Obtaining Special Immigrant Juvenile Status Findings in Connecticut Probate Courts

Selected Resources and Materials

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SIJS Pro-Bono Training

2015

Legal Representation of Undocumented Children in Connecticut's Probate Courts

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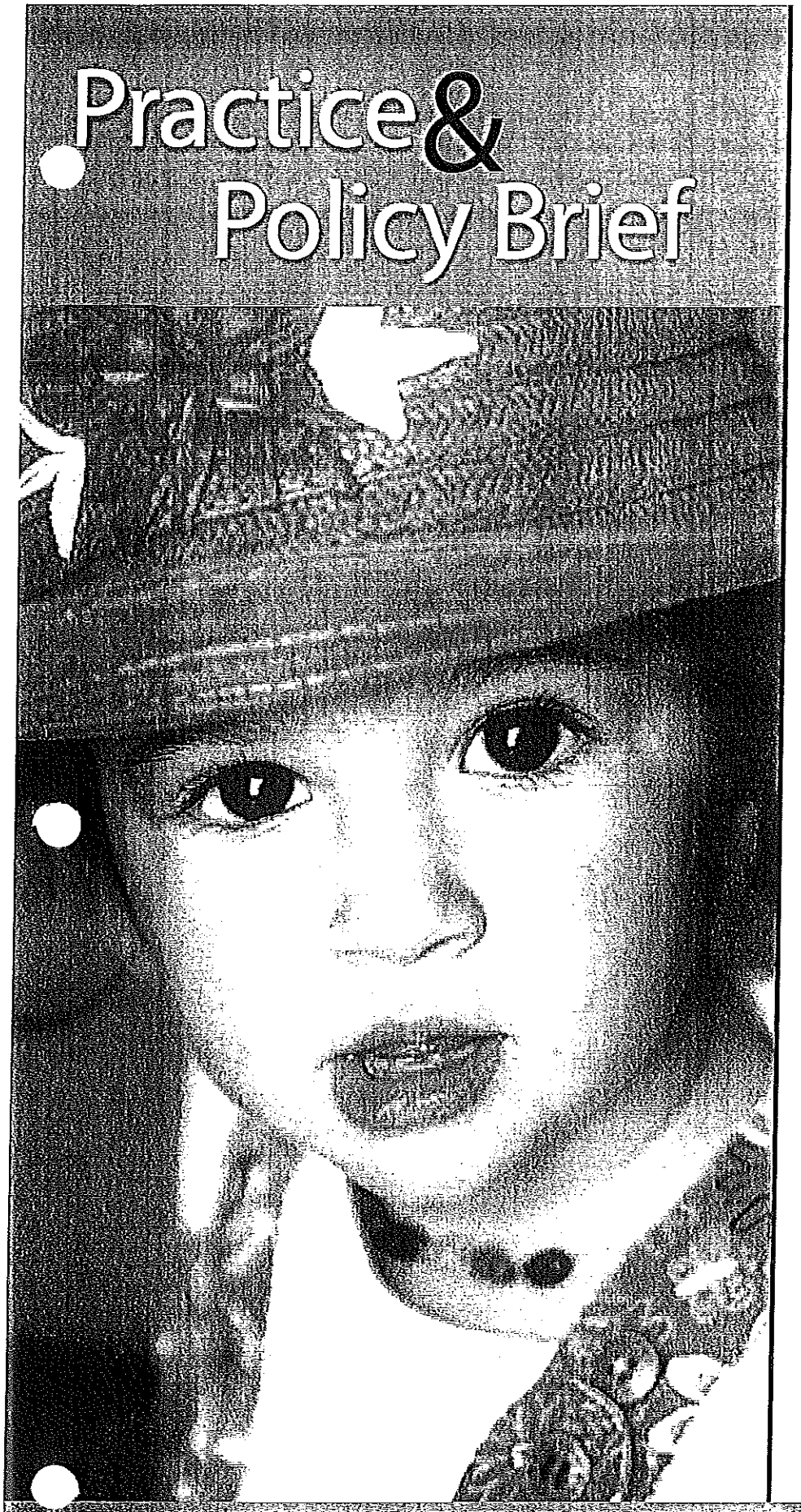
Center for Children's Advocacy

Obtaining Special Immigrant Juvenile Status Findings
in Connecticut Probate Courts

Chapter One

Representing Children and Adolescents

Practice & Policy Brief



Advocating for Very Young Children in Dependency Proceedings:

The Hallmarks of Effective, Ethical Representation

October 2010

Author
Candice L. Maze, JD

Entire Practice & Policy Brief can be found at:

http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/ethicalrep_final_10_10.authcheckdam.pdf

ABA Center on Children and the Law

Recommended Reading on Child Development and Child Maltreatment

Ethical Considerations

- Koh Peters, Jean. *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions.* Lexis Nexis, 2001.
- Renne, Jennifer L. *Legal Ethics in Child Welfare Cases.* Washington, DC: ABA Center on Children and the Law, 2004.

Early Child Development & Maltreatment

- Shonkoff, Jack P. and Deborah A. Phillips, eds. *From Neurons to Neighborhoods: The Science of Early Childhood Development.* National Research Council and Institute of Medicine Committee on Integrating the Science of Early Childhood Development. Washington, DC: National Academy Press, 2000.
- Jones Harden, Brenda. *Infants in the Child Welfare System: A Developmental Framework for Policy & Practice.* Washington, DC: Zero to Three, 2007.

Infant Mental Health & Early Trauma

- *Handbook of Infant Mental Health, Third Edition.* Zeanah, Charles H., ed. New York: The Guilford Press, 2009.
- *Young Children and Trauma: Intervention and Treatment.* Osofsky, Joy, ed. New York: The Guilford Press, 2007.

Health & Well-Being

- *Healthy Beginnings, Healthy Futures: A Judge's Guide.* ABA Center on Children and the Law, National Council of Juvenile and Family Court Judges, and Zero to Three National Policy Center, 2009.
- Osofsky, Joy et al. *Questions Every Judge and Lawyer Should Ask about Infants and Toddlers in the Dependency System.* Reno, NV: National Counsel of Juvenile and Family Court Judges, 2001.

System Advocacy

- Dicker, Sheryl. *Reversing the Odds: Improving Outcomes for Babies in the Child Welfare System.* Baltimore: Brookes Publishing, Inc., 2009.
- Katz, Lynne, Cindy Lederman and Joy Osofsky. *Child-Centered Practices for the Courtroom and Community: A Guide to Working Effectively with Young Children and their Families in the Child Welfare System.* Baltimore: Brookes Publishing, Inc., 2010.

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Helping Lawyers Help Kids

Counseling Children and Youth in Times of Crisis

Understanding Child Development and Building Rapport (Part 1)

by Lauren Girard Adams, Esq. and Maisley Paxton, Ph.D.

