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**2019 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,  
Judge Support Services, Law Library Services Unit*

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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](#).
- "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) (2019).

## **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 (2019)</a> .
	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2018)</a> .
	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2017)</a> .
	Office of Legislative Research, <a href="#">[Public] Acts Affecting Children (2016)</a> .
	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> .

\* Source: Office of Legislative Research, *Acts Affecting*, <https://www.cga.ct.gov/olr/actsaffecting.asp> (Accessed on 07/23/2019).

Table 2: Court Appointed Special Advocates (CASA) Program

<b>Court Appointed Special Advocates (CASA) Program</b>	
<b>Definition:</b>	<p>“<b>court appointed special advocate</b>” means a volunteer who is recruited, screened, trained and supervised by a local court appointed special advocate program that is affiliated with the National Court Appointed Special Advocates Association.” Conn. Gen. Stat. <a href="#">§ 46b-129c(a)</a>.</p> <p>“a <b>court appointed special advocate</b> may serve as a resource to the superior court for <b>juvenile matters</b> in determining and furthering the best interests of a person under eighteen years of age who is the subject of a petition filed under section 46b-129 or 46b-149.” Conn. Gen. Stat. <a href="#">§ 46b-129c(b)</a>.</p>
<b>Statute:</b>	<p>Conn. Gen. Stat. (2019) Chapter 815t. Juvenile Matters. <a href="#">§ 46b-129c.</a></p> <p><b>(a) For the purposes of this section, “court appointed special advocate” means a volunteer who is recruited, screened, trained and supervised by a local court appointed special advocate program that is affiliated with the National Court Appointed Special Advocates Association.</b></p> <p><b>(b) (1)</b> The Judicial Department shall establish, within available resources, a court appointed special advocate program. Under the program, a court appointed special advocate may serve as a resource to the superior court for juvenile matters in determining and furthering the best interests of a person under eighteen years of age who is the subject of a petition filed under section 46b-129 or 46b-149. The program shall be administered by the Chief Court Administrator within the superior court for juvenile matters.</p> <p><b>(2)</b> A court, on its own motion or upon a motion of a party, may appoint a court appointed special advocate in any proceeding in which a petition is filed under section 46b-129 or 46b-149. The court appointed special advocate may conduct an independent investigation of the facts associated with the filing of the petition and shall undertake and facilitate activities in furtherance of the child's best interests, including, but not limited to, making recommendations to the court. Upon appointment by the court and after obtaining any required releases to access records, a court appointed special advocate shall have access to (A) any party to such proceeding, and (B) all information or records relevant to the child's best interests including, but not limited to, school records, child care records, medical records, mental health records, court records and records maintained by the Department of Children and Families. Nothing in this section</p>
<p>You can visit your local law library or search the most recent <a href="#">statutes</a> and <a href="#">public acts</a> on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.</p>	

<p>You can visit your local law library or search the most recent <a href="#">statutes</a> and <a href="#">public acts</a> on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.</p>	<p>shall permit a court appointed special advocate to supplant or interfere with any counsel or guardian ad litem appointed to represent the best interests of a child in such proceeding. Notwithstanding the provisions of this subsection, a court appointed special advocate may, in appropriate cases as determined by the court, undertake activities in furtherance of the child's best interests, until the child who is the subject of a petition filed under section 46b-129 or 46b-149 reaches twenty-one years of age.</p> <p>(3) No fees shall be charged for the services provided by a court appointed special advocate.</p> <p>(c) Prior to accepting any person who seeks to serve as a court appointed special advocate, the National Court Appointed Special Advocates Association or a court appointed special advocate program located in this state and affiliated with said association shall require that such person submit to (1) a state and national criminal history records check conducted in accordance with section 29-17a, and (2) a check of the state child abuse and neglect registry established under section 17a-101k. Any person who refuses to consent or cooperate in processing of such checks shall not be accepted into the court appointed special advocate program.</p> <p>(d) A court appointed special advocate who acts in good faith and within the scope of the court's appointment shall not be civilly or criminally liable for actions undertaken in connection with such appointment. Any staff member of a court appointed special advocate program affiliated with the National Court Appointed Special Advocates Association who acts in good faith and within the scope of his or her employment shall not be civilly or criminally liable for actions undertaken in connection with such employment. The protection provided in this subsection shall not apply to acts or omissions that constitute intentional, wilful or wanton misconduct.</p>
<p><b>Legislative Reports:</b></p> <p><a href="#">Office of Legislative Research</a> reports summarize and analyze the law in effect on the date of each <b>report's</b> publication. Current law may be different from what is discussed in the reports.</p>	<p>Michelle Kirby, <a href="#">Court Appointed Special Advocates</a>, Connecticut General Assembly, Office of Legislative Research, Report No. 2017-R-0076 (March 13, 2017). "Describe the new court appointed special advocates (CASA) program in <b>Connecticut's juvenile courts.</b>"</p> <p>Susan Goranson, <a href="#">RE: CASA Programs</a>, Connecticut General Assembly, Office of Legislative Research, Report No. 94-R-0197 (February 15, 1994). "You asked for information on Court Appointed Special Advocate (CASA) programs including how many states have programs and if any states have adopted legislation supporting CASA programs."</p>

