

Pennsylvania	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE
<p>1. General Duties: <i>Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</i></p>	<p>[Guardians ad litem (who must be attorneys-at-law) are appointed to represent the legal interests and best interests of children in dependency hearings. The courts may also appoint legal counsel under certain circumstances.]</p> <p>--A. Guardian <i>ad litem</i> for child. The court shall assign a guardian <i>ad litem</i> to represent the legal interests and the best interests of the child if a proceeding has been commenced alleging a child to be dependent who:</p> <ol style="list-style-type: none"> 1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the physical, mental or emotional health, or morals; 2) has been placed for care or adoption in violation of law; 3) has been abandoned by parents, guardian, or other custodian; 4) is without a parent, guardian or legal custodian; or 5) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.Code § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety, or welfare of the child. <p>The guardian ad litem must be an attorney. 42 Pa. Code § 6311(a); Pa.R.J.C.P. No. 1151.</p> <p>--B. Counsel for child. The court shall appoint legal counsel for a child:</p> <ol style="list-style-type: none"> 1) if a proceeding has been commenced alleging a child to be dependent who: <ol style="list-style-type: none"> a) while subject to compulsory school attendance is habitually and without justification truant from school; b) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of the child's guardian and who is ungovernable and found to be in need of care, treatment, or supervision; c) is under the age of ten years and has committed a delinquent act; d) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or e) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or 2) upon order of the court. Pa.R.J.C.P. No. 1151. <p>--C. Counsel and Guardian <i>ad litem</i> for child. If a child has legal counsel and a guardian <i>ad litem</i>, counsel shall represent the legal interests of the child and the guardian <i>ad litem</i> shall represent the best interests of the child. Pa.R.J.C.P. No. 1151.</p> <p>--1) Guardian <i>ad litem</i>. A child may not waive the right to a guardian <i>ad litem</i>.</p> <p>2) Legal Counsel. A child may waive legal counsel if:</p> <ol style="list-style-type: none"> a) the waiver is knowingly, intelligently, and voluntarily made; and

	<p>b) the court conducts a colloquy with the child on the record. Pa.R.J.C.P. No. 1152(A).</p> <p>If the child waives legal counsel, then the GAL should represent both the child’s best interests and legal interest. Pennsylvania Dependency Benchbook, Rule 4.2.3.</p> <p>-- The court shall appoint counsel to represent the child in an involuntary termination proceeding when one or both of the parents are contesting the proceeding. The court may appoint counsel or a guardian ad litem to represent any child who has not reached the age of 18 years and is subject to any other proceeding under this part whenever it is in the best interests of the child. No attorney or law firm shall represent both the child and the adopting parent or parents. 23 Pa. Code § 2313.</p> <p>-- Guardian ad litem and court designated advocate. The county agency shall cooperate with and provide information to a guardian ad litem appointed under section 6382¹ of the CPSL (relating to guardian ad litem for child in court proceedings) and the court designated advocate. When appropriate, because of the age or mental and emotional condition of the child, the guardian ad litem in addition to representing the best interests of the child shall also determine the wishes of the child concerning the proceedings and shall communicate this information to the court. 55 Pa. Code § 3490.71.</p> <p>--Court-appointed special advocates.</p> <p>(a) General rule.--The court may appoint or discharge a CASA at any time during a proceeding or investigation regarding dependency under this chapter.</p> <p>(b) Immunity.--A court-appointed special advocate shall be immune from civil liability for actions taken in good faith to carry out the duties of the CASA under this chapter except for gross negligence, intentional misconduct or reckless, willful or wanton misconduct.</p> <p>(c) Qualifications.--Prior to appointment, a CASA shall:</p> <ol style="list-style-type: none"> (1) Be 21 years of age or older. (2) Successfully pass screening requirements, including criminal history and child abuse background checks. (3) Successfully complete the training requirements established under subsection (f) and by the court of common pleas of the county where the CASA will serve. 42 Pa. Code § 6342(a)-(c).
<p>2. Out of Court - Actions to be Taken: <i>Meet with</i></p>	<p>-- A guardian <i>ad litem</i> shall:</p>