Counseling is key to representing and advocating for any court-involved child.[1] Working with child clients in court presents challenges, including understanding the role of trauma on child and adolescent functioning and understanding how a child's stage of development may impact the counseling role.

This article incorporates principles of child development and trauma into an approach to counseling the child client.

- Part 1 explains how to assess and understand a child's developmental level, and emphasizes the importance of building rapport and establishing trust with your client.
- Part 2 shares multidisciplinary strategies and tools to assist you in counseling the child client and addresses common challenges that arise.

Assessing and Understanding Developmental Level

Chronological age is a poor predictor of a child's abilities. Instead, the client's developmental level—a dynamic composite including the client's level of physical, cognitive, social, emotional, and academic growth—is more insightful. Once you understand your client's limits and capabilities based on developmental level, you can devise appropriate, informed strategies for effective communication and counseling. A good grasp of a client's developmental level also promotes a collaborative working relationship and keeps clients from becoming frustrated, discouraged, oppositional, and/or uncooperative. To gauge a client's developmental level and abilities, begin by gathering information about the following factors:

Cognitive functioning

Review any existing psychological (or psycho-educational) evaluations for a thorough assessment of cognitive functioning. For example, does your client have an Individualized Education Plan (IEP) to receive specialized instruction for a learning disability, emotional disability, or both? Review the testing and IEP documents because they include specific, concrete recommendations for conveying and communicating information to your client based on his learning and communication styles, and information-processing abilities.

Academic achievement

School records such as report cards, teacher comments, honors, disciplinary problems, or transfers are all helpful. Look closely at the client's performance in different classes. This will help you to build on the client's strengths and avoid overextending in areas of limitation. For example, if math is a strength, try communicating and exchanging information about the client's personal data, evidence, or options using quantitative terms. This is important as you develop rapport and establish trust with your client.

(Continued on p. 54)

What's Inside:

TOOLBOX **Information gathering in a pinch**

If you don't have time to gather information before going to court:

- Gather as many records as you can.
- Talk to caregivers (foster parents, parents) and the child.
- Have your own gauge for knowing what a child of a certain age and developmental level acts like (draw on knowledge of general child development).
- Consult a social worker with experience understanding kids and families.
- Note your own observations of the child.

(Continued from front page)

Pediatric records

Pediatric chart notes include assessments of whether children achieve their physical and developmental milestones on time and other information about developmental level. A pediatrician's general clinical impressions also can be informative.

Home environment

A stable, enriching home environment—which includes at least one consistent, caring, adult caretaker—promotes physical, cognitive, social, emotional, and academic growth. A client with consistent care and an invested caretaker is at a distinct advantage and likely to have a higher developmental level. Many clients come from chaotic home environments, which can diminish one's developmental level.

Gender

In general, the developmental level of girls is more advanced than the developmental level of boys.[2] Females are often better at expressing themselves verbally than males, which promotes social, emotional, and academic growth. Using alternative forms of communication, such as note-taking, diagrams, symbols, outlines, and timelines bolsters communication with male clients, and females as needed.

Trauma history

Conservative estimates show 50 percent of court-involved children experience traumatic stress symptoms or full-blown Posttraumatic Stress Disorder (PTSD).[3] PTSD is an anxiety disorder characterized by increased arousal and hypervigilance. Children who have experienced trauma and/or are experiencing PTSD are more likely to perceive people and situations as threatening. They also are more likely to exhibit behaviors such as:

- worrying about dying at an early age
- losing interest in activities
- having physical symptoms such as headaches and stomachaches
- showing more sudden and extreme emotional reactions
- having problems falling or staying asleep
- showing irritability or angry outbursts
- having problems concentrating
- acting younger than their age (e.g., clingy or whiny behavior or thumb sucking)
- showing increased alertness to the environment (hypervigilance)[4]

Often, children experiencing these symptoms come from homes characterized by inconsistent care, unhealthy relationships, violence, ambivalence, and/or disorganization. These factors lower the child's self-esteem and place the child at higher risk for aggression.[5] Children who carry these feelings into their social relationships are likely to misinterpret social cues, perceive threats from peers, and respond with anger and aggression.[6]

These factors present challenges for the attorney-client relationship. As the lawyer, you can provide your client with safe, clear, and reliable, experiences by modeling appropriate interactions. Using a trauma-informed approach can reduce client anxiety and its potential impact on the child client. By developing a productive relationship with the child client, you can increase the likelihood of a more positive outcome for the child. Additionally, building rapport and establishing trust are key to a productive, collaborative attorney-client relationship, and the ultimate success of the case.

Assessing competency

Competence involves a basic comprehension of the purpose and nature of the legal process.[7] It includes:

- *Understanding*—capacity to provide relevant information to counsel and to make sense of courtroom procedures and personnel.
- *Reasoning*—ability to recognize information relevant to a legal case and to process information for legal decision making.[8]
- *Appreciation*—ability to recognize the relevance of information for one's own situation.

Assessing and understanding these factors gives you insight into your child client's developmental level and helps you communicate with and counsel your client so he can make informed decisions about his case. Another prerequisite to good decision making is the client's ability to trust you, the lawyer, and your advice.

Building Rapport and Establishing Trust

Successfully counseling the child client requires a collaborative approach. To develop an attorney-client relationship that encourages collaboration, you must build rapport and establish trust with your child client.[9] The following strategies will help you build rapport and create conditions that promote collaboration and establish trust with your child client.

Make establishing rapport the first order of business.

During client meetings, you will severely compromise the collaborative process if you do not cultivate rapport before launching in to discuss legal issues with your client. Let your client begin the conversation. Allow a nonstructured start at the beginning of an interaction to draw a sample of the child's phrasing and language and learn what is important to the client. Such stress-free conversation also helps build rapport and establish trust—key components to successful counseling.

Create a quiet, distraction-free, meeting environment.

Empirical evidence suggests that when a child feels safe and comfortable, he will be more likely to communicate his desires and preferences, and to engage in positive decision making.[10] Children with a history of trauma often have trouble concentrating and may become hypervigilant. Even in the most difficult situations, it is possible to create conditions that enhance your ability to communicate with and counsel your client. Take these steps:

- **View the meeting location and make any adjustments to room configuration.** Reduce/eliminate visual, auditory, and/or motion stimulation that could cause anxiety and distractions. A quiet environment with dimmed lights and reduced visual or tactile distractions works best. For instance, when meeting in a room with a television, window, radio, computer, or other obvious distraction, have your client sit with his back to the distraction.
- **Consider where you sit in relation to your child client.** Sitting directly across the table, interrogation-style, can be perceived as threatening and creates a barrier between you and the client. Instead, sit beside or catty-corner to your client. This shows you are side-by-side working on issues together.
- **Look at materials together to show you are "with the client"** supporting him as he makes sense of the situation and determines his best course of action.
- **Consider the impact your body language has on the meeting environment and tone.** Children are adept at reading the body language of adults. Crossing your arms, frowning, looking down over your glasses, checking e-mail or text messages, and other body language sets the wrong tone and sends your client the message that you are not on the same team.

