

NEW JERSEY

<p>Structure, organization, and delivery of Child Representation</p> <p>State-by-state, county-by-county, etc.</p>	<p>One important right a child has is the right to have an attorney, known as a Law Guardian, represent the child in court, present the child's wishes to the judge, and protect the child's interests throughout the legal proceedings. Located within the NJOPD, the Office of Law Guardian (OLG) is responsible for providing this legal representation to children in family court matters involving allegations of abuse and neglect against parents or other caregivers, or in cases involving possible termination of parental rights. <a href="http://www.state.nj.us/defender/structure/olg/">http://www.state.nj.us/defender/structure/olg/</a></p> <p>OLG offices are organized county-by-county: <a href="http://www.state.nj.us/defender/regional/index.shtml#2">http://www.state.nj.us/defender/regional/index.shtml#2</a></p> <p>The NJOPD also maintains a "pool" of private attorneys who can be called upon to accept cases that, because of conflicts or other reasons, staff attorneys cannot handle. Pool attorneys are independent contracting state vendors. <a href="http://www.state.nj.us/defender/structure/">http://www.state.nj.us/defender/structure/</a></p>
<p>Funding Child Representation</p>	<p>Most lawyers who represent children in dependency cases – known as “law guardians” – are salaried employees of the Office of the Public Defender. <a href="http://www.state.nj.us/defender/structure/olg/">http://www.state.nj.us/defender/structure/olg/</a></p>
<p>1. General Duties: 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.</p>	<p>In all matters the parties shall have the right to be represented by counsel. In family matters the court shall advise the juvenile and the juvenile's parents, guardian, or custodian of their right to retain counsel and, if counsel is not otherwise provided for the family and if the matter may result in the institutional commitment or other consequence of magnitude to any family member, or if any family member is constitutionally or by law entitled to counsel, the court shall refer the family member to the Office of the Public Defender, if appropriate, or assign other counsel to represent the juvenile or family member. The court may, depending upon the financial circumstances of the parents, guardian or custodian, order them to pay the fee of assigned counsel in such amount as it fixes. The court shall also assign counsel to represent indigents in family actions where a party is by constitution, state or federal, or by law entitled to counsel and there is no publicly-funded source of representation available, except in child support enforcement hearings. <a href="#">N.J. Court Rules, R. 5:3-4.</a></p> <p>In all cases where custody or parenting time/visitation is an issue, the court may, on the application of either party or the child or children in a custody or parenting time/visitation dispute, or on its own motion, appoint counsel on behalf of the child or children. Counsel shall be an attorney licensed to practice in the courts of the State of New Jersey and shall serve as the child's lawyer. The appointment of counsel should occur when the trial court concludes that a child's best interest is not being sufficiently protected by the attorneys for the parties. Counsel may, on an interim basis or at the conclusion of the litigation, apply for an award of fees and costs with an appropriate affidavit of</p>

services, and the trial court shall award fees and costs, assessing same against either or both of the parties. [N.J. Court Rules, R. 5:8A](#)

In all cases in which custody or parenting time/visitation is an issue, a guardian ad litem may be appointed by court order to represent the best interests of the child or children if the circumstances warrant such an appointment. The services rendered by a guardian ad litem shall be to the court on behalf of the child. A guardian ad litem may be appointed by the court on its own motion or on application of either or both of the parents... [N.J. Court Rules, R. 5:8B\(a\)](#)

"Law guardian" means an attorney admitted to the practice of law in this State, regularly employed by the Office of the Public Defender or appointed by the court, and designated under P.L.1974, c.119 to represent minors in alleged cases of child abuse or neglect and in termination of parental rights proceedings. [N.J. Stat. § 9:6-8.21\(1\)\(d\)](#)

- a. Any minor who is the subject of a child abuse or neglect proceeding under this act must be represented by a law guardian to help protect his interests and to help him express his wishes to the court. However, nothing in this act shall be construed to preclude any other interested person or agency from appearing by counsel.
- b. The Superior Court, Chancery Division, Family Part, on its own motion, will make appointments of law guardians. [N.J. Stat. § 9:6-8.23\(3\)](#).

b. A child who is the subject of an application for the termination of parental rights pursuant to section 15 of P.L.1951, c.138 (C.30:4C-15) shall be represented by a law guardian as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21).

If the child was represented by a law guardian in a child abuse and neglect action filed pursuant to chapter 6 of Title 9 of the Revised Statutes, the same law guardian, to the extent practicable, shall continue to represent the child in the termination of parental rights action, unless that law guardian seeks to be relieved by the court upon application for substitution of counsel or other just cause.

c. The Office of the Public Defender is authorized to provide representation to children and indigent parents in termination of parental rights proceedings under Title 30 of the Revised Statutes pursuant to the provisions of this section. [N.J. Stat. § 30:4C-15.4\(b\)-\(c\)](#)

A court-appointed guardian ad litem's services are to the court on behalf of the child. The GAL acts as