# 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:**

- “Any appropriate party may move for alimony, child support, custody, visitation, appointment or removal of counsel for the minor child, appointment or removal of a guardian ad litem for the minor child, counsel fees, or for an order with respect to the maintenance of the family or for any other **equitable relief.**” Connecticut Practice Book [§ 25-24](#)(a) (2019).
- “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) (2019).
- **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](#) (2019). (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) (2019). [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) (2019).

**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 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 Family Law Section 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 (2019)
  - Chapter 25. Procedure in Family Matters
    - [§ 25-24](#). Motions
    - [§ 25-50](#). Case Management
    - [§ 25-61A](#). Standing Committee on Guardians Ad Litem and Attorneys for the Minor Child in Family Matters
    - [§ 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

Amendments to the Probate Court Rules are posted [online](#).

- [Probate Court Rules of Procedure](#) (2017)
  - [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
  - [Rule 30](#). **Decedents’ Estates**
    - 30.8 Appointment of guardian ad litem in proceeding to admit purported will to probate

30.9 Appointment of guardian ad litem in intestate estate or after admission of will

[Rule 32](#). Trusts

32.3 Virtual representation and appointment of guardian ad litem in trust proceeding

[Rule 40](#). **Children's Matters:** General Provisions

40.2. Appointment of attorney and guardian ad litem for minor

**STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019)

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. Recombitment.

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

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.

[§ 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

[§ 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.

## **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.

- Kevin E. McCarthy, [Guardians Ad Litem](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2013-R-0098 (February 6, 2013). "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?"
- 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..."
- 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.”

- 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.”
- Amy Calvo Macnamara, Aidan R. Welsh, and Cynthia Coulter George, editors, [Library of Connecticut Family Law Forms](#), Second Edition (2014).  
Form 5-017. *Plaintiff’s Motion to appoint guardian ad litem for the Minor Child/Children, Pendente Lite*
- 3 Joel M. Kaye and Wayne D. Efron, Connecticut Practice Series, [Civil Practice Forms](#), 4th (2004).  
Form 504.1-L. Motion for appointment of counsel or guardian ad litem for minor(s).
- [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)
- [Probate Court Forms](#)
  - PC-170B - Report of Court-Appointed Guardian Ad Litem

#### **FORMS:**

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.

- [Dubinsky v. Reich](#), 187 Conn. App. 255, 262-263, 201 A.3d 1153 (2019), cert. denied by 331 Conn. 918, 204 A.3d 1159 (2019). “The plaintiff further argues that ‘[p]ublic policy requires that the trial court recognize that there is a limitation to the actions of a [guardian ad litem]’ and that ‘[t]he grant of immunity allows unchecked abuses of power by a [guardian ad litem].’ We disagree. Granting absolute immunity to guardians ad litem is not contrary to public policy. There are sufficient procedural safeguards to protect against improper conduct by a guardian ad litem. Because a guardian ad litem is appointed by the court, the guardian ad litem is subject to the court’s oversight and discretion and may be removed by the court at any time, either sua sponte or upon motion of a party. See *Carrubba v. Moskowitz, supra, 274 Conn. 543*; see, e.g., Connecticut Judicial Branch, Code of Conduct for Counsel for the Minor Child and Guardian Ad Litem, available at [https://www.jud.ct.gov/family/GAL\\_code.pdf](https://www.jud.ct.gov/family/GAL_code.pdf). (last visited January 9, 2019). Additionally, the guardian ad litem, just as any other attorney, is subject to discipline for violations of the Code of Professional Conduct. See *Carrubba v. Moskowitz, supra, 543*. Therefore, because the complaint was not grounded on any conduct by Reich in which she acted outside the role of a court-appointed guardian ad litem, the defendants are entitled to absolute immunity and the trial court lacked subject matter jurisdiction.”
- [Petrov v. Gueorguieva](#), 167 Conn. App. 505, 528–29, 146 A.3d 26 (2016). “Finally, the defendant contends that the court improperly disregarded the testimony and recommendations of both the family relations officer and the guardian ad litem. Clearly, the trial court is not required to accord testimonial evidence any particular weight, and it may ignore or adopt, in whole or in part, such testimony as it weighs the credibility of the witnesses.”
- [Keenan v. Casillo](#), 149 Conn. App. 642, 659–60, 89 A.3d 912 (2014). “In support of his argument that the court committed plain error by permitting Dornfeld to testify, the plaintiff cites General Statutes § 46b–129a (2)(D), which provides in relevant part: ‘No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child’s guardian ad litem.’ Section 46b–129a, however, is contained within chapter 815t of the General Statutes and is thus limited to juvenile matters. This statute does not control dissolution matters like the present case. Rather, chapter 815j of the General Statutes controls marital dissolution matters. ‘Where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject ... is significant to show that a different intention existed.’ (Internal quotation marks omitted.) *Hatt v. Burlington Coat Factory*, 263 Conn. 279, 310, 819 A.2d 260