Develop a collaborative, interactive, style.

Strategies to help you develop a collaborative style to interact with child clients include:

- actively engaging clients in verbal give-and-take
- actively encouraging children to have their full say
- staying open to and encouraging questions and negotiation
- providing clear explanations and rationale behind legal advice
- setting expectations for clients that will instill a "you can do this" attitude
- recognizing the child's individual interests and attributes
- being responsive, warm and nurturing, while at the same time assertive and supportive
- creating a style and atmosphere that encourages the child to ask questions and clarify any confusing issues

TOOLBOX — Communicating with children

Always be prepared with these basic tools:

- 4 Bold, clear stationary images that activate the brain
- 4 Concrete representations
- 4 Paper and pen to draw charts, diagrams, visual representations showing choices
- 4 Calendars and timelines to illustrate when things will happen.
- 4 Agenda—develop and review with child (with very young children, guide them through it)
- 4 Symbols
- 4 Short words child understands
- 4 Drawings—let child draw a person, family, picture of something meaningful (allows you to ask questions)
- 4 Informal, child-friendly settings
- 4 Getting down low/meeting child at her level
- 4 Humor/laughter

TOOLBOX Practice what you preach

- Visit the child when you say you will.
- Don't try to impress the child.
- Be authentic.
- Don't convey judgment.

By setting a collaborative tone and creating an open and respectful environment, you will enhance communication and ultimately your ability to effectively counsel your client.

Use language the child understands.

Legal interviews and counseling sessions with child clients are often conducted in language that exceeds the client's verbal comprehension and developmental level.[11] Child clients are confused by complicated language, compound or excessively long sentences, and legalese. Using language the client does not understand also interferes with your relationship. Conversely, using language the client readily understands reinforces and enhances rapport, trust, and collaboration.

Strategies to match language to the child's level of understanding include:

- **Be attentive to the client's language,** phrasing, terms, and names of important people, places, or things.
- **Use casual conversation at the beginning of an interaction** to draw a sample of the child's phrasing and language and give you a better understanding of the client's developmental level.
- **Get the child to discuss a neutral topic,** using humor to get the child to smile and laugh. This puts the child at ease with the situation and also gives you a sample of the child's own language use.[12]
- **Err on the side of using language below or at a child's developmental level** (and become more elaborate once a client's comprehension is well established) to enhance the likelihood of comprehension. Caveat: avoid assuming clients cannot comprehend relevant information. Child clients usually understand much more than adults give them credit for understanding. Even young children of a relatively low developmental level and those with developmental delays or verbal communication deficits comprehend more than is obvious.
- **Use nonverbal and verbal strategies to enhance comprehension.** Even if a concept seems out-of-reach, try to convey it in ways that make sense to the client. Children, especially those with trauma or maltreatment histories, are adept at "reading" adults and can see when someone is withholding information even in a benevolent, well-intentioned way.
- **Use open, back-and-forth discussions** to enhance your rapport and produce better outcomes for clients.

Using accessible and understandable language with the child client also leads to productive counseling sessions and more informed decision making by the client.

Keep your messages simple, concise.

Making information accessible and understandable to the child client requires not only appropriate language, but also simple and concise delivery of the information. Young children tend to focus on one aspect at a time in conversation and, therefore, the best sentence structure is one with a simple subject, a verb, and an object. This pattern is recommended until at least age eight[13] and probably older (11 years) for this population. Avoid long and complicated sentences altogether.

Lawyers working with children tend to present information in an unstructured way that is fluctuating and off topic, especially with younger children. This sort of topic incoherence is typical in younger child clients, and it may be that attorneys mirror the communication style of younger clients. Thus, take care to avoid frequent or rapid switches of topic. Children can be serious and task-focused when needed, but if they can choose between playing and discussing (likely difficult topics), they might well opt to be playful and off-topic.

In addition, be aware of what your client has been through prior to meeting with you. If you speak with your child client after he has been through a crisis, you will want to keep your meeting especially short and simple, and repeat important points several times.

Practice active listening.

Active listening builds rapport and enhances trust. Active listening can take many forms:

- repeating what a client has said
- asking clarifying questions
- using empathic statements at appropriate times
- restating client-generated ideas
- using the child's words for people and things (e.g., if your client calls her brother "Shorty" (instead of his given name), call him as Shorty as well)

"Active listening is not just a nodding of the head, it is making comments throughout a child's story that lets them know that

you're hearing them. So if they're talking about being frustrated, you might say, 'That sounds really frustrating' and if they are talking about a really difficult situation at home, you might say, 'Wow, that must have been really hard.'"[14] Through active listening, you build rapport with your child client, and further cement the foundation for successful counseling.

Use open-ended questions. Open-ended questions facilitate and reinforce building rapport and establishing trust. Conversely, closed-ended or leading questions, particularly at the beginning of the relationship (and even at the beginning of a conversation) can effectively shut-down communication because they inhibit the exchange of information and severely limit responses.

- Use open-ended questions to optimize the ready exchange of information.
- Be mindful of your phrasing, making modifications as needed.
- Be aware when clients are providing limited, brief, yes-or-no responses, and craft questions that evoke greater responses.
- Use informal prompts (e.g., "tell me more") to encourage a client to provide more information, including key facts that otherwise the client might keep to himself.

The initial, rapport-building period of the legal conference is a good time to ask open-ended questions and set the stage for ongoing open-ended questioning throughout the relationship. Once you have built rapport and established trust with your client, you can then ask more pointed questions to clarify and obtain specific information. This technique, often called the funnel technique, can be effective for gathering information with child clients. It involves three stages:

- **Stage 1:** Begin gathering information using open-ended questions. Let the child tell his story from start to finish without interruption. By letting your client to tell his story uninterrupted, you learn more than just the facts. You also learn what parts of the story are important to *him*. These parts may not be critical to your case theory, but knowing them will help you better understand your client and counsel him effectively. It also shows your client you respect him and what he is saying, thus encouraging further communication.
- **Stage 2:** Continue using open-ended questions, though these questions can be directed at clarifying and filling-in missing information ("Was anyone with you?" and "Where did you go next?").
- **Stage 3:** The goal as lawyer and counselor is to make sure your client fully understands important legal terms and issues and the pros and cons of choosing one option over another. During this stage, you will ask more pointed, specific questions.[15]

Let the client evaluate options. The child must ultimately live with the outcome of his case, as well as the decisions he makes. Actively and continually support your client so he can fully evaluate his options and think through various consequences and outcomes. Strategies to help your client fully understand and evaluate his options include:

- **Have the client make a pros and cons list.** This lets him fully elaborate and evaluate his concerns about potential consequences of choices. For younger children especially, serve as scribe, allowing your child client to voice thoughts and concerns and watch them take shape on paper. This signals how central their input and ideas are to the process and reduces concerns about suggestibility.
- **Have the client evaluate options to reduce impulsive or snap decisions.** This helps the child take ownership over the decision-making process and the ultimate outcome.[16] As the lawyer, you are responsible for making sure the client understands and properly evaluates all options and the short-and long-term consequences.

