

PART IV: REPRESENTATION OF PARTIES

CHAPTER 6: TYPES OF REPRESENTATION

Judges need complete and accurate information in order to make well-informed decisions. This chapter looks at attorneys who appear in juvenile proceedings and the volunteer Guardians ad Litem who advocate for the child's best interest.

State's Attorneys (prosecutors) in each county file the initial petition with the court. The Public Defender system generally represents children, and parents are represented through a contract system set up by the Defender General's Office.¹ Vermont provides separate legal representation for both parents. When and if a termination of parental rights (TPR) petition is filed, the Attorney General's Office usually represents the state.

6.1. THE CAST OF PLAYERS: ROLES & RESPONSIBILITIES

6.1.1. The "State" (State's Attorneys)

Juvenile petitions are brought on behalf of the "state" by state's attorneys.² They represent "the people" of Vermont, not the Family Services Division. Consequently, at times the state's attorney may advocate in court for a position that differs from the caseworker's.³ Twenty-eight percent of the caseworkers surveyed report this happens occasionally to often, while 67% of them rarely encountered that situation.⁴

Most state's attorneys are reluctant to "advise" DCF workers, as the worker is not the prosecutor's client. However, there is collaboration with respect to strategizing how a case will proceed, and discussion and assistance given for preparing for hearings.

In ten counties out of fourteen counties, there is a prosecutor assigned to do the bulk of the juvenile work.⁵ In the other four counties, there are no prosecutors specifically designated to cover or "specialize" in that docket. In most Vermont counties, the state's attorneys also carry a criminal court caseload, in which they practice in an adversarial environment.

In the survey, 44% of the Assistant Attorneys General (AAGs), attorneys, and caseworkers supported a system of designated state's attorneys who specialize in the juvenile docket, with Department counsel available to Family Services caseworkers when needed.⁶ There was less

¹ Of the survey respondents, one-third replied that their caseload is a 50/50 mix representing juveniles and parents. Survey Q9.

² The state's attorneys are elected in each of the fourteen counties and hire their deputies who handle much of the juvenile work.

³ One caseworker responded that this is a factor causing delay.

⁴ DCF Survey Q65.

⁵ Caledonia, Franklin, Grand Isle, and Washington counties do not specifically designate a deputy/state's attorney to the juvenile docket. Source: Juvenile Docket Clerks.

⁶ Survey Q64.

support expressed for a system where Department counsel would “prosecute” the case from detention through permanency.⁷

Recommendations:

- State’s Attorney’s Association and CAO/Supreme Court should encourage local State’s Attorneys to designate an attorney in each office to specialize in the juvenile docket, and ensure that person is adequately trained.
- The roles of the state’s attorney vis a vis the AAGs in their role as “corporate counsel” should be clarified. The following issues should be explained in writing:
 - Who is responsible to advise agency caseworkers on the legal requirements of CHINS cases;
 - Who the state’s attorney represents at the hearing, e.g, who the “client” is;
 - What the minimum training for attorneys assigned to this case type is;
 - What the role of the AAGs is when acting as the agency’s attorney or in their advisory capacity to the state’s attorney’s office.

The initial assessment found that many of the state’s attorneys assigned to the juvenile docket were among the newest and least experienced attorneys in the office. This is no longer the case. In some counties, such as Chittenden, the juvenile docket is covered by some of the more experienced prosecutors.

State’s attorneys remain with a juvenile case unless a TPR is filed, at which time the AAG almost always steps in to litigate the TPR.

6.1.2. Agency Representation: Assistant Attorneys General (AAGs)

The AAGs represent the interests of the Family Services Division as well as the “people” of Vermont. In addition to representing DCF in TPR and appellate proceedings, AAGs act as “corporate” counsel. They advise the department on pending legislation, represent the department in civil and other litigation involving the department’s interests, draft and review contracts, and represent the department in administrative appeals related to matters of foster care licensing, child care subsidy, child care licensing and central registry use. There are currently six full time AAGs to represent DCF around the state at TPR hearings, one half-time AAG who handles TPR appeals, and one vacant position.

In 1996, virtually all stakeholder groups identified the lack of AAG resources as a major contributor to delay.⁸ This was not identified as a source of delay in the 2005 reassessment. In fact, 63% of the AAG survey respondents believe there are adequate resources available for them to manage abuse/neglect cases.⁹ The vast majority of the 2005 survey responses rated the level of AAG performance as *good* to *excellent*. This is consistent with findings of the initial assessment, in which stakeholder groups expressed confidence in the preparation and performance of AAGs in TPR proceedings.

⁷ The issue of representation for DCF was explored in *A Plan to Achieve Permanence*, Recommendation 29.

⁸ In August 1996, there were 94 pending TPRs being handled by five AAGs. As of June 3 2005, there were 104 pending TPRs handled by six AAGs.

⁹ AAG Survey Q16.

6.1.3. Public Defenders

Under Vermont law, every child is represented by an attorney through the public defender system. More often than not, the local public defender is assigned to represent the child, while the Defender General’s “contract counsel” are assigned to represent the parent(s) if financially eligible. Sometimes private “ad hoc” attorneys may be appointed if the contract counsel has conflicts and are, therefore, precluded from representing the child or parents. This is the “third tier” of the Defender General system.

6.1.4. Contract & Assigned Counsel

The Defender General’s Office contracts with private attorneys to represent parties in situations where the public defender has a conflict or is otherwise unable to represent the party. Since the initial assessment, maintaining a pool of competent and skilled contract attorneys, who mostly represent parents, has been a challenge. In the past, contract attorneys carried higher caseloads and were paid considerably less than they are today. This resulted in a high turnover rate for those positions. Recently, compensation for contract attorneys has increased as has the number of contract counsel, resulting in an improvement in the quality of representation by contract counsel.

All parties should be represented by attorneys with specialized interest and training in child in need of care and supervision matters.

*A Plan to Achieve Permanence,
Recommendation 28*

6.1.5. Guardians ad Litem (GAL)

Guardians ad Litem in Vermont are volunteers who advocate for the best interests of children. In child protection cases, they are often the “eyes and ears” of the child’s attorney. Most of the work the GALs do is out of court and involves gathering information, interviewing the parties, and working with the other professionals in the case to work toward attaining the goal of safeguarding the child’s best interest and rights.¹⁰

“A great GAL is able to bring opposing sides towards a resolution for the child’s best interest.”

GAL Survey Q80

Although the Juvenile Proceedings Act states that a Guardian ad Litem *or* counsel shall be appointed for children, it is practice in Vermont that the court appoints both in CHINS cases.¹¹ In delinquency cases, the GAL often is the child’s parent, unless the court believes that the child’s interests cannot be served by a parent acting as

GAL. As was the case when the initial assessment was conducted, GALs are appointed in virtually all CHINS cases prior to the merits hearing, except in counties where there are severe shortages of GALs. Currently GALs are appointed within an average of 4 days of case filing, compared to 14 days in FY00.¹²

¹⁰ V.R.F.P. 6.

¹¹ 33 V.S.A. § 5525. Some courts that have a shortage of GALs will proceed without one. For abuse/neglect cases filed in FY04, 95% had a GAL. This figure fluctuates from 90% in FY03 to a high of 97% in FY99. Source: Extract 12; rpt5.1.

¹² Source: Extract 12.