



# OLR RESEARCH REPORT

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## GUARDIANS AD LITEM

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You asked 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?

OLR Reports [2013-R-0017](#) and [2012-R-0416](#) address related issues regarding GALs in Connecticut. OLR Report [2013-R-0099](#) describes the law regarding GALs in family court in Arizona, California, Florida, and Maryland.

### SUMMARY

The law allows judges in family court to appoint a counsel for the child, who may function as a GAL. It also requires judges in juvenile court to appoint a GAL for a child under certain circumstances. GALs in both courts must undergo training before being appointed. The training runs for six half day sessions in family court and more than three full days in juvenile court. Training in family court covers issues relating to family court, child development, mental health, while training in juvenile court focuses on child protection. GALs in both courts must complete six hours of continuing education each year. The training varies because the roles of the GALs vary, although these roles can overlap.

The Judicial Branch does not have a central monitoring process for the quality of GALs' work. Individual judges in both court systems are responsible for appointing and removing GALs. Litigants dissatisfied with the quality of the work performed by a GAL assigned to their case may raise their concerns with the judge. Such issues are handled on a case-by-case basis.

CGS § [4-141](#) grants individuals appointed as GALs in neglect, abuse, termination of parental rights, delinquency, or family with service needs proceedings qualified immunity for their actions. Although there is no controlling case, it appears likely that courts would find GALs in family court cases have absolute immunity for actions undertaken at a judge's direction. The Supreme Court has held that attorneys appointed by the court as counsel for a child in divorce, separation, or annulment proceedings have absolute, quasi-judicial immunity for actions taken during, or activities necessary to, performance of functions that are integral to the judicial process. It found that such attorneys met a three-part test for granting absolute immunity. The test is (1) whether the official performs functions comparable to those of officials granted absolute immunity at common law, (2) whether personal liability would expose the official to harassment or intimidation so as to interfere with the official's performance of his or her duties, and (3) there are procedural safeguards to protect against improper conduct by the official.

There currently are no official practice guidelines for GALs although GALs who are attorneys are bound by the Practice Book and the Code of Professional Ethics. The former Commission on Child Protection developed practice standards and guidelines and guidelines for GALs in juvenile court. PA [11-51](#) eliminated the commission and transferred its powers and responsibilities to the Division of Public Defender Services (DPDS). DPDS is developing practice standards closely based on those developed by the commission for the GALs in its jurisdiction (those working in juvenile court and in those family court cases where the state pays the GAL), which it hopes to put in place in late spring.

The Judicial Branch has a handbook on representing minors in Connecticut courts, which addresses several of the issues discussed in this memo. It is available at <http://www.jud.ct.gov/lawlib/Notebooks/Pathfinders/RepresentingMinorsinCT/Representingminors.pdf>.

## **INTRODUCTION**

CGS § [45a-132](#) allows a judge or magistrate, in any proceeding before superior or probate court, to appoint a GAL for any minor or incompetent, undetermined or unborn person if it appears to the judge or magistrate that the person (1) has or may have an interest in the proceedings and (2) is a minor, incompetent person, or a person undetermined or unborn at the time of the proceeding.

### ***Child Abuse and Related Cases***

In addition, under § [46b-129a](#), in proceedings in the juvenile court under § [46b-129](#) for neglect and related issues, a child must be represented by counsel knowledgeable about representing such children. The counsel must be assigned by the Office of Chief Public Defender or appointed by the court if there is an immediate need for the appointment during a court proceeding. The counsel for the child must act solely as the child's attorney.

If (1) the court or counsel for the child, determines that the child cannot adequately act in his or her own best interests and (2) the counsel determines that child's wishes could lead to substantial physical, financial or other harm to the child unless protective action is taken, counsel may request and the court must order that a separate GAL be assigned for the child. The court must either appoint a GAL to serve on a voluntary basis or notify the Office of Chief Public Defender who then assigns a GAL for the child. The GAL need not be an attorney but must be knowledgeable about the needs and protection of children and relevant court procedures.

The GAL must perform an independent investigation of the case. The GAL may present information pertinent to the court's determination of the child's best interests at any hearing. Opposing counsel may cross examine the GAL.

### ***Divorce and Child Custody Cases***

CGS § [46b-54](#) allows the family court to appoint counsel for any minor child or children of either or both parties in divorce, separation, or annulment proceedings, if the court deems it to be in the best interests of the child or children. The court may appoint counsel on its own motion or at the request of (1) either of the parties, (2) a child's legal guardian, or (3) any child who is of sufficient age and capable of making an intelligent request. Counsel for the child must be heard on all matters pertaining to

the child's interests, including the custody, care, support, education and visitation, so long as the court considers this to be in the child's best interests. The counsel can play the same role as a GAL, although this is not always the case (see *Lesnewski v. Redvers* 276 Conn. 526, (2005) *partially overruled on other grounds by Gross v. Rell* 304 Conn. 234 (2012)).

CGS § [51-296](#) requires DPDS to provide GALs and legal services to children and youth in (1) family court when the state has been ordered to pay the cost (i.e., the family is indigent) and (2) non-delinquency proceedings in juvenile court. To carry out this requirement, the Office of Chief Public Defender may contract with (1) appropriate not-for-profit legal services agencies, (2) individual lawyers or law firms for legal services to represent children in these proceedings, and (3) mental health professionals to serve as GALs in family court.

## **TRAINING**

As noted in OLR Report [2013-R-0017](#), it appears that in practice most cases court clerks appoint GALs in family court cases involving child custody and visitation disputes. The GAL must have completed a training course co-sponsored by the Office of the Chief Public Defender and the Judicial Branch, as demonstrated by having his or her name included on the court's master list. The course consists of six half-day sessions on issues relating to family court, child development, mental health and other issues.

