

Child Protection Committee

Role of the Guardian Ad Litem

Summary: The Vermont Guardian Ad Litem Program is administered from the Office of the Court Administrator within the Judiciary. There are currently 290 active volunteer guardian ad litem (GALs) in Vermont, with four part-time supervisory coordinator positions, the equivalent of 1.7 full-time coordinators. The role of the GAL is to assist the child in understanding the process and to provide information to the court that will assist the parties in achieving a satisfactory outcome. The guardian ad litem shall act as an independent parental advisor and advocate whose goal shall be to safeguard the child's best interest and rights.

Current Law: Under Title 33, the court shall appoint a GAL for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters. 33 V.S.A. § 5112. The GAL must be provided with the following: notice of the time and date of the temporary care hearing, a copy of the initial case plan (filed within 60 days of the temporary care order), and upon request, DCF records of abuse and neglect. 33 V.S.A. §§ 4921, 5306, and 5314. In addition to CHINS cases, GALs may be appointed to other dockets as well, including juvenile delinquency cases under 33 V.S.A. § 5112(b), cases of abuse, neglect, or exploitation of vulnerable adults under 33 V.S.A. chapter 69, parental rights and responsibilities cases under 15 V.S.A. chapter 11, and relief from abuse cases under 15 V.S.A. chapter 21. In addition, GALs may be appointed in criminal cases for older youth and adults, mental health cases, probate cases, and civil cases, such as stalking, sexual assault; and landlord-tenant disputes.

In all proceedings under the child protection chapters, 33 V.S.A. chapters 51, 52 and 53, appointment and duties of a guardian ad litem for the child shall be governed by the Vermont Rules for Family Proceedings (VRFP).

GAL Duties: Under V.R.F.P. 6, which governs the role of the GAL in CHINS proceedings, the activities to be carried out by the GAL include:

- (1) meeting with the child, the child's attorney, and others who may be necessary for an understanding of the issues in the proceeding;
- (2) familiarizing him or herself with the pleadings, reports, and other documents;
- (3) discussing with the child and the child's attorney all options which may be presented to the court, and assisting the attorney in advising the child regarding those options.

Role in Court Proceedings: Under V.R.F.P. 6, at any hearing, the court may inquire whether the GAL is satisfied with the representation of the child by the attorney, including the presentation of evidence made by the child's attorney. If the GAL at any time is not satisfied that the child's rights and interests are being effectively represented, the GAL has an obligation to notify the court.

At a disposition hearing, temporary care hearing, or any other phase of the proceeding *except* for the merits hearing, the GAL may state his or her position or opinion and the reasons for that opinion. The reasons for the GAL's opinion shall be based upon the evidence which is in the record. In the merits hearing, the GAL shall not be asked for nor provide an opinion on the merits to the court.

A GAL may be called as a witness, but if the GAL appears as a witness, the court will usually appoint the child a new GAL. The court may only hear from a GAL as a witness when the GAL's testimony would be directly probative of the child's best interest, and no other person could be subpoenaed to testify on the same subject matter. If the GAL prepares a written report at any phase of the proceeding, it shall be submitted to the court only by agreement of the parties or pursuant to the Vermont Rules of Evidence.

Issues and Potential Committee Options: The Committee heard testimony from several GALs that designated, experienced coordinators to provide mentoring are necessary for the GALs to provide the best services to children. The National Court Appointed Special Advocates, the federal agency that provides funding to Vermont's GAL program, requires one full-time coordinator for every 30 active GAL volunteers. The Committee also heard testimony that the GALs can be assigned to cases on many other dockets, depleting the GAL resources available for CHINS cases. Potential solutions include increasing resources available to the GAL program to provide state-wide coordinator coverage, and limiting the types of cases that can be assigned to a GAL.

In addition, the Committee could recommend an amendment to require by statute that judges consistently request a status update from the GAL at pre-trial proceedings to increase the information available to the court and the parties about the safety and well-being of the child. The Committee could also recommend an amendment to require by statute that judges inquire of the GAL whether the evidence presented at hearings is sufficient. This would increase information available to judges about witnesses that might be available but have not been called by the attorney.