Take an unbiased approach. Avoid allowing your personal biases or relevant personal history to interfere with providing objective, clear, concise advice. Working with clients in the juvenile justice and child protection systems is challenging and may evoke strong personal reactions. These clients are often difficult interpersonally and have experienced many disadvantages. All of this combined can trigger strong emotional reactions from even the most unflappable adults. Take these steps:

- **Take an honest inventory of personal reactions and biases** that arise from this work on an ongoing basis.

TOOLBOX: Cultural differences matter

Differences in culture, race, and class are real. The best thing you can do as an attorney is be mindful of personal biases and recognize how they could be influencing your interactions with children. Kids will recognize that certain things distinguish you from them. Differences in class are often the biggest issue you will face. While there is no rule of thumb for handling these differences, staying attuned to them and avoiding letting them affect your interactions will help.

- **Acknowledge challenges** when they arise and understand and work within your limits.
- **Develop a system of support** including colleagues, mentors, or others who can provide you relief and serve as sounding boards.

Be honest and reliable.
Dishonesty or not following through can irreparably damage your relationship with your young client. Take these steps:

- **Be honest** with your client and do not make promises you might not be able to keep. It is tempting to want to make your client feel better, but only offer to do as much as you *know* you can achieve.
- **Be reliable.** Child clients often come from backgrounds in which adults frequently let them down and fail to follow-through on promises. Set yourself apart, and show your client he can rely on you. For example, tell your client you will call him every week on a certain day at a certain time to check-in, and do it. And be careful to avoid making promises that you cannot keep.

Using the tips above will help build rapport and establish trust – prerequisites to successfully counseling the child client. Children involved in any court system are regularly called upon to make difficult and sometimes life-altering decisions. Taking the time to build rapport and establish trust will enhance your ability to counsel your young client through these difficult times and ultimately lead to better decision-making and outcomes for your client.

Stay tuned: Part 2 of this article, in next month's CLP, will share counseling strategies and tips for addressing common barriers.

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This article was adapted with permission from *Counseling Children and Youth in Times of Crisis: Tips to Achieve Success and Avoid Pitfalls*, a guide produced by the Children's Rights Litigation Committee of the ABA Section of Litigation. View the complete guide at: http://apps.americanbar.org/litigation/committees/childrights/multimedia.html#guide
To listen to a related teleconference, visit: http://apps.americanbar.org/litigation/committees/childrights/materials.html

Endnotes

[1] "Child" is used in this article to describe anyone under age 18.

[2] Nikolaenko, N.N. "Sex Differences and Activity of the Left and Right Brain Hemispheres." *Journal of Evolutionary Biology and Physiology* 41(6). 2005; Sax, L. *Why Gender Matters*. New York: Broadway Books. 2006.

[3] Abram, K.M. et al. "Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention." *Archives of General Psychiatry* 61(4). 2004, 403-410; Arroyo, W. "PTSD in Children and Adolescents in the Juvenile Justice System." In S. Eth (Ed.), *PTSD in Children and Adolescents*. Arlington, VA: American Psychiatric Publishing 20, 2001, 59-86; Garland, A.F. et al. "Prevalance of Psychiatric Disorders in Youths Across Five Sectors of Care." *Journal of the American Academy of Child & Adolescent Psychiatry* 40(4), 2001, 409-418; Igelman, R. S. et al. "Best Practices for Serving Traumatized Children and Families." *Juvenile and Family Court Journal* 59(4), 2008. 35-47.

[4] American Academy of Child and Adolescent Psychiatry. *Facts for Families: Posttraumatic Stress Disorder*, No. 70, 1999, 1-2.

[5] Cicchetti, D. and S. L. Toth. "Child Maltreatment." *Annual Review of Clinical Psychology* 1, 2005, 409-438.

[6] Cicchetti, D. and W.J. Curtis. "An Event-Related Potential Study of the Processing of Affective Facial Expressions in Young Children Who Experienced Maltreatment in the First Year of Life." *Development and Psychopathology* 17. 2005, 641-677.

[7] Bonnie, R. "The Competence of Criminal Defendants: A Theoretical Reformulation." *Behavioral Sciences and the Law* 10. 1992, 291-316.

[8] Grisso, Thomas et al. "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants." *Law and Human Behavior* 27(4). 2003. 333-363.

[9] "[G]ood decision[-]making [by the child client] is predicated on the lawyer's ability to create an appropriate environmental context for counseling and to develop a good relationship with the client." Henning, Kristin. "Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of the Child's Counsel in Delinquency Cases." *Notre Dame Law Review* 81(1), 2005. 245, 317-318.

[10] Vernon, A. *Counseling Children & Adolescents*, 3d ed. Denver, CO: Love Publishing. 2004.

[11] Korkman, J. et al. "Failing to Keep it Simple: Language Use in Child Sexual Abuse Interviews with 3-8-Year-Old Children." *Psychology, Crime & Law* 14(1). 2008. 41-60.

[12] Walker A.G. and A.R. Warren. "The Language of the Child Abuse Interview: Asking the Questions, Understanding the Answers." In T. Nay (Ed.), *True and False Allegations of Child Abuse: Assessment and Case Management*. New York: Brunner/Mazel. 1995, 153-162.

[13] Ibid.

[14] American Bar Association Section of Litigation. Children's Rights Litigation Committee. *Interviewing the Child Client* (video excerpt of interview with Mary Ann Scali), 2008. <http://apps.americanbar.org/litigation/committees/childrights/video/1006-interviewing-child-client.html.>

[15] For more information about the funnel technique, see Binder, David A. et al. *Lawyers as Counselors: A Client-Centered Approach*, 2d ed. West Publishing Co., 2004.

[16] "Because youth tend to have a higher level of trust and satisfaction with attorneys who spend more time working with them, the child is more likely to receive and accept input from the collaborative lawyer. The child will also be able to avoid hasty, short-sighted decisions when he has the assistance of a lawyer who will patiently help him identify and consider all of the long-term implications of any given decision. When provided with all of the relevant information and given all of the appropriate environmental and emotional supports, a child may make well reasoned decisions and appropriately direct his counsel in the course of the representation." Henning, 2005.