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(2003). Chapter 815j does not have a similar limitation as that in chapter 815t on a person serving both as a guardian ad litem and as an attorney for the same minor children. Such limitation, then, cannot be read into chapter 815j. The plaintiff's reliance on § 46b-129a (2)(D) is therefore misplaced. As a result, we conclude that the court did not commit plain error by allowing Dornfeld to testify as the guardian ad litem after serving for a period of time both as attorney for the minor children and as their guardian ad litem.

- [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.*'"
- [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

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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 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."

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.

- [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)  
  
**"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)
- [In Re Shaquanna M.](#), 61 Conn. App. 592, 600, n.11, 767 A.2d 155 (2001). **"In the present case, the respondent is** claiming not only that the children's attorney should have had more time to prepare for his representation of them, but also that his guardian ad litem role to pursue the best interests of her children has been compromised by a lack of time to prepare and by a lack of precise knowledge of the



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testimony of the witnesses who already had testified before his appointment as guardian ad litem, which the transcripts could have provided. There is a significant difference between the standard of proof in custody modification cases involving the parents of a child and that in termination of parental rights cases. Also, the former cases concern modifiable orders, whereas the latter concern irrevocable judgments.”

- [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.

- Louise Truax, Editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2019 ed.).
  - Chapter 8. Custody and Visitation
    - § 8.14. **Appointing a Child’s Representative, *Pendente Lite***
    - § 8.15. Appointing an Attorney for the Minor Child, ***Pendente Lite***
    - § 8.16. Appointing a Guardian ad Litem for the Minor Child, ***Pendente Lite***
    - § 8.17. Assessing Different Positions by the Attorney for the Minor Child and Guardian ad Litem
    - § 8.18. Asserting Privileges on Behalf of the Minor Child
    - § 8.19. Delegating Judicial Authority to an Attorney for the Minor Child or Guardian ad Litem is Prohibited
    - § 8.20. Determining the Duration of the Appointment of the Attorney for the Minor Child and Guardian ad Litem
    - § 8.21. Seeking to Remove the Attorney for the Minor Child or Guardian ad Litem
- Arnold H. Rutkin, Sarah Oldham, and Kathleen A. Hogan, Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).

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.

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

- Barry F. Armata, et. al., [A Practical Guide to Divorce in Connecticut](#) (2013).
  - Chapter 20. Representing Children in Family Court
    - § 20.2. Basis for Appointment
    - § 20.3. The Roles of the Guardian Ad Litem and the Attorney for the Minor Child
    - § 20.4. Initial Contact with the Parents
    - § 20.5. Court Expectations
    - § 20.6. Meeting and Understanding Your Client
    - § 20.7. Collateral Resources
    - § 20.8. Cultural Competence
    - § 20.9. Prepare for Trial
    - § 20.10. Postjudgment Matters
    - § 20.11. Appeals
  
- 3 Arnold H. Rutkin, Gen. Ed., [Family Law and Practice](#) (2019).
  - 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](#) (2019).
  - 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
  
- 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](#) (2019).  
     § 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](#) (2019).  
     § 9.02[5]. Guardian Ad Litem (distinguished from the role of an attorney)

**LAW REVIEWS:**

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 an 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:**

