

RULE 1151. ASSIGNMENT OF GUARDIAN *AD LITEM* & 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 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); or
 - 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

2) upon order of the court.

C. **Counsel and Guardian *ad litem* for child.** 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.

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 guardian *ad litem* for the child may move the court for appointment as legal counsel and assignment of a separate guardian *ad litem* **when, for example, [especially if]** the information that the guardian *ad litem* **possesses gives [is privy to is]** rise **to [for]** 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 also Pa.R.P.C. 1.7 and 1.8. Under paragraph (C), legal counsel represents the legal interests of the child and the guardian *ad litem* represents the best interests of the child.