RELATING TO THE ADOLESCENT CLIENT

Stacey Violante Cote
Director, Teen Legal Advocacy Project
Center for Children's Advocacy

I. TEENS AS A DISTINCT ANIMAL:

- interested in notions of fairness & justice
- at once knowing it all & knowing very little (this is why they will say they understand what you're saying when they really don't)
- need to feel they have a voice
- will rarely be on time (expect to wait 20 minutes when they say they'll be right there)
- need to know that you are someone who can do something for them
- adolescent brain development

II. WHAT TO EXPLORE IN THE IN ITIAL INTERVIEW:

A. Family constellation
Who is raising them- parent, stepparent, guardian (relative or nonrelative)?
Who is their legal guardian?
Siblings- where living?
Importance of extended family

B. What is their current living situation?
Be careful not to make assumptions about living arrangements
With family?
In care of DCF?
Living with relative? Friend?

C. Who are the significant supports in their life?
Family?
Mentor?
Teacher?
Coach?
Boyfriend/girlfriend?
Religious leader?

D. What's going on at school for them?
Spec Ed?
Connections- activities, clubs
Attendance
Discipline issues- suspensions? Detentions?
What are they good at? What do they dislike most about school?

E. What are the other significant factors in their life?
Mental health issues?
Pregnant? Parent?
Death of someone they care about?

III. Legal/Ethical Issues Related to Representing Adolescents

A. Minor client directs the representation
Rules of Professional Conduct (Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer, 1.14 Client with Diminished Capacity)
Attorney acts at client's direction, not necessarily in client's best interests
Attorney's role in counseling client

B. Confidentiality
Rules of Professional Conduct (Rule 1.6 Confidentiality of Information)
Not mandated reporters of abuse/neglect
Think about what to do if client wants another person in meeting
Translators & confidentiality

C. Have a plan for clients who may be suicidal
Know your ethical obligations to client (ie: Rule 1.6 Confidentiality of Information)
Know whom to call within your program if you need to sort this out
Know mental health services in the area (ie: Emergency Mobile Psychiatric Services)
Know if client is already involved with a clinician
Have a plan for how to get back in touch with client if need be

IV. What's Your Job When Interviewing Your Adolescent Client?

A. Clarify your role as an attorney
Explain why you're asking "nosy" questions
Explain your job as one of "advocating for what *they* want"
Let them know you're not here to judge; you'll give advice, but they "call the shots"

B. Explain confidentiality
Note that attorneys are not mandated reporters
"What does confidentiality mean to you?"

C. Explain importance of being truthful
Give them "an out" here- let them know it's ok to decline to answer something

D. LISTEN
Best way to get the answers to the questions is to listen for the information
Give it time

E. Know your own biases
ie: teen parenting, abortion, cultural

F. Meet with Client without Parent
If parent is present, let them know you have to meet with client alone

V. TECHNIQUES
Acknowledge the awkwardness- "I know you don't know me"
Let them feel in control v. telling them what to do
ie: "it's your choice"; "I know you will do what you think is right, but here are some things to think about as you make your decisions"
When discussing options- ask them to repeat back to you
Ask questions to help them come to their own conclusions
ie: Teen says they want to run away
Ask: What will happen if you do? Then what? Is that what you want?
Keep promises & be in touch- even when you don't know what's going to happen yet
Be sincere; concede differences
In meetings with other adults, work to engage client, don't talk about client as if s/he isn't there

VI. HOME VISITS
Importance of seeing where they live
Can help to create relationship with client
Consider safety concerns & be sensitive to clients' perceptions of these

Federal Legal Authority for Children to Access or Retain Legal Counsel:

WILLIAM WILBERFORCE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008, PL 110–457, December 23, 2008, 122 Stat 5044

Here is link to the act:
https://a.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=1077005&cite=UUID%28IE404DAF0D5-A011DDBC03E-3FA6ED9E47F%29&originationContext=document&transitionType=DocumentItem&contextData=%28sc.Search%29

2) SPECIAL RULES FOR CHILDREN FROM CONTIGUOUS COUNTRIES.—
(A) DETERMINATIONS.—Any unaccompanied alien child who is a national or habitual resident of a country that is contiguous with the United States shall be treated in accordance with subparagraph (B), if the Secretary of Homeland Security determines, on a case-by-case basis, that—
(i) such child has not been a victim of a severe form of trafficking in persons, and there is no credible evidence that such child is at risk of being trafficked upon return to the child's country of nationality or of last habitual residence;
(ii) such child does not have a fear of returning to the child's country of nationality or of last habitual residence owing to a credible fear of persecution; and
(iii) the child is able to make an independent decision to withdraw the child's application for admission to the United States.
.....
Since it is mentioned in the exception, Subparagraph B:
(B) RETURN.—An immigration officer who finds an unaccompanied alien child described in subparagraph (A) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may—
(i) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and
(ii) return such child to the child's country of nationality or country of last habitual residence.
.....

(5) ACCESS TO COUNSEL.—The Secretary of Health and Human Services shall ensure, to the greatest extent practicable and consistent with section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking. To the greatest extent practicable, the Secretary of Health and Human Services shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.

WILLIAM WILBERFORCE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008, PL 110–457, December 23, 2008, 122 Stat 5044

Connecticut General Statutes Annotated
Title 45a. Probate Courts and Procedure (Refs & Annos)
Chapter 802H. Protected Persons and Their Property (Refs & Annos)
Part II. Guardians of the Person of a Minor (Refs & Annos)

C.G.S.A. § 45a-614

§ 45a-614. Removal of parent as guardian of minor. Parent may not petition for removal of permanent guardian

Effective: October 1, 2012 to December 31, 2015

Currentness

<Section effective until Jan. 1, 2016. See, also, section effective Jan. 1, 2016.>

(a) Except as provided in subsection (b) of this section, the following persons may apply to the court of probate for the district in which the minor resides for the removal as guardian of one or both parents of the minor: (1) Any adult relative of the minor, including those by blood or marriage; (2) the court on its own motion; or (3) counsel for the minor.

(b) A parent may not petition for the removal of a permanent guardian appointed pursuant to section 45a-616a.

Credits

(1958 Rev., § 45-43a; 1979, P.A. 79-460, § 5; 2012, June 12 Sp.Sess., P.A. 12-1, § 278.)

Editors' Notes

C. G. S. A. § 45a-614, CT ST § 45a-614
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

Summary of selected materials regarding role of Attorney for Minor Child and Guardian ad litem

- CT Probate Court Rule Section 40.2
- Section 13.6 of the Probate Court Rules
- Conn. Gen. Stat. Ann. § 46b-129a.
- *Newman v. Newman,* 235 Conn. 82, 96, 663 A.2d 980 (1995)
- *In re Tayquon H.,* 76 Conn.App. 693, 706–707, 821 A.2d 796 (2003)
- *In re Christina M.*, 280 Conn. 474, 491-92, 908 A.2d 1073, 1085 (2006)

Section 40.2: Appointment of attorney and guardian ad litem for minor states that: (a) The court may appoint an attorney for a minor under C.G.S. section 45a-620. (b) If the court determines that the minor is unable to express his or her wishes to the attorney, the court may appoint the attorney to serve as both attorney and guardian ad litem. (c) If the court determines that the minor's wishes, if followed, could lead to substantial physical, financial or other harm to the minor, the court may appoint an individual as attorney for the minor and another individual as guardian ad litem for the minor. *(C.G.S. sections 45a-132, 45a-717 (b) and 46b-172a (c); Probate Court Rules, rule 13.)*

Section 13.6 of the Probate Court Rules states that the duties of a guardian ad litem are to: (1) advocate for the best interest of the person for whom the guardian is acting; and (2) if the person is a minor, make reasonable efforts to keep each parent or guardian of the minor who is not a party to the matter advised of the actions of the guardian ad litem and the court.

