for one's self, a person may not appear on another person's behalf in the other's cause.' (Emphasis in original.) [Iannaccone v. Law](#),

142 F.3d 553, 558 (2d Cir. 1998). 'Any person who is not an attorney is prohibited from practicing law, except that any person may practice law, or plead in any court of this state "in his own cause." General Statutes § 51-88 (d) (2). The authorization to appear pro se is limited to representing one's own cause, and does not permit individuals to appear pro se in a representative capacity.' (Emphasis added.) [Expressway Associates II v. Friendly Ice Cream Corp. of Connecticut](#), 34 Conn. App. 543, 546, 642 A.2d 62, cert. denied, 230 Conn. 915, 645 A.2d 1018 (1994). The plaintiff's parents in this case were not appearing for their own cause. They were appearing for another individual, their son, in a representative capacity."

- [Newman v. Newman](#), 235 Conn. 82, 104-105, 663 A.2d 980 (1995). "In summary, we conclude that the general rule is that minor children may not appeal from a trial court order in a dissolution case regarding their support in the absence of a guardian or next friend. An exception to that rule is that the counsel for the minor children appointed pursuant to § 46b-54 may file such an appeal on their behalf if the children, through their counsel, first persuade the trial court that it is in their best interests to do so. The court should take all available information into account in making that determination."
- [Orsi v. Senatore](#), 230 Conn. 459, 466-467, 645 A.2d 986 (1994). "Although generally a person who brings an action as next friend need not obtain prior authorization from the court to do so;...the court must determine whether the person seeking to represent the child as next friend is a proper or suitable person to make a claim on behalf of the child. Williams v. Cleaveland, supra [76 Conn. 426], 433-434; McCarrick v. Kealy, supra, [70 Conn. 642], 646."
- [Cottrell v. Connecticut Bank & Trust](#), 175 Conn. 257, 264-265, 398 A.2d 307 (1978). "Although in the present case the interests of the plaintiff and those of the guardian ad litem are not clearly antagonistic, and, indeed, the failure of the guardian ad litem to bring an appeal may well be in the plaintiff's best interest, a procedure initiated to protect her interests should not be utilized to hinder her in obtaining a review of any action involving her rights. Consequently, we hold that where, as here, those appointed to protect the interest of an incompetent fail to appeal from a decision in which the incompetent has a real interest, an action may be brought by a next friend in order that a court may review the substantive issues involved."

**ENCYCLOPEDIAS:**

- 42 [Am. Jur. 2d Infants](#) (2010).  
 VI. Actions  
 B. Representation of Infant  
 1. Representation in General

§ 146 Generally; distinction between next friend and guardian ad litem

- 43 [C.J.S. \*Infants\*](#) (2014).
  - VIII. Actions
    - B. Representation of Infant by Guardian Ad Litem, Next Friend, and Attorney
      - 1. In General
        - (§§ 416-418)