- “Any appropriate party may move for alimony, child support, custody, visitation, appointment or removal of counsel for the minor child, appointment or removal of a guardian ad litem for the minor child, counsel fees, or for an order with respect to the maintenance of the family or for any other **equitable relief.**” Connecticut Practice Book [§ 25-24\(a\)](#) (2019).
- “The judicial authority may appoint an attorney for the minor child in any family matter.” Connecticut Practice Book [§ 25-62A\(a\)](#) (2019).
- “The judicial authority may order compensation for services rendered by a court-appointed attorney for the minor child.” Connecticut Practice Book [§ 25-62A\(d\)](#) (2019).
- “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\(2\)\(C\)](#) (2019) [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 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 Family Law Section 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 (2019)
  - [§ 25-24](#). Motions (*Family Matters*)
  - [§ 25-62A](#). Appointment of Attorney for a Minor Child (*Family Matters*)
  - [§ 30-3](#). Advisement of Rights (*Juvenile Matters*)

[§ 32a-1](#). Right to Counsel and to Remain Silent (*Juvenile Matters*)

[§ 32a-4](#). Child or Youth Witness (*Juvenile Matters*)

[§ 32a-5](#). Consultation with Child or Youth (*Juvenile Matters*)

[§ 67-13](#). Briefs in Family and Juvenile Matters and Other Matters involving Minor Children (*Rules of Appellate Procedure*)

Amendments to the Probate Court Rules are posted [online](#).

- [Probate Court Rules of Procedure](#) (2017)

[Rule 12](#). Court Appointed Attorney

12.1 When attorney appointed

12.2 Appointment from panel of attorneys maintained by probate court administrator

12.3 Appointment from panel of attorneys maintained by court

12.4 Court-appointed attorney: Rules of Professional Conduct

12.5 Duration of appointment

12.6 Withdrawal from court appointment

[Rule 40](#). **Children's Matters:** General Provisions

40.2 Appointment of attorney and guardian ad litem for minor

**RULES OF PROFESSIONAL CONDUCT:**

Connecticut Practice Book (2019)

[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 to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019)

Chapter 319. Department of Children and Families

[§ 17a-76](#). Application for commitment of mentally ill child. Jurisdiction. Transfer to Superior Court.

Appointment of Counsel. Three-judge court, 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 (*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.

**LEGISLATIVE:**

- [Public Act No. 17-119](#). An Act Concerning the Right of Counsel to Access Records in Certain Abuse and Neglect Proceedings. (Effective October 1, 2017)

**FORMS:**

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

- [Official Court Webforms](#), Connecticut Judicial Branch.
  - JD-FM-176 - Motion for Orders Before Judgment (Pendente Lite) in Family Cases
  - 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
- Connecticut Network for Legal Aid, [Does Your Child Need a Lawyer?](#) (2016).  
[Motion for Appointment of Counsel for Minor Children](#)  
[https://ctlawhelp.org/files/motion\\_appointment\\_minor\\_children.pdf](https://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
- 3 Joel M. Kaye and Wayne D. Efron, Connecticut Practice Series, [Civil Practice Forms](#), 4th (2004).
  - Form 504.1-L. Motion for appointment of counsel or guardian ad litem for minor(s).

**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, 616-617, 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

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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."

- [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 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

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.

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, ...**"
- [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.**"
- [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)

**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.

- Louise Truax, Editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2019 ed.).
  - Chapter 8. Custody and Visitation
    - § 8.14. **Appointing a Child’s Representative**
    - § 8.15. Appointing an Attorney for the Minor Child, ***Pendente Lite***
    - § 8.16. Appointing a Guardian ad Litem for the Minor Child, ***Pendente Lite***
    - § 8.17. Assessing Different Positions by the Attorney for the Minor Child and Guardian ad Litem
    - § 8.18. Asserting Privileges on Behalf of the Minor Child
    - § 8.19. Delegating Judicial Authority to an Attorney for the Minor Child or Guardian ad Litem
    - § 8.20. Determining the Duration of the Appointment of the Attorney for the Minor Child or Guardian ad Litem
    - § 8.21. Seeking to Remove the Attorney for the Minor Child or Guardian ad Litem
- 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
  - Chapter 45. Attorney fees & expenses
    - § 45:16. Fees for counsel for minor child or guardian ad litem

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.

