

**SUPREME COURT OF PENNSYLVANIA
JUVENILE COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.J.C.P. 1151

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 1151 to provide for the appointment of counsel for a dependent child 18 years of age or older for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **May 14, 2018**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court Procedural Rules Committee,

Jennifer R. Sletvold, Chair

**SUPREME COURT OF PENNSYLVANIA
JUVENILE COURT PROCEDURAL RULES COMMITTEE**

REPORT

Proposed Amendment of Pa.R.J.C.P. 1151

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 1151 to provide for the appointment of counsel for a dependent child 18 years of age or older.

The Juvenile Act provides that “[e]xcept as provided under section 6337.1 (relating to right to counsel for children in dependency and delinquency proceedings), counsel must be provided for a child.” 42 Pa.C.S. § 6337. Section 6337.1 states “[l]egal counsel shall be provided for a child who is alleged or has been found to be a dependent child in accordance with the Pennsylvania Rules of Juvenile Court Procedure.” 42 Pa.C.S. § 6337.1(a).

The statutory directive for the provision of counsel is satisfied when a dependency proceeding is initiated because statute further provides that an alleged dependent child is to be appointed an attorney to serve as a guardian ad litem (“GAL”) to represent the legal interests and the best interests of the child. See 42 Pa.C.S. § 6311(a). The procedures for doing so are set forth in Pa.R.J.C.P. 1151. When legal and best interests may conflict, the GAL is to seek the appointment of counsel to represent the child’s legal interests. See Pa.R.J.C.P. 1151, Comment at ¶ 2.

The Committee recently considered the distinction between the appointment of a GAL and the appointment of counsel when a child is 18 years of age or older in the context of resumption of jurisdiction. For example, Rule 1151(B)(1)(f) provides counsel for the child who has filed a motion for the resumption of jurisdiction, but Rule 1151(A) does not provide for the appointment of a GAL for the child. In contrast, it was reported that a child 18 years of age or older remaining under the jurisdiction of the juvenile court would continue to have a GAL.

This illustration led to a further examination of the GAL paradigm and whether a GAL, as opposed to counsel, should represent a child 18 year of age or older. It was believed at that age that many children could express their own interests and direct counsel. Accordingly, the Committee proposes amendment of Rule 1151 to maintain the current model of a GAL in all cases and counsel when there is a conflict for a child under 18 years if age. However, the Committee further proposes a reversal of the model for a child 18 years of age or older whereby counsel would be appointed in all cases and a GAL when there is a conflict.

The Committee acknowledges a previous proposal that sought to clarify the role and duties of attorneys in juvenile court proceedings patterned after the American Bar Association's Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. See 42 Pa.B. 5470 (August 25, 2012). The present proposal is not intended as a revision and republication of that earlier proposal.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

RULE 1151. ASSIGNMENT OF GUARDIAN AD LITEM AND COUNSEL

A. **Guardian ad litem for child.** The court shall assign a guardian ad litem to represent the legal interests and the best interests of the child **less than 18 years of age** if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

- 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.C.S. § 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.

B. **Counsel for child.** The court shall appoint legal counsel for a child:

- 1) if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:
 - 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);

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

f) has filed a motion for resumption of jurisdiction pursuant to Rule 1634;
[or]

2) **when the child is 18 years of age or older; or**

3) upon order of the court.

C. Counsel and Guardian ad litem for child.

1) If a child has legal counsel and a guardian ad litem, counsel shall represent the legal interests of the child and the guardian ad litem shall represent the best interests of the child.

2) If a child younger than 18 years of age has a guardian ad litem, then that representative may be appointed as counsel when the child becomes 18 years of age unless the court determines there is a conflict.

D. Time of appointment.

1) **Child in custody.** The court shall appoint a guardian ad litem or legal counsel immediately after a child is taken into protective custody and prior to any proceeding.

2) **Child not in custody.** If the child is not in custody, the court shall appoint a guardian ad litem or legal counsel for the child when a dependency petition is filed.

E. Counsel for other parties. If counsel does not enter an appearance for a party, the court shall inform the party of the right to counsel prior to any proceeding. If counsel is requested by a party in any case, the court shall assign counsel for the party if the party is without financial resources or otherwise unable to employ counsel. Counsel shall be appointed prior to the first court proceeding.

Comment

See 42 Pa.C.S. §§ 6302, 6311, and 6337.

The age specifications set forth in paragraphs (A) and (B)(2) are intended to effectuate a requirement that a guardian ad litem be appointed in every case

when a child is younger than 18 years of age and counsel be appointed in every case when a child is 18 years of age or older.

The guardian ad litem for the child **younger than 18 years of age** may move the court for appointment as legal counsel and assignment of a separate guardian ad litem, when, for example, the information that the guardian ad litem possesses gives rise to the conflict and can be used to the detriment of the child. To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. See Rule 1800. See *a/so* Pa.R.P.C. 1.7 and 1.8.

Pursuant to paragraph (B)(1)(f), the court is to appoint legal counsel when a motion for resumption of jurisdiction has been filed. It is best practice to appoint the guardian ad litem or legal counsel who was previously assigned to the child as legal counsel.

Under paragraph (C), legal counsel represents the legal interests of the child and the guardian ad litem represents the best interests of the child.

Nothing in these rules anticipates that a guardian **[ad litem]** for an adult is to be appointed by these rules. For appointment of a guardian of the person, see 20 Pa.C.S. § 5501 *et seq.* and Pa. O.C. Rules 14.2—14.5.

Pursuant to paragraph (E), the court is to inform all parties of the right to counsel if they appear at a hearing without counsel. If a party is without financial resources or otherwise unable to employ counsel, the court is to appoint counsel prior to the proceeding. Because of the nature of the proceedings, it is extremely important that every “guardian” has an attorney. Therefore, the court is to encourage the child’s guardian to obtain counsel. Pursuant to Rule 1120, a guardian is any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian for purposes of a proceeding. See Pa.R.J.C.P. 1120.

Official Note: Rule 1151 adopted August 21, 2006, effective February 1, 2007. Amended February 20, 2007, effective immediately. Amended May 12, 2008, effective immediately. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013. **Amended _____, 2018, effective _____, 2018.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1151 published with the Court’s Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to this rule published with the Court’s order at 37 Pa.B. 1123 (March 10, 2007). Final Report explaining the amendments to Rule 1151 published with the Court’s Order at 38

Pa.B. 2360 (May 24, 2008). Final Report explaining the amendments to Rule 1151 published with the Court's Order at 41 Pa.B. 2430 (May 14, 2011). Final Report explaining the amendments to Rule 1151 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013). **Final Report explaining the amendments to Rule 1151 published with Court's Order at Pa.B. (, 2018).**