¹ It should be noted that 23 Pa. Code § 6382 was repealed in 2000, but the cross-reference to it in [55 Pa. Code § 3490.71](#) remains in effect. Presumably, the requirement of cooperation by the county agency, as set forth in [55 Pa. Code § 3490.71](#), remains in effect, even though GALs are now appointed pursuant to other authority.

child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements

- 1) Meet with the child as soon as possible following assignment pursuant to Rule 1151 and on a regular basis thereafter in a manner appropriate to the child's age and maturity;
 - 2) On a timely basis, be given access to relevant court and county agency records, reports of examination of the guardians or the child, and medical, psychological, and school records;
 - 3) Participate in all proceedings, including hearings before masters, and administrative hearings and reviews to the degree necessary to adequately represent the child;
 - 4) Conduct such further investigation necessary to ascertain the facts;
 - 5) Interview potential witnesses, including the child's guardians, caretakers, and foster parents, examine and cross-examine witnesses, and present witnesses and evidence necessary to protect the best interests of the child;
 - 6) At the earliest possible date, be advised by the county agency having legal custody of the child of:
 - a) any plan to relocate the child or modify custody or visitation arrangements, including the reasons, prior to the relocation or change in custody or visitation; and
 - b) any proceeding, investigation, or hearing under the Child Protective Services Law, [23 Pa.Code § 6301 et seq.](#) or the Juvenile Act, [42 Pa.Code § 6301 et seq.](#), directly affecting the child;
 - 7) Make any specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety;
 - 8) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition, and emotional condition; and
 - 9) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court.
- 42 Pa. C.S. §6311(b); [Pa.R.J.C.P. No. 1154](#).

--Information in the resource family registry. -- ... (2) The information maintained in the resource family registry may be released to the following individuals when the department has positively identified the individual requesting the information and the department, except in the case of subparagraphs (iii) and (iv), has inquired into whether and if it is satisfied that the individual has a legitimate need within the scope of the individual's official duties to obtain the information:

...

(ii) A guardian ad litem or court-designated advocate for a child. The information is limited to the information related to the resource family with whom the child resides.... [28 Pa. Code § 6344\(d.2\)](#).

--Release of information in confidential reports.

(a) General rule. --Reports specified in section 6339 (relating to confidentiality of reports) shall only be made available to:

...

(3) A guardian ad litem or court designated advocate for the child.... [23 Pa. Code §6340](#).

--Petition for involuntary termination.

(a) Who may file. --A petition to terminate parental rights with respect to a child under the age of 18 years may be filed by any of the following:

(1) Either parent when termination is sought with respect to the other parent.

(2) An agency.

(3) The individual having custody or standing in loco parentis to the child and who has filed a report of intention to adopt required by section 2531 (relating to report of intention to adopt).

(4) An attorney representing a child or a guardian ad litem representing a child who has been adjudicated dependent under [42 Pa. Code § 6341\(c\)](#) (relating to adjudication).

(b) Contents. --The petition shall set forth specifically those grounds and facts alleged as the basis for terminating parental rights. The petition filed under this section shall also contain an averment that the petitioner will assume custody of the child until such time as the child is adopted. If the petitioner is an agency it shall not be required to aver that an adoption is presently contemplated nor that a person with a present intention to adopt exists. [23 Pa. Code § 2512](#); *see also* [Pennsylvania Dependency Benchbook, Rule 12.3](#).

--CASA. (d) Powers and duties.--Following appointment by the court, the CASA shall:

(1) have full access to and review all records, including records under [23 Pa.Code Ch. 63](#) (relating to child protective services) relating to the child and other information, unless otherwise restricted by the court;

(2) interview the child and other appropriate persons as necessary to develop its recommendations;

(3) receive reasonable prior notice of all hearings, staff meetings, investigations or other proceedings relating to the child;

(4) receive reasonable prior notice of the movement of the child from one placement to another placement, the return

of a child to the home, the removal of a child from the home or any action that materially affects the treatment of the child;

(5) submit written reports to the court to assist the court in determining the disposition best suited to the health, safety and welfare of the child; and

(6) submit copies of all written reports and recommendations to all parties and any attorney of a party.

