

DELAWARE

<p>Structure, organization, and delivery of Child Representation State-by-state, county-by-county, etc.</p>	<p>State-organized system of representation</p> <p>The General Assembly has recognized the need to safeguard the welfare of abused, neglected and dependent children in this State. As such, it has charged the Office of the Child Advocate and the Court-Appointed Special Advocate Program with ensuring representation of children's best interests in child welfare proceedings through appointment of guardians ad litem. To this end, the Office shall coordinate with the Family Court and the Court-Appointed Special Advocate program to implement and administer a program for guardian ad litem representation of children. DEL. CODE ANN. tit. 29, § 9007A(a)(1).</p>
<p>Funding Child Representation</p>	<p>The General Assembly may annually appropriate such sums as it may deem necessary for the payment of the salary of the Child Advocate, the assistants, and the staff, and for the payment of actual expenses incurred by the Office of Child Advocate. DEL. CODE ANN. tit. 29, § 9004A.</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>A guardian ad litem may be appointed upon motion by any party to the action, the Office of the Child Advocate, Court Appointed Special Advocate, or upon the Court’s own initiative. DEL. FAM. CT. R. CIV. P. 204 (page 55).</p> <p>Rule 207. Appointment of Guardian Ad Litem, Court Appointed Special Advocate, or Counsel for the Child</p> <p>(a) The Court shall appoint an attorney authorized to practice law in this state or a Court Appointed Special Advocate (“CASA”) to represent the best interests of the child.</p> <p>(b) The Court may appoint an attorney authorized to practice law in this state to represent the wishes of the child. 2015 DELAWARE COURT ORDER 0011 (D.O. 0011).</p> <p>The Court and each Judge shall have authority to:</p> <p>(14) Appoint guardians ad litem;</p> <p>(17) Appoint attorneys and/or Court-Appointed Special Advocates to serve as guardians ad litem to represent the best interests of a child in any child welfare proceeding DEL. CODE ANN. tit. 10, § 925(14), (17).</p> <p>For the purposes of a CAPTA grant to the State...or any related state or federal legislation, the CASA shall be deemed a GAL to represent the best interests of the minor in proceedings before the Court. No bond shall be required from any CASA who serves as a GAL. DEL. CODE ANN. tit. 31 § 3607.</p> <p>(9) “Guardian <i>ad litem</i>” means an individual appointed by the Court to represent the best interests of a child whether or not that reflects the wishes of the child, who by their appointment shall be a party to the child welfare proceeding. The guardian <i>ad litem</i> is charged with obtaining a clear understanding of the situation and needs of the child, and making recommendations to the Court as to what is in the best interests of the child. DEL. CODE ANN. tit. 31, § 3602(9); DEL. CODE ANN. tit. 29, § 9002A(11).</p> <p>(11) “Guardian ad litem” means an individual appointed by the Court to represent the best interests of a child, whether or</p>

not that reflects the wishes of the child, who by that individual's appointment shall be a party to the child welfare proceeding. [DEL. CODE ANN. tit. 13, § 2302\(11\)](#).

When a petition is filed [in a Department of Services for Children, Youth and Their Families (DSCYF)] proceeding, the Court shall appoint an attorney authorized to practice law in this State or a Court-Appointed Special Advocate to represent the best interests of the child. The Court, in its discretion, may also appoint an attorney to represent the child's wishes...When determining whether to appoint an attorney or Court-Appointed Special Advocate, the Court, in its discretion, should assign the most complex and serious cases to attorneys through the Office of the Child Advocate. [DEL. CODE ANN. tit. 13, § 2504\(f\)](#).

In the event that the Family Court Judge determines...that an attorney guardian ad litem should be appointed, the Family Court Judge shall sign an order appointing the attorney guardian ad litem. That order shall impose on the attorney guardian ad litem all the duties, rights and responsibilities set forth in this section. Upon entry of the order, the attorney guardian ad litem shall have the authority to review all documents and interview all pertinent persons having significant information relating to the child and the child's life circumstances. [DEL. CODE ANN. tit. 29, § 9007A\(b\)\(1\)](#).

[In addition to appointing an attorney to represent the best interests of the child], [t]he Court, in its discretion, may also appoint an attorney to represent the child's wishes. [DEL. CODE ANN. tit. 13, § 2504\(f\)](#).

The appointment [of the attorney GAL] shall last until the attorney guardian ad litem is released from responsibility by order of the Court, or until the attorney guardian ad litem's commitment to the Court ends. [DEL. CODE ANN. tit. 29, § 9007A\(b\)\(2\)](#).

The attorney guardian ad litem shall be a party to any child welfare proceeding in which the child is the subject, and shall possess all the procedural and substantive rights of a party. [DEL. CODE ANN. tit. 29, § 9007A\(3\)](#).

The attorney guardian ad litem's duty is to the child. The scope of the representation of the child is the child's best interests. The attorney guardian ad litem shall have the duty of confidentiality to the child unless disclosure is necessary to protect the child's best interests. ... [DEL. CODE ANN. tit. 29, § 9007A\(c\)](#).