- [A Practical Guide to Divorce in Connecticut](#), by Barry F. Armata, et. al. (2013).
  - Chapter 20. Representing Children in Family Court
    - § 20.2. Basis for Appointment
    - § 20.3. The Roles of the Guardian Ad Litem and the Attorney for the Minor Child
    - § 20.4. Initial Contact with the Parents
    - § 20.5. Court Expectations
    - § 20.6. Meeting and Understanding Your Client
    - § 20.7. Collateral Resources
    - § 20.8. Cultural Competence
    - § 20.9. Prepare for Trial
    - § 20.10. Postjudgment Matters
    - § 20.11. Appeals
  
- 3 Arnold H. Rutkin, Gen. Ed., [Family Law and Practice](#) (2019).
  - 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](#) (2019).
  - 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
  
- 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]
  
- 1 Michael J. Dale et al., [Representing the Child Client](#) (2019).
  - § 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:**

- **Superior Court Procedures:** "Any appropriate party may move for alimony, child support, custody, visitation, appointment or removal of counsel for the minor child, appointment or removal of a guardian ad litem for the minor child, counsel fees, or for an order with respect to the **maintenance of the family or for any other equitable relief.**" Connecticut Practice Book [§ 25-24\(a\)](#) (2019).
- **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\(f\)](#) (2019).

## **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 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 Family Law Section 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 to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019)
  - 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.

**LEGISLATIVE HISTORY:**

- Connecticut State Library
  - [Legislative History of Public Act No. 14-3, An Act Concerning Guardians Ad Litem And Attorneys For Minor Children In Family Relations Matters.](#)

**COURT RULES:**

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

- Connecticut Practice Book (2019)
  - [§ 25-24](#). Motions
  - [§ 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 matters*)

Amendments to the Probate Court Rules are posted [online](#).

- [Probate Court Rules of Procedure](#) (2017)
  - [Rule 12](#). Court Appointed Attorney
  - 12.4 Court-appointed attorney: Rules of Professional Conduct

- 12.5 Duration of appointment
- 12.6 Withdrawal from court appointment

[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**

**STANDING ORDERS:**

- Superior Court, State of Connecticut  
Standing Orders – Family Matters Statewide  
[Motion to Remove AMC or GAL](#)

**FORMS:**

- 3 Joel M. Kaye and Wayne D. Efron, Connecticut Practice Series, [Civil Practice Forms](#), 4th (2004).  
Form 504.1-L.50. Motion for removal of counsel or guardian ad litem for minor(s).

**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.

- [Dubinsky v. Reich](#), 187 Conn. App. 255, 262, 201 A.3d 1153 (2019), cert. denied by 331 Conn. 918, 204 A.3d 1159 (2019). **“There are sufficient procedural safeguards to protect against improper conduct by a guardian ad litem. Because a guardian ad litem is appointed by the court, the guardian ad litem is subject to the court’s oversight and discretion and may be removed by the court at any time, either sua sponte or upon motion of a party.”**
- [In re Samuel R.](#), 163 Conn. App. 314, 321, 134 A. 3d 752 (2016). **“In her motion to open, the respondent also alleged that the appointment of the guardian ad litem was improperly vacated and that the department did not provide the court with information that showed that the respondent could effectively parent. It was respondent’s counsel who approached the court, *Hon. Francis J. Foley III*, judge trial referee, and requested that it vacate the appointment of the guardian ad litem. In addition, the guardian ad litem informed the court that he had met with the respondent and based on that interaction, he agreed that his representation was not necessary.**
- [Sargent v. Sargent](#), 156 Conn. App. 109, 116, 113 A. 3d 72 (2015). **“Once the relation of parent and guardian ad litem was extinguished, orders relating to the context of the relationship are of no effect and controversy regarding the orders is, then, moot.”**
- [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 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.]

**TREATISE:**

- 8 Arnold H. Rutkin, Sarah Oldham, and Kathleen A. Hogan, Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).  
Chapter 42. Child custody and visitation.  
§ 42:18.30. Appointment and removal of representatives for the minor child.
- Louise Truax, Editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2019 ed.).  
Chapter 8. Custody and Visitation  
§ 8.14. **Appointing a Child’s Representative**  
§ 8.20. Determining the Duration of the Appointment of the Attorney for the Minor Child or Guardian ad Litem  
§ 8.21. Seeking to Remove the Attorney for the Minor Child or Guardian ad Litem

**WEST KEY NUMBERS:**

- Infants  
# 1234. Guardian ad litem or next friend.  
# 1243. Resignation, removal, and successorship

**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)

# Section 4: Fees for Guardian Ad Litem or Attorney for the Minor Child

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to orders for payment of attorney's fees for guardian ad litem or attorney for the minor child.