(e) Confidentiality.--All records and information received under this section shall be confidential and only

	<p>used by the CASA in the performance of his duties. 42 Pa. Code § 6342(d)-(e).</p> <p>--Generally, CASAs review records, research information, and interview the child and everyone else involved in the case. They prepare reports and recommendations for the court and monitor the case until conclusion or whatever time period is defined in the order of appointment. Volunteers generally have only one or two cases at a time and their activities are monitored by a CASA case manager....</p> <p>CASA volunteers, under the supervision of their agency, create a written report that details the history of the case, the work they have done, and the results of their investigations, as well as specific recommendations for the children and the family to which they are assigned. CASA reports should be provided in advance to all parties, as well as to the court. The volunteer or other responsible person from the CASA agency should be available in the courtroom to testify at the request of the court or parties regarding the investigation or recommendations provided within the report. If the court has appointed CASA on a case, the court should hear from them at some point during the hearing, whether that is through testimony or the presentation of their report and recommendations. Family Dependency Benchbook, 15.7.1.</p>
<p>3. In Court - Active Participation in Hearings: <i>Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</i></p>	<p>--The court shall give notice of the adjudicatory hearing to:</p> <ol style="list-style-type: none"> 1) the attorney for the county agency; 2) the child's attorney; 3) the guardian's attorney; 4) the parents, child's foster parent, preadoptive parent, or relative providing care for the child; 5) the county agency; 6) the court appointed special advocate, if assigned; and 7) any other persons as directed by the court. Pa.R.J.C.P. No. 1361. <p>--The GAL is the child's voice in the courtroom, especially if the child is not of age to articulate his or her own best interests. Pa.R.J.C.P. 1128 requires the presence of the child's attorney at all proceedings with no exceptions provided. If the child has a GAL and legal counsel, both attorneys shall be present. Additionally, the Juvenile Court Rules have specifically set forth the duties and responsibilities of the GAL in Pa.R.J.C.P. 1154.</p> <p>. . .To fully understand the child's circumstances and represent the child's best interest to the court, the GAL may need to further investigate by interviewing potential witnesses, including the child's guardians, caretakers, and foster parents. In representing the child's best interest to the court, the GAL should fully advise the child of the proceeding and discuss potential outcomes with the child to ascertain the child's wishes to the extent possible. At hearings, the GAL must play an active role in the case by cross-examining witnesses, presenting witnesses, and presenting evidence necessary to communicate to the court the child's wishes and best interests. Pennsylvania Dependency Benchbook, Rule 4.2.2.</p>

	<p>-- ...The child must be present at all proceedings, except for good cause shown (Pa.R.J.C.P. 1128). The child's attendance at the permanency hearing is particularly important, because the court needs to know the child's wishes regarding the permanency plan. Even though these may be contrary to the child's best interest, it is important for the judge or master to view the case "through the eyes of the child."... Pennsylvania Dependency Benchbook, Rule 105.2.</p>
<p>4. <i>Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders.</i></p>	<p>-- A guardian <i>ad litem</i> shall: ... 8) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition, and emotional condition; ... Pa.R.J.C.P. No. 1154. 42 Pa. Code § 6311(b).</p> <p>--The GAL should always be kept apprised of any changes to the child's placement, custody, visitation or treatment plan. Both the county agency and the GAL should be proactive in assuring the GAL is informed of all actions that affect the child's safety, well being and permanence. This includes ensuring that the GAL has access to all relevant court and agency records, such as reports on the child's guardians, reports on the child, and the child's medical and school records (Pa.R.J.C.P. 1154 (2)). Pennsylvania Dependency Benchbook, Rule 4.2.2.</p> <p>-- At every permanency review, the court should determine whether the placement goal is appropriate and feasible, and if not, whether a new placement goal should be set. The judge or master should seek an opinion from the agency and consider the positions of the GAL or counsel for the child, the parents and their counsel, and the CASA before reaching a decision... Pennsylvania Dependency Benchbook, Rule 10.6.5.</p>
<p>5. <i>Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p>-- A. In accordance with Pa.R.A.P. 102, revised in 2009, and in accordance with a program first established in this court in 2000, the court shall expedite handling of appeals involving parent-child relationships as follows:</p> <ol style="list-style-type: none"> 1. Children's Fast Track: All cases involving dependency, termination of parental rights, adoption, custody, or paternity shall be designated as Children's Fast Track in the Superior Court. 2. Other Family Fast Track: Central Legal Staff in its discretion may expedite other appeals involving the parent-child relationship. Such cases shall be designated "Other Family Fast Track." Superior Court I.O.P., § 65.14. <p>--2) Children's fast track appeals.</p> <ol style="list-style-type: none"> (i) In a children's fast track appeal, the appellant shall serve and file appellant's brief within 30 days after the