.....

Conn. Gen. Stat. Ann. § 46b-129a.

The primary role of any counsel for the child shall be to advocate for the child in accordance with the Rules of Professional Conduct, except that if the child is incapable of expressing the child's wishes to the child's counsel because of age or other incapacity, the counsel for the child shall advocate for the best interests of the child.

If the court, based on evidence before it, or counsel for the child, determines that the child cannot adequately act in his or her own best interests and the child's wishes, as determined by counsel, if followed, could lead to substantial physical, financial or other harm to the child unless protective action is taken, counsel may request and the court may order that a separate guardian ad litem be assigned for the child, in which case the court shall either appoint a guardian ad litem to serve on a voluntary basis or notify the office of Chief Public Defender who shall assign a separate guardian ad litem for the child. The guardian ad litem shall perform an independent investigation of the case and may present at any hearing information pertinent to the court's determination of the best interests of the child. The guardian ad litem shall be subject to cross-examination upon the request of opposing counsel. The guardian ad litem is not required to be an attorney-at-law but shall

be knowledgeable about the needs and protection of children and relevant court procedures. If a separate guardian ad litem is assigned, the person previously serving as counsel for the child shall continue to serve as counsel for the child and a different person shall be assigned as guardian ad litem, unless the court for good cause also determines that a different person should serve as counsel for the child, in which case the court shall notify the office of Chief Public Defender who shall assign a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem. Conn. Gen. Stat. Ann. § 46b-129a.

.....

In *Newman v. Newman,* 235 Conn. 82, 96, 663 A.2d 980 (1995), our Supreme Court was concerned "about creating conflict in the attorney's role by conflating the role of counsel for a child with the role of a guardian ad litem or next friend.... As an advocate, the attorney should honor the strongly articulated preference ... of a child who is old enough to express a reasonable preference; as a guardian, the attorney might decide that, despite such a child's present wishes, the contrary course of action would be in the child's long term best interests, psychologically or financially." Gil v. Gil, 94 Conn. App. 306, 324, 892 A.2d 318, 331 (2006)

The primary role of any counsel for the child shall be to advocate for the child in accordance with the Rules of Professional Conduct, except that if the child is incapable of expressing the child's wishes to the child's counsel because of age or other incapacity, the counsel for the child shall advocate for the best interests of the child.

.....

Although there is often no bright line between the roles of a guardian ad litem and counsel for a minor child, the legal rights of a child may be distinct from the child's best interest. When the roles do overlap, "it is only because, in such cases, the rights of a child and the child's best interest coincide. While the best interest of a child encompasses a catholic concern with the child's human needs regarding his or her psychological, emotional, and physical well-being, the representation of a child's legal interests requires vigilance over the child's legal rights. Those legal rights have been enumerated as the right to be a party to a legal proceeding, the right to be heard at that hearing and the right to be represented by a lawyer. When both a guardian ad litem and an attorney have been appointed for a child, their respective roles and the duties attendant to those roles should adhere to that basic distinction. Specifically, the guardian ad litem should refrain from acting as a second attorney for the child. Just as it is not normally the province of the attorney to testify, it is not the province of the guardian ad litem to file briefs with the court." *In re Tayquon H.,* 76 Conn.App. 693, 706–707, 821 A.2d 796 (2003). Generally speaking, then, counsel bears responsibility for representing the legal interest of a child while a guardian ad litem must promote and protect the best interest of a child. *In re Christina M.,* 280 Conn. 474, 491-92, 908 A.2d 1073, 1085 (2006)

Connecticut General Statutes Annotated
Probate Court Rules and Procedure
Probate Court Rules of Procedure
Rules for All Case Types

Probate Rule 13

Rule 13. Court-Appointed Guardian Ad Litem

Currentness

Section 13.6 Duties of guardian ad litem

(a) A guardian ad litem shall:

(1) advocate for the best interests of the person for whom the guardian is acting; and

(2) if the person is a minor, make reasonable efforts to keep each parent or guardian of the minor who is not a party to the matter advised of the actions of the guardian ad litem and the court.

(b) A guardian ad litem may recommend to the court a waiver, election, modification or compromise of the rights or interests of the person for whom the guardian ad litem is acting and may, with approval of the court, effectuate the waiver, election, modification or compromise on behalf of the person.

(c) A guardian ad litem does not have title to, or custody of, property of the person for whom the guardian ad litem is acting.

Credits

[Adopted November 7, 2012, effective July 1, 2013. Amended November 12, 2014, effective July 1, 2015.]

Probate Rule 13, CT R PROB Rule 13
State court rules and the Connecticut Code of Evidence are current with amendments received through June 15, 2015.

End of Document

Connecticut General Statutes Annotated
Title 46b. Family Law (Refs & Annos)
Chapter 815T. Juvenile Matters (Refs & Annos)
Part I. General Provisions

C.G.S.A. § 46b-129a

§ 46b-129a. Examination by physician, psychiatrist or psychologist. Counsel and guardian ad litem. Testimony. Evidence

Effective: July 1, 2012

Currentness

In proceedings in the Superior Court under section 46b-129:

(1) The court may order the child, the parents, the guardian, or other persons accused by a competent witness of abusing the child, to be examined by one or more competent physicians, psychiatrists or psychologists appointed by the court;

(2) (A) A child shall be represented by counsel knowledgeable about representing such children who shall be assigned to represent the child by the office of Chief Public Defender, or appointed by the court if there is an immediate need for the appointment of counsel during a court proceeding. The court shall give the parties prior notice of such assignment or appointment. Counsel for the child shall act solely as attorney for the child.

(B) If a child requiring assignment of counsel in a proceeding under section 46b-129 is represented by an attorney for a minor child in an ongoing probate or family matter proceeding, the court may appoint the attorney to represent the child in the proceeding under section 46b-129 provided (i) such counsel is knowledgeable about representing such children, and (ii) the court notifies the office of Chief Public Defender of the appointment. Any child who is subject to an ongoing probate or family matters proceeding who has been appointed a guardian ad litem in such proceeding shall be assigned a separate guardian ad litem in a proceeding under section 46b-129 if it is deemed necessary pursuant to subparagraph (D) of this subdivision.

(C) The primary role of any counsel for the child shall be to advocate for the child in accordance with the Rules of Professional Conduct, except that if the child is incapable of expressing the child's wishes to the child's counsel because of age or other incapacity, the counsel for the child shall advocate for the best interests of the child.