As of January 1, 2012, [Sections 25-62 and 25-62A](#) of the Connecticut Practice Book limit new appointments as GALs for minor children in family court to persons who have completed this training. The training is also required for all attorneys and professionals who wish to be eligible for appointment in cases where the parents are indigent and the case has been approved for payment of fees by the state, through the Office of Chief Public Defender under CGS § [51-296](#). Individual judges may also make their own selections from among those listed. GALs must complete six hours of continuing education on child welfare every year.

GALs serving in juvenile court also must undergo training. It takes three full days and part of a fourth and focuses on child protection and relevant court procedures. They must take six hours of continuing education every year.

The difference in training reflects the difference in roles of GALs in family and juvenile court. In juvenile court, a GAL is appointed if (1) a child welfare agency, foster parents, or other entities assert that a child

is neglected, uncared-for, or abused and (2) the court determines that the child cannot adequately act in his or her own best interests and the child's wishes, if followed, could lead to substantial physical, financial, or other harm to the child unless protective action is taken. The GAL must independently investigate the case. In contrast, counsel are appointed in family court in the context of divorce, separation, or annulment proceedings. They are responsible for representing the child's interests with regard to such things as custody, care, support, education and visitation.

The two roles can overlap, for example parents can be litigating a family-related matter in one court and be charged with neglect or abuse in the other.

### **GAL LIABILITY**

Under CGS § [4-141](#), individuals appointed by the DPDS commission or the court as a GAL for a party in a neglect, abuse, termination of parental rights, delinquency or family with service needs proceeding are considered state employees for purposes of liability. Under CGS § [4-165](#) (1) representation by a GAL in these proceedings is considered to be within his or her scope of employment and (2) state employees are not personally liable for damage or injury caused within the scope of his or her employment. As a result, GALs appointed in these proceedings have qualified, rather than total, immunity for their actions. They are only liable if their negligence was wanton, reckless, or malicious.

While there is no case law on the liability of GALs in family court, in *Carrubba v. Moskowitz* 274 Conn. 533 (2005), the state Supreme Court held that attorneys appointed by the court pursuant to CGS § [46b-54](#) are entitled to absolute, quasi-judicial immunity for actions taken during, or activities necessary to, performance of functions that are integral to the judicial process.

In this case, the plaintiff claimed that the court-appointed attorney had inflicted emotional distress on him and engaged in legal malpractice with regard to his son. The defendant moved to dismiss, which the trial court granted. The plaintiff appealed and the Appellate Court affirmed the trial court's decision, holding that the attorney was entitled to qualified, quasi-judicial immunity. (OLR Report [2004-R-0226](#) describes the Appellate Court decision.) Carrubba then appealed to the Supreme Court.

The Supreme Court agreed with the Appellate Court that the defendant was entitled to immunity, but concluded that he was entitled to absolute, rather than qualified, quasi-judicial immunity. It noted that judges may not be civilly sued for judicial acts that they undertake in their capacity as judges and absolute immunity had been extended to prosecutors, identifying them as being an integral part of judicial system.

In determining whether attorneys appointed pursuant to CGS § 46b-54 are entitled to absolute immunity, the court adopted a three-prong test as to whether:

1. the official in question performs functions sufficiently comparable to officials traditionally granted absolute immunity at common law,
2. the likelihood of harassment or intimidation by personal liability is sufficiently great to interfere with the official's performance of his or her duties, and
3. there were sufficient procedural safeguards to protect against improper conduct by the official.

The court concluded that these tests were met in the case of the attorneys appointed pursuant to CGS § [46b-54](#). It also noted that courts in other jurisdictions have “almost unanimously” granted GALs absolute immunity for their actions that are integral to the judicial process. The court's decision in this case suggests that GALs in family court proceedings in Connecticut would be found to have absolute immunity for actions undertaken at a judge's direction.

## **GUIDELINES**

Under prior law, the Commission on Child Protection was required to ensure that children and indigent parents who required GALs and legal services in child protection, child custody, and child support cases received high quality representation from people knowledgeable and trained in the law applicable to these cases. The commission's chief child protection attorney was responsible for establishing the system of legal representation and ensuring its quality.

As noted in OLR Report [2007-R-0414](#), in 2006 the commission adopted standards of practice for GALs and attorneys representing children in child protection cases. The standards applied when a lawyer was appointed for a child under age 18 in any action based on (1) a petition for child protection; (2) a request to change legal custody, visitation, or guardianship based on abuse and neglect charges; or (3)

termination of parental rights. Section V of the standards applied when an attorney or other qualified individual was appointed to act solely as GAL and represent the child's best interests. The standards provided guidelines on a GAL's duties regarding investigations and advocating for the child's best interest.

PA [11-51](#) transferred all of the commission's functions, powers, and duties to the Public Defender Services Commission. The chief public defender assumed the duties previously assigned to the chief child protection attorney, including the training, supervision, and compensation for DPDS-assigned counsel. The rules on training and curriculum remain in place.

The act transferred to DPDS the chief child protection attorney's duty to provide (1) GALs and legal services to children, youth, and indigent respondents in family court when the state has been ordered to pay the individual's legal costs, as well as paternity and contempt cases involving indigents when the potential sentence includes prison time and (2) legal services and GALs to children, youth, and indigent parties in juvenile court. The act makes several related conforming changes, including requiring DPDS to establish training, practice, and caseload standards for assigned counsel.

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