## **DEFINITIONS:**

- "Under the **sliding scale methodology** developed by the **Judicial Branch**, 'the sliding fee scale is based upon the combined gross income of the parents and assumes one child. The scale is only applicable to cases where the combined gross income of the parents is \$100,000 or less.' See Press Release, Connecticut Judicial Branch, Guardian Ad Litem/Attorney for Minor Child (GAL/AMC) Sliding Fee Scale, effective October 1, 2014 (September 11, 2014), available at <https://www.jud.ct.gov/external/news/press387.pdf> (last visited July 12, 2018) (sliding scale announcement); Press Release, Connecticut Judicial Branch, Update on the Judicial Branch Family Court Initiatives (November 23, 2015), available at [https://www.jud.ct.gov/family/family\\_court\\_initiatives15.pdf](https://www.jud.ct.gov/family/family_court_initiatives15.pdf) (last visited July 12, 2018) (2015 Family Court Initiatives)." *Zilkha v. Zilkha*, 183 Conn. App. 452, 456-457, 193 A.3d 95 (2018).

## **STANDARDS & GUIDANCE:**

- Connecticut Judicial Branch
  - Family Matters Frequently Asked Questions, <https://www.jud.ct.gov/faq/family.htm>
    - #5. [Who pays the GAL?](#)
    - #6. [Is there a sliding scale fee option for parents with limited resources?](#)

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. General Statutes (2019)
  - Chapter 815. Court proceedings in family relations matters.
    - [§ 46b-12\(c\)](#). 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-54\(e\)](#). Appointment of counsel or guardian ad litem for a minor child. Duties. Best interests of the child.
    - [§ 46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.
    - [§ 46b-62](#). Orders for payment of attorney's fees 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](#)(2)(E). Examination by physician, psychiatrist or psychologist. Counsel and guardian ad litem. Testimony. Evidence.

## **LEGISLATIVE HISTORY:**

- Connecticut State Library
  - [Legislative History of Public Act No. 14-3, An Act Concerning Guardians Ad Litem And Attorneys For Minor Children In Family Relations Matters.](#)

## **COURT RULES:**

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

- Conn. Practice Book (2019)  
Chapter 25. Procedure in Family Matters.  
[§ 25-62A](#)(d). Appointment of Attorney for a Minor Child. *"(d) The judicial authority may order compensation for services rendered by a court-appointed attorney for the minor child."*

Chapter 44. Procedure in Criminal Matters. General Provisions.

[§ 44-20](#)(b). Appointment of Guardian Ad Litem.

## **FORMS:**

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

- [Official Court Webforms](#), Connecticut Judicial Branch.
  - 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

## **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.

- [Brochard v. Brochard](#), 185 Conn. App. 204, 242, 196 A.3d 1171 (2018). "The defendant was ordered to pay 20 percent and the plaintiff was ordered to pay 80 percent of the fees owed to Attorney Nugent. The defendant alleged that there had been a substantial change in circumstances since the entry of Judge Munro's order because she was no longer employed and had insufficient assets to pay her share. The court found that there had been no substantial change in circumstances in the finances of either party since the order of February 6, 2014. 'The court may order either party to pay the fees for [a] guardian ad litem pursuant to General Statutes § 46b-62, and how such expenses will be paid is within the court's discretion.... An abuse of discretion in granting [guardian ad litem] fees will be found only if [an appellate court] determines that the trial court could not reasonably have concluded as it did.' (Citation omitted; internal quotation marks omitted.) *Lamacchia v. Chilinsky*, 79 Conn. App. 372, 374-75, 830 A.2d 329 (2003)."
- [Zilkha v. Zilkha](#), 183 Conn. App. 452, 457, n.12, 193 A.3d 95 (2018). "We note that, as with statutory criteria, the trial

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court need not make express findings on each sliding scale criterion. See, e.g. *Rubenstein v. Rubenstein*, supra, 107 Conn. App. At 495, 945 A.2d 1043 ('The court must consider all of these criteria.... It need not however, make explicit reference to the statutory criteria that it considered in making its decision or make express finding[s] as to each statutory factor.... Nor need it give each factor equal weight.' [Internal quotation marks omitted].)''

- [Zilkha v. Zilkha](#), 182 Conn. App. 459, 189 A.3d 686 (2018). "Following a hearing, and in accordance with the criteria set forth in General Statutes §§ 46b-62 and 46b-82, Judge Shay ordered the plaintiff and the defendant each to pay \$500 to the attorney for the minor children, \$1500 to the guardian ad litem, and \$500 to the custody evaluator. Id., at 172, 123 A.3d 439. The court also ordered the following payments to be made from the defendant's funds in the escrow account: \$40,000 to the attorney for the minor children, \$62,577.95 to the guardian ad litem, \$9000 to the custody evaluator, and an additional \$15,000 each to the attorney for the minor children and to the guardian ad litem as retainers for future services related to the litigation." (p. 463).