[T]he attorney guardian ad litem shall:

(14) Ascertain the wishes of the child and make the child's wishes known to the Court. If the attorney guardian ad litem concludes that the child's wishes differ from the position of the attorney guardian ad litem, he or she will notify the Court of the conflict. [DEL. CODE ANN. tit. 29, § 9007A\(c\)](#).

"When a client's capacity to make adequately considered decision in connection with a representation is diminished, whether because of minority...the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client." [Del. R. Prof. Cond. 1.14\(a\)](#).

"When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or

	<p>other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.” Del. R. Prof. Cond. 1.14(b).</p> <p>Upon presentation of the order of appointment by the attorney guardian ad litem, any agency, hospital, school, organization, division or department of the State, doctor, nurse or other health care provider, treatment facility, psychologist, psychiatrist, police department or mental health clinic shall permit the attorney guardian ad litem to inspect and copy any records relating to the child and parents involved in the case of appointment without consent of the child or parents. DEL. CODE ANN. tit. 29, § 9007A(b)(4).</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>[T]he attorney guardian ad litem shall:</p> <p>(1) Represent the best interests of the child in all child welfare proceedings, and explain to the child, taking into account the child's ability to understand the proceedings, the duties of the guardian ad litem...</p> <p>(3) Conduct an independent investigation of the circumstances of a case of appointment, which shall include but not be limited to interviews and/or observations of the child and relevant individuals, as well as a review of all relevant records and reports;</p> <p>5) Participate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals... DEL. CODE ANN. tit. 29, § 9007A(c)(1), (3), (5).</p>
<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 certain obligations post-disposition.</p>	<p>The attorney guardian ad litem's duty is to the child. The scope of the representation of the child is the child's best interests. The attorney guardian ad litem shall have the duty of confidentiality to the child unless disclosure is necessary to protect the child's best interests. As such, the attorney guardian ad litem shall:</p> <p>(4) Present evidence to the Court in support of his or her position...</p> <p>(6) Participate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals...</p> <p>(8) Monitor cases to which they are appointed to assure that the terms of the Court's orders are fulfilled and permanency for the child is achieved...</p> <p>(11) Request a hearing before the Court when the plan on behalf of the child is not implemented, is not meeting the child's needs, or upon completion of a Division investigation;</p> <p>(12) Request any appropriate relief from the Court on behalf of the child;</p> <p>(13) Appear, when appropriate, on behalf of a child before the Violent Crimes Compensation Board, to pursue a claim on behalf of the child, as set forth in Chapter 90 of Title 11 DEL. CODE ANN. tit. 29, § 9007A(c).</p>
<p>4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders</p>	<p>[T]he attorney guardian ad litem shall:</p> <p>(8) Monitor cases to which they are appointed to assure that the terms of the Court's orders are fulfilled and permanency for the child is achieved...</p> <p>(11) Request a hearing before the Court when the plan on behalf of the child is not implemented, is not meeting the child's needs, or upon completion of a Division investigation;</p> <p>(12) Request any appropriate relief from the Court on behalf of the child. DEL. CODE ANN. tit. 29, § 9007A(c).</p>

<p>5. Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>[T]he attorney guardian ad litem shall: (6) Participate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals DEL. CODE ANN. tit. 29, § 9007A(c)(6).</p>
<p>6. Cessation of Representation: Contacts post representation, if any</p>	<p><i>No explicit legal authority or requirement.</i></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>In the event that the Family Court Judge determines...that an attorney guardian ad litem should be appointed, the Family Court Judge shall sign an order appointing the attorney guardian ad litem. That order shall impose on the attorney guardian ad litem all the duties, rights and responsibilities set forth in this section. Upon entry of the order, the attorney guardian ad litem shall have the authority to review all documents and interview all pertinent persons having significant information relating to the child and the child's life circumstances. DEL. CODE ANN. tit. 29, § 9007A(b)(1).</p> <p>The Office [of the Child Advocate] shall coordinate with the Family Court and the CASA program to implement and administer a program for GAL representation of children. DEL. CODE ANN. tit. 29, § 9007A(a)(1).</p> <p>Child's representative is independent of the court.</p>
<p>8. Lawyer Training: Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</p>	<p>The attorney GAL shall...be trained by the Office of the Child Advocate or a course approved by the Office prior to representing any child before the Court. The attorney guardian ad litem shall be required to participate in ongoing training regarding child welfare. DEL. CODE ANN. tit. 29, § 9007A(c)(2).</p>
<p>9. Lawyer Compensation: Adequate and timely compensation, reimbursement provided for expenses.</p>	<p><i>No explicit legal authority or requirement.</i></p> <p>The attorney shall be employed, contracted and/or appointed by the Office DEL. CODE ANN. tit. 29, § 9007A(c)(2).</p>
<p>10. Caseload Levels: Caseloads are of a manageable size.</p>	<p><i>No explicit legal authority or requirement.</i></p>