	<p>an independent fact finder, investigator and evaluator as to what furthers the best interests of the child. The GAL submits a written report to the court and is available to testify. If the purpose of the appointment is for independent investigation and fact finding, then a GAL would be appointed. The GAL can be an attorney, a social worker, a mental health professional or other appropriate person. If the primary function of the GAL is to act in the capacity of an expert, then the court should ordinarily appoint a GAL from the appropriate area of expertise. Attorneys acting on behalf of children in abuse or neglect cases and in termination of parental rights cases should act as counsel for the child pursuant to Rule 5:8A rather than in the capacity of a GAL pursuant to Rule 5:8B. <a href="#">N.J. Court Rules, R. 5:8B comment</a></p>
<p>2. Out of Court - Actions to be Taken: Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</p>	<p>The duties of a guardian may include, but need not be limited to, the following:</p> <ol style="list-style-type: none"> <li>1. Interviewing the children and parties.</li> <li>2. Interviewing other persons possessing relevant information.</li> <li>3. Obtaining relevant documentary evidence.</li> <li>4. Conferring with counsel for the parties.</li> <li>5. Conferring with the court, on notice to counsel.</li> <li>6. Obtaining the assistance of independent experts, on leave of court.</li> <li>7. Obtaining the assistance of a lawyer for the child (Rule 5:8A) on leave of court.</li> <li>8. Such other matters as the guardian ad litem may request, on leave of court. <a href="#">N.J. Court Rules, R. 5:8B(a)</a></li> </ol>
<p>3. In Court – Active Participation in Hearings: Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake</p>	<p>The guardian ad litem shall file a written report with the court setting forth findings and recommendations and the basis thereof, and shall be available to testify and shall be subject to cross-examination thereon. In addition to the preparation of a written report and the obligation to testify and be cross-examined thereon, the duties of a guardian may include, but need not be limited to, the following...</p> <ol style="list-style-type: none"> <li>5. Conferring with the court, on notice to counsel. <a href="#">N.J. Court Rules, R. 5:8B(a)</a></li> </ol> <p>The court may adjourn a fact-finding hearing or a dispositional hearing for good cause shown on its own motion or on the motion of ... the law guardian <a href="#">N.J. Stat. § 9:6-8.48</a></p> <p>For good cause shown and after due notice, the court on its own motion, or that of the county prosecutor, the law guardian, the respondent's attorney, or the division may stay execution of arrest, set</p>

<p>certain obligations post-disposition.</p>	<p>aside, modify or vacate any order issued in the course of a proceeding under this act. The court must state the grounds for this action. <a href="#">N.J. Stat. § 9:6-8.59</a></p>
<p>4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders</p>	<p>For good cause shown and after due notice, the court on its own motion, or that of the county prosecutor, the law guardian, the respondent's attorney, or the division may stay execution of arrest, set aside, modify or vacate any order issued in the course of a proceeding under this act. The court must state the grounds for this action. <a href="#">N.J. Stat. § 9:6-8.59</a></p>
<p>5. Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>No explicit legal authority.</p>
<p>6. Cessation of Representation: Contacts post representation, if any</p>	<p>The term of the guardian ad litem shall be coextensive with the application pending before the court and shall end on the entry of a judgment of divorce, dissolution of a civil union or termination of a domestic partnership or an order terminating the application for which the appointment was made, unless continued by the court. The guardian ad litem shall have no obligation to file a notice of appeal from a judgment or order nor to participate in an appeal filed by a party. <a href="#">N.J. Court Rules, R. 5:8B(c)</a></p>
<p>7. General Representation Rules: Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</p>	<p>The Office of the Public Defender is authorized to provide representation to children and indigent parents in termination of parental rights proceedings under Title 30 of the Revised Statutes pursuant to the provisions of this section. (1) In selecting attorneys to serve as law guardians or counsel for indigent parents, the Office of the Public Defender shall take into consideration the nature, complexity and other characteristics of the cases, the services to be performed, the status of the matters, the attorney's pertinent trial and other legal experience and other relevant factors. The Office of the Public Defender also shall take into consideration an attorney's willingness to make a commitment to represent a child or parent, as applicable, in any actions taken under Titles 9 and 30 of the Revised Statutes related to child abuse and neglect and termination of parental rights. <a href="#">N.J. Stat. § 30:4C-15.4 (c)</a></p>

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<p>8. Lawyer Training: Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</p>	<p>The Office of the Public Defender shall ensure that an attorney selected pursuant to this section has received training in representing clients in child abuse and neglect and termination of parental rights actions from the Office of the Public Defender or will receive such equivalent training, as soon as practicable, from other sources. <a href="#">N.J. Stat. § 30:4C-15.4 (c)(2)</a></p>
<p>9. Lawyer Compensation: Adequate and timely compensation, reimbursement provided for expenses.</p>	<p>-The hourly rate to be charged by the guardian ad litem shall be fixed in the initial appointing order and the guardian ad litem shall submit informational monthly statements to the parties. The court shall have the power and discretion to fix a retainer in the appointing order and to allocate final payment of the guardian ad litem fee between the parties. The guardian ad litem shall submit a certification of services at the conclusion of the matter, on notice to the parties, who will thereafter be afforded the right to respond prior to the court fixing the final fee. <a href="#">N.J. Court Rules, R. 5.8(d)</a></p> <p>Most lawyers who represent children in dependency cases – known as “law guardians” – are salaried employees of the Office of the Public Defender. <a href="http://www.state.nj.us/defender/structure/olg/">http://www.state.nj.us/defender/structure/olg/</a></p>
<p>10. Caseload Levels: Caseloads are of a manageable size</p>	<p>No explicit legal authority.</p>