"A court is not authorized to decide which of a party's assets must be used to pay a party's share of fees. Id., at 175, 123 A.3d 439. '[T]he court could not make orders for funds to be disbursed from the escrow account because those funds belonged solely to the defendant, until and unless, the court opened the judgment and distributed the escrowed funds, if at all.' Id." (p. 464).

- [Nassra v. Nassra](#), 180 Conn. App. 421, 439-40, 183 A.3d 1198 (2018). "In support of his position that the court improperly awarded N.J. Sarno \$8785 after the parties had already complied with the separation agreement, the defendant relies on *Kavanah v. Kavanah*, 142 Conn. App. 775, 66 A.3d 922 (2013). In that case, the court, Prestley, J., incorporated into the dissolution judgment the parties' initial agreement to appoint a guardian ad litem and share costs equally. Id., at 783, 66 A.3d 922. The defendant subsequently filed a motion to be excused from paying fees on the basis of financial hardship and Judge Prestley ordered that '[the guardian ad litem is] to be paid at state rates by the state.' Id. After trial, the court, Dolan, J., ordered the parties, sua sponte, to pay the guardian ad litem an additional sum of \$5000. Id., at 778, 783, 66 A.3d 922. On appeal, this court held that the court's order was improper because there was: (1) 'no motion or request seeking a different payment arrangement for [the guardian ad litem]'; (2) 'no opportunity for the parties to address the issue prior to the court's ruling'; and (3) 'no evidence of [the guardian ad litem's] services from which the court could calculate her

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fees.’ *Id.*, at 784, 66 A.3d 922. We do not find support for the defendant’s position in *Kavanah*, as it is distinguishable from the facts presented by this case. Here, the defendant had notice of the issue through N.J. Sarno’s motion for order of payment.”

- [Perry v. Perry](#), 312 Conn. 600, 624, 95 A.3d 500 (2014). **“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.”**
- [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).”**
- [Rubenstein v. Rubenstein](#), 107 Conn. App. 488, 506, 945 A.3d 1043 (2008). **“The additional criterion sought to be considered by the defendant, namely, postdissolution fault, is not a factor included among those enumerated in § 46b-82. As already noted, the order for payment of guardian ad litem fees ‘requires consideration of the financial resources of both parties and the criteria set forth in General Statutes § 46b-82.’ (Internal quotation marks omitted.) *Lamacchia v. Chilinsky, supra*, 79 Conn. App. 376. There is no requirement, however, to consider any additional factors or evidence deemed relevant by any of the parties. Accordingly, we cannot conclude that the court abused its discretion in precluding evidence of postdissolution fault at the allocation hearing.”**
- [LaMacchia v. Chilinsky](#), 79 Conn. App. 372, 830 A. 2d 329 (2003). **“The order for payment of [guardian ad litem] fees under General Statutes § 46b-62 requires consideration of the financial resources of both parties and the criteria set forth in General Statutes § 46b-82.’ *Merritt v. Merritt*, 2 Conn. App. 425, 428, 479 A.2d 255 (1984). Section 46b-82 instructs the court to consider, inter alia, ‘the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate and needs of each of the parties. . . .’ ‘Although the trial court is not required to find expressly on each of the § 46b-82 factors, it must have**

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sufficient evidence to support each factor.’ *Clement v. Clement*, 34 Conn. App. 641, 650, 643 A.2d 874 (1994).” (p. 376).

“The situation is different, however, with respect to the court’s treatment of the parties’ responsibilities for future guardian ad litem fees. To provide a meaningful basis on which to assign responsibility for the payment of guardian ad litem fees, consideration of the financial situation of the parties and the statutory criteria should be made at the time that fees are sought. See General Statutes §§ 46b-62 and 46b-82; *Clement v. Clement*, supra, 34 Conn. App. 650; *Merritt v. Merritt*, supra, 2 Conn. App. 428. The record is devoid of any evidence sufficient to support an anticipatory allocation of future fees. In the present case, both the amount, if any, of future guardian ad litem fees and the respective financial capacities of the parties to pay such fees are purely speculative. Further, there is nothing in the record to guarantee that when any such guardian ad litem fees are sought, the respective financial situations of the parties will have remained unchanged.” (p. 377-378).