(D) If the court, based on evidence before it, or counsel for the child, determines that the child cannot adequately act in his or her own best interests and the child's wishes, as determined by counsel, if followed, could lead to substantial physical, financial or other harm to the child unless protective action is taken, counsel may request and the court may order that a separate guardian ad litem be assigned for the child, in which case the court shall either appoint a guardian ad litem to serve on a voluntary basis or notify the office of Chief Public Defender who shall assign a separate guardian ad litem for the child.

The guardian ad litem shall perform an independent investigation of the case and may present at any hearing information pertinent to the court's determination of the best interests of the child. The guardian ad litem shall be subject to cross-examination upon the request of opposing counsel. The guardian ad litem is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children and relevant court procedures. If a separate guardian ad litem is assigned, the person previously serving as counsel for the child shall continue to serve as counsel for the child and a different person shall be assigned as guardian ad litem, unless the court for good cause also determines that a different person should serve as counsel for the child, in which case the court shall notify the office of Chief Public Defender who shall assign a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem.

(E) The counsel and guardian ad litem's fees, if any, shall be paid by the office of Chief Public Defender unless the parents or guardian, or the estate of the child, are able to pay, in which case the court shall assess the rate the parent or guardian is able to pay and the office of Chief Public Defender may seek reimbursement for the costs of representation from the parents, guardian or estate of the child;

(3) The privilege against the disclosure of communications between husband and wife shall be inapplicable and either may testify as to any relevant matter; and

(4) Evidence that the child has been abused or has sustained a nonaccidental injury shall constitute prima facie evidence that shall be sufficient to support an adjudication that such child is uncared for or neglected.

Credits

(1996, P.A. 96-246, § 13; 2001, P.A. 01-148, § 1; 2011, P.A. 11-51, § 17, eff. July 1, 2011; 2012, June 12 Sp.Sess., P.A. 12-1, § 270, eff. July 1, 2012.)

Editors' Notes

235 Conn. 82
Supreme Court of Connecticut.

Johanna C. NEWMAN
v.
Fred M. NEWMAN.

No. 15069. | Argued April 25, 1995. | Decided Aug. 15, 1995.

In postdissolution proceedings, the Superior Court, Judicial District of Fairfield, Mihalakos, J., reduced father's child support payments to zero, and children appealed. The Appellate Court, 646 A.2d 885, dismissed appeal based on absence of guardian ad litem or next friend to prosecute the appeal. Children appealed. The Supreme Court, Borden, J., held that children were entitled to appeal from judgment modifying child support provisions of dissolution decree, even though children's appointed counsel, rather than guardian ad litem or next friend, was prosecuting the appeal, provided that children could persuade trial court that it was in their best interest to appeal.

Reversed and remanded.

Berdon, J., concurred and filed opinion.

Attorneys and Law Firms

**981 *82 Sharon Wicks Dornfeld, Danbury, for the appellants (minor children).

William B. Barnes, with whom, on the brief, was Sheila K. Rosenstein, Fairfield, for the appellee (defendant).

Before PETERS, C.J., and CALLAHAN, BORDEN, BERDON and KATZ, JJ.

Opinion

*83 BORDEN, Associate Justice.

[1] The sole issue in this certified appeal is whether, in a marriage dissolution case, minor children who are represented by an attorney appointed by the trial court pursuant to General Statutes § 46b–54,[1] but not by a guardian ad litem or next friend, may appeal from a judgment of the trial court concerning the support obligations of the children's parents.[2] The minor children appeal, following our grant of certification,[3] from the judgment of the Appellate Court dismissing their appeal from the judgment of the trial court, which had modified the support obligation of the defendant, who is the father of the minor children, to zero dollars. The Appellate Court dismissed the appeal because it concluded that the attorney for the minor children could not prosecute the appeal on behalf of the children. We conclude that, under certain limited circumstances outlined herein, minor children may appeal from such a trial court judgment. Accordingly, we reverse the judgment *84 of the Appellate Court, and remand the case for further proceedings for the trial court to determine whether those circumstances are present in this case.

The prior procedural history and facts are undisputed. The plaintiff, Johanna C. Newman,[4] and the defendant, Fred M. Newman, who were married in 1981, have two minor children, a daughter born on August 16, 1983, and a son born on May 20, 1987.

In September, 1991, the plaintiff brought this dissolution action, and the defendant filed a cross complaint, both claiming custody of the children, support, alimony and a property distribution. In March, 1992, attorney Sharon Wicks Dornfeld was appointed by the **982 court pursuant to § 46b–54; see footnote 1; to represent the minor children. In March, 1993, the trial court, *Hon. T. Clark Hull,* state trial referee, after what it described as an "almost incredibly bitter battle between the parties," rendered a judgment dissolving their marriage. In addition to orders of property distribution and nominal alimony to be paid by the defendant to the plaintiff, the court awarded custody of the minor children to the plaintiff, with certain visitation rights in the defendant. The plaintiff was permitted to move with the children to North Carolina. The court also ordered the defendant to pay child support for the two children in the amount of $300 per week.

Thereafter, in September, 1993, the defendant filed a motion to modify the judgment by reducing the amount of child support "in accordance with the child support guidelines presently in effect, and in accordance with his income."[5] The basis of the motion was that, on or about July 31, 1993, he had lost his only *85 source of income, a consulting position, and that, although he had applied for unemployment benefits, he had not received confirmation that he would be awarded any such benefits.

The defendant's motion for modification was heard by the

trial court, *Mihalakos, J.*, on November 15, 1993. The plaintiff's counsel represented to the court that the plaintiff was residing in North Carolina, that he had explained to her by telephone the previous week that the matter would proceed, that the plaintiff was "without funds ... to come to Connecticut to defend" against the motion, and that "apparently we are going to have to proceed in her absence." Moreover, the plaintiff's counsel informed the court that he did not have a financial affidavit of the plaintiff, and that he did not know what she was earning because he had "not ask[ed] her." When the defendant's counsel represented to the court that the defendant was relying on the fact that, although he then was receiving unemployment compensation, he was "not working at all," and that the defendant did not rely at all for his motion on "any of [the plaintiff's] income," the trial court instructed the defendant to proceed.

The defendant testified that he had lost his last job at the end of July, and that he was receiving $325 per week as unemployment compensation from the state of New Jersey. He also testified that, because he had suffered a heart attack on October 17, 1993, on his physician's advice he had not sought employment since he had been released from the hospital approximately two weeks earlier. After cross-examination by the plaintiff's counsel, the trial court found, from the defendant's financial affidavit, that he had a net weekly income of approximately $150.[6] Applying the child support guidelines, **86 the court granted the defendant's motion, reducing his support obligation to zero dollars.

