

§4005. Parties' rights to representation; legal counsel

1. Child; guardian ad litem. The following provisions shall govern guardians ad litem. The term guardian ad litem is inclusive of lay court appointed special advocates under Title 4, chapter 31.

A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child. The guardian ad litem's reasonable costs and expenses must be paid by the District Court. The appointment must be made as soon as possible after the proceeding is initiated. Guardians ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court. [PL 1999, c. 251, §2 (AMD).]

B. The guardian ad litem shall act in pursuit of the best interests of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate, the following:

- (1) Review of relevant mental health records and materials;
- (2) Review of relevant medical records;
- (3) Review of relevant school records and other pertinent materials;
- (4) Interviews with the child with or without other persons present; and
- (5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

The guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment by the court and at least once every 3 months thereafter or on a schedule established by the court for reasons specific to the child and family. The guardian ad litem shall report to the court and all parties in writing at 6-month intervals, or as is otherwise ordered by the court, regarding the guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child. The court may provide an opportunity for the child to address the court personally if the child requests to do so or if the guardian ad litem believes it is in the child's best interest. [PL 1997, c. 715, Pt. A, §1 (AMD).]

C. The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make a recommendation to the court. [PL 1983, c. 183 (NEW).]

D. The guardian ad litem shall make a written report of the investigation, findings and recommendations and shall provide a copy of the report to each of the parties reasonably in advance of the hearing and to the court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order. The court may admit the written report into evidence. [PL 2001, c. 696, §12 (AMD).]

E. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed the child's wishes, regardless of the recommendation of the guardian ad litem. [RR 2021, c. 2, Pt. B, §180 (COR).]

F. The guardian ad litem or the child may request the court to appoint legal counsel for the child. The District Court shall pay reasonable costs and expenses of the child's legal counsel. [PL 1995, c. 405, §20 (AMD).]

G. A person serving as a guardian ad litem under this section acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem. [PL 2001, c. 253, §4 (NEW).]
[RR 2021, c. 2, Pt. B, §180 (COR).]

2. Parents. Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders. The parent or custodian may request the court to appoint legal counsel for the parent or custodian. The court, if it finds the parent or custodian indigent, shall appoint legal counsel.

[PL 2023, c. 638, §23 (AMD).]

3. Wishes of child. The District Court shall consider the wishes of the child, in a manner appropriate to the age of the child, including, but not limited to, whether the child wishes to participate or be heard in court. In addition, when a child's expressed views are inconsistent with those of the guardian ad litem, the court shall consider whether to consult with the child directly, when the child's age is appropriate.

[PL 2009, c. 557, §1 (NEW).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 183 (AMD). PL 1983, c. 783, §§1,2 (AMD). PL 1985, c. 581, §2 (AMD). PL 1995, c. 405, §§18-20 (AMD). PL 1997, c. 257, §5 (AMD). PL 1997, c. 715, §§A1,2 (AMD). PL 1999, c. 251, §2 (AMD). PL 2001, c. 253, §4 (AMD). PL 2001, c. 696, §12 (AMD). PL 2009, c. 557, §1 (AMD). RR 2021, c. 2, Pt. B, §180 (COR). PL 2023, c. 638, §23 (AMD).

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