- [Ruggiero v. Ruggiero](#), 76 Conn. App. 338, 348-349, 819 A.2d 864 (2003). “The court made a factual finding that the plaintiff had behaved inappropriately and, therefore, should be required to pay for the fees of the guardian ad litem. Pursuant to § 46b-62, the court must consider the total financial resources of the parties when awarding attorney’s fees. *Turgeon v. Turgeon*, 190 Conn. 269, 280, 460 A.2d 1260 (1983). The record indicates that the court did understand and consider the parties’ financial circumstances when it ruled during the proceedings. When the court ruled that the plaintiff would be required to pay the attorney’s fees for the guardian ad litem for the children, the court also discussed the potential need of the parties to undergo counseling. During that part of the ruling, the court stated: ‘I’m aware of the financial circumstances of these parties....’ The court also heard evidence concerning the decrease in child support payments that the plaintiff was required to pay to the defendant. The record indicates that the court considered the financial circumstances of the parties, and the plaintiff has not persuaded us that the court abused its discretion.”
- [Marlin v. Marlin](#), 73 Conn. App. 570, 572-73, 808 A.2d 707 (2002). “On appeal, the plaintiff claims that in ruling on Whelan’s motion for counsel fees, the court abused its discretion because (1) there was insufficient evidence to support its finding that \$8308 constituted fair and reasonable attorney’s fees, (2) it already had issued an order that the parties were to share equally Whelan’s fees and (3) its order that the plaintiff pay 75 percent of Whelan’s fees was punitive. We disagree. ‘An appellant who seeks to



reverse the trial court's exercise of judicial discretion assumes a heavy burden.... In family matters, a trial court is vested with broad discretion.... Appellate review of the exercise of that discretion is limited to determining (1) whether the trial court correctly applied the law, and (2) whether the trial court could reasonably have concluded as it did.... Every reasonable presumption must be given to support the correctness of the judgment.... Decision making in family cases requires flexible, individualized adjudication of the particular facts of each case.... Trial courts have a distinct advantage over an appellate court in dealing with domestic relations, where all of the surrounding circumstances and the appearance and attitude of the parties are so significant.... This court may not substitute its own opinion for the factual findings of the trial court.' (Citations omitted.) ***Brown v. Brown***, 36 Conn.App. 597, 600-601, 652 A.2d 527, cert. denied, 232 Conn. 917, 655 A.2d 260 (1995)."

- [In re Manzi](#), United States Bankruptcy Court, D. Conn, 283 B.R. 103, 104 (2002). "Resolution of this adversary proceeding requires a determination of whether a debt owing to a court-appointed guardian ad litem and/or attorney for the debtor's minor children from a prior marriage for services rendered to such minor children in connection with the dissolution of such marriage constitutes under the circumstances presented here a nondischargeable debt for child 'support' within the purview of Bankruptcy Code § 523(a)(5) (and thus excluded from the purview of § 523(a)(15))."

**WEST KEY NUMBERS:**

- West Key Numbers: Infants
  - VII. Actions
    - (A) Role of Representative or Counsel
      - # 1244. Guardian ad litem or next friend — Compensation and expenses

**ENCYCLOPEDIAS:**

- 42 [Am. Jur. 2d Infants](#) (2010).
  - VI. Actions
    - B. Representation of Infant
      - 5. Powers, Duties, and Liabilities of Representative
        - c. Compensation and Liability of Representative
          - (1) Reimbursement or Compensation (§§ 178-181)
- 43 [C.J.S. Infants](#) (2014).
  - VIII. Actions
    - B. Representation of Infant by Guardian Ad Litem, Next Friend, and Attorney
      - 3. Compensation and Allowances for Representatives (§§ 432-436)

**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.

- Louise Truax, Editor, [LexisNexis Practice Guide: Connecticut Family Law](#) (2019 ed.).  
Chapter 15. Counsel Fees.  
§ 15.18. Awarding Counsel Fees for the Guardian Ad Litem and Attorney for the Minor Child
- 8A Arnold H. Rutkin, Sarah Oldham, and Kathleen A. Hogan, Connecticut Practice Series, [Family Law and Practice with Forms](#) (3d ed. 2010).  
Chapter 45. Attorney fees & expenses  
§ 45:16. Fees for counsel for minor child or guardian ad litem
- 2 Sandra Morgan Little, [Child Custody & Visitation Law and Practice](#) (2019).  
Chapter 12A. Legal representation of children in custody and visitation cases  
§ 12A.10. Payment for services.

# Section 5: 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).
- "First, we note that the general rule is that a next friend may not bring an action for a competent person. [Phoebe G. v. Solnit](#), 252 Conn. 68, 77, 743 A.2d 606 (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.' [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:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019)  
Chapter 319. Department of Children and Families  
[Commitment of mentally ill child]  
[§ 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.  
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 (2019)  
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.

## **RULES OF PROFESSIONAL CONDUCT:**

- Connecticut Practice Book (2019)  
[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, 756, 851 A.2d 1183 (2004). "As nonattorneys, the plaintiffs parents lacked

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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)