	<p>date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee's brief within 21 days after service of appellant's brief and reproduced record. A party may serve and file a reply brief permitted by these rules within 7 days after service of the preceding brief but, except for good cause shown, a reply brief must be served and filed so as to be received at least 3 days before argument. In cross appeals, the second brief of the deemed or designated appellant shall be served and filed within 21 days of service of the deemed or designated appellee's first brief. Briefs shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. Pa.R.A.P., Rule 2185.</p> <p>-- Once an appearance is entered or the court assigns counsel for the child, counsel shall represent the child until the closing of the dependency case, including any proceeding upon direct appeal and permanency review, unless permitted to withdraw pursuant to paragraph (C). Pa.R.J.C.P. No. 1150(B).</p> <p><i>There is no explicit authority regarding the role of the GAL on appeals.</i></p>
<p>6. Cessation of Representation: <i>Contacts post representation, if any.</i></p>	<p>--B. Duration. Once an appearance is entered or the court assigns counsel for the child, counsel shall represent the child until the closing of the dependency case, including any proceeding upon direct appeal and permanency review, unless permitted to withdraw pursuant to paragraph (C).</p> <p>C. Withdrawals.</p> <p>1) Upon motion, counsel shall be permitted to withdraw only:</p> <p>a) By order of the court for good cause shown; or</p> <p>b) If new counsel has entered an appearance in accordance with paragraph (A).</p> <p>A motion to withdraw shall be:</p> <p>a) Filed with the clerk of courts, and a copy concurrently served on the other parties' attorneys, or the party, if unrepresented; or</p> <p>b) Made orally on the record in open court in the presence of the parties. Pa.R.J.C.P. No. 1150.</p>
	<p style="text-align: center;">Organizational and Administrative Supports for the Child Representative</p>
<p>7. General Representation Rules: <i>Administrative structure is clear for appointment, support and accountability of the CR.</i></p>	<p><i>In Pennsylvania, each county (there are 67) is responsible for implementing the requirements regarding appointment of a GAL and counsel for children.</i></p>

<i>The child's representative is independent from the court</i>	
8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i>	<p><i>There is no explicit legal authority or requirement for GALs or counsel for children.</i></p> <p>--Court-appointed special advocates.</p> <p>(c) Qualifications.--Prior to appointment, a CASA shall:</p> <ul style="list-style-type: none"> (1) Be 21 years of age or older. (2) Successfully pass screening requirements, including criminal history and child abuse background checks. (3) Successfully complete the training requirements established under subsection (f) and by the court of common pleas of the county where the CASA will serve. 42 Pa. Code §6342(c).
9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i>	<p><i>No explicit legal authority or requirement.</i></p>
10. Caseload Levels: <i>Caseloads are of a manageable size.</i>	<p><i>There are no standards or requirements regarding caseloads for GALs or children's counsel. The Administrative Office of the Courts is able to track these appointments, however, via</i></p> <p>Inventory Report (AOPC 3904). Pennsylvania Dependency Handbook, Rule 15.4.1.</p>