At that point, the children's counsel sought to be heard regarding the support obligation. The court denied her request.[7] The children did not seek, through their counsel, the appointment of a guardian ad litem for purposes of taking an appeal, nor did their counsel take an appeal as their next friend. Instead, the minor children, represented by Dornfeld, appealed from the modification of the judgment to the Appellate Court, claiming that the trial court had improperly: (1) refused to permit the children's attorney to participate in the hearing; and (2) failed to consider certain statutory criteria regarding support for minor children.

The Appellate Court ultimately dismissed the minor children's appeal, on the ground that the "appeal, brought in the name of the **983 minor children, without a next friend or the appointment of a guardian ad litem, is improper."[8] *Newman v. Newman*, 35 Conn.App. 449, 453, 646 A.2d 885 (1994). Reasoning that, although the lack of a guardian ad litem or next friend for purposes of a minor child's appeal is an amendable and waivable irregularity, the irregularity neither had been cured by amendment nor waived by the defendant in **87 this case. Id., at 453–54, 646 A.2d 885. Thus, the court concluded that "this appeal has not been brought properly because court-appointed counsel cannot prosecute this appeal on behalf of the children." Id., at 455, 646 A.2d 885. Accordingly, the court dismissed the appeal. Id.

We granted the minor children's petition for certification, limited to the following issue: "Did the Appellate Court properly conclude that minor children, acting through counsel appointed pursuant to General Statutes § 46b–54 and not through a guardian ad litem or next friend, lack standing to appeal from a trial court's order regarding their support?" *Newman v. Newman*, 231 Conn. 928, 648 A.2d 879 (1994). This appeal followed.

We note, initially, that our phrasing of this certified question was improper. The Appellate Court did not conclude that the minor children *lacked standing to appeal.*[9] Although lack of standing, and thus lack of subject matter jurisdiction, had been one of the bases of the defendant's motion to dismiss, it was not the basis of the Appellate Court's dismissal. Because on certification our focus is generally on the judgment of the Appellate Court; see *State v. Gilbert*, 229 Conn. 228, 246, 640 A.2d 61 (1994); we rephrase the certified question as follows: "Did the Appellate Court properly conclude that an appeal by minor children, acting through counsel appointed pursuant to § 46b–54 and not through a guardian ad litem or next friend, is improper and is thus subject to dismissal?"

The minor children raise several closely related arguments in support of their right to appeal in their own name. First, they argue that "[t]here is ample precedent in Connecticut for considering children to be 'parties' **88 in proceedings affecting their custody and care." They point to certain statutes, which provide for the protection of children's interests; see, e.g., General Statutes § 46b–56(b) (requiring court, in making or modifying any order with respect to custody or visitation, to consider wishes of child, if child is of sufficient age and capable of forming intelligent preference); General Statutes § 46b–57 (requiring court, in making any order granting custody to third party, to consider the wishes of child, if child is of sufficient age and capable of forming intelligent preference); General Statutes § 46b–55(b) (child, or his representative, born during marriage but not issue of marriage may bring paternity action); General Statutes § 46b–37 (joint duty of each spouse to support his or her family); General Statutes § 46b–84 (following annulment or dissolution of marriage, parents of minor child shall maintain child according to their respective abilities, if child is in need of maintenance); General Statutes § 46b–

215(a) (child can bring petition for orders of support); General Statutes § 46b–54(a) (court may appoint counsel to represent minor children in dissolution action); and General Statutes § 46b–54(c), the statute pursuant to which Dornfeld was appointed in this case; and certain of our precedents; see, e.g., *Nye v. Marcus,* 198 Conn. 138, 502 A.2d 869 (1985); *Guille v. Guille,* 196 Conn. 260, 492 A.2d 175 (1985); *Salvio v. Salvio,* 186 Conn. 311, 441 A.2d 190 (1982); **984 *Yontef v. Yontef,* 185 Conn. 275, 440 A.2d 899 (1981); as evidence of legislative and judicial recognition "that children who are the subject of contested family relations matters have separate interests in the proceeding which are directly affected and to which injury may result."

Second, the minor children argue that they are aggrieved by the trial court's decision in two ways. They are statutorily aggrieved, they assert, because they have a statutory right to be supported by both parents pursuant *89 to §§ 46b–37[10] and 46b–84,[11] and the **985 trial court's decision deprives them of their right to be supported *90 by the defendant, their father. They are classically aggrieved, they contend, because they have been deprived of their property rights without an opportunity for them to be heard by counsel.

*91 Third, the minor children argue that they have the capacity to prosecute an appeal in this case, despite the absence of a guardian ad litem or next friend, because, where an attorney has been appointed to represent them pursuant to § 46b–54, the appointed attorney serves a function essentially similar to the guardian ad litem. Therefore, the minor children argue, to hold that the absence of either such a guardian or next friend is fatal to an appeal "is to elevate form over substance." In their view, the fact that the appeal is brought by their attorney "satisfies any requirement that the children bring suit via an adult representative."

Fourth, the minor children point out, as did the Appellate Court, that the absence from the appeal of a guardian ad litem or next friend is a mere irregularity that does not affect the Appellate Court's jurisdiction. They contend, therefore, that the defendant's motion to dismiss was untimely because the appeal had been filed on December 6, 1993, and the motion to dismiss was not filed until January 24, 1994, which was beyond the ten day time limit provided by Practice Book § 4056.[12]

*92 Finally, the minor children argue that, even if the common law requires a minor child to bring an *action* by a guardian ad litem or next friend, that common law rule does not apply to the filing of an appeal. Thus, they contend that their appeal is simply a continuation of the trial court action that was properly brought by the plaintiff, and that they are not saddled with any legal disability in continuing that action.

The defendant responds in kind.[13] He argues first that the Appellate Court was correct in dismissing the appeal because the minor children were not parties to the underlying dissolution action. Thus, the defendant, reminding us that the right to appeal is purely statutory, contends that under General Statutes § 52–263[14] and Practice Book **986 § 4000[15] only an aggrieved *party* may appeal, and that the parties to this action were the plaintiff and the defendant, and not the minor children.

Second, the defendant maintains that the minor children lacked standing to appeal because they did not act through a guardian or next friend. Because the minor *93 children could not, by themselves, set the appellate machinery in motion, the defendant asserts, and because standing involves the legal right to set that machinery in motion, they lacked standing to appeal. In this respect, the defendant contests the minor children's asserted functional equivalence between an attorney for minor children and a guardian ad litem or next friend, and the minor children's argument that their appeal is simply a continuation of the trial court proceeding to which they were not parties.

Third, the defendant argues that, even if their lack of party status in the trial court and the absence of a guardian ad litem or next friend were not dispositive, the minor children lacked standing to appeal because they were not aggrieved by the trial court's ruling. The defendant asserts that, because the order of support in this case is payable to the plaintiff, their mother, only she has a direct legal interest in the order, and that they "have at best an indirect practical interest."

Finally, the defendant offers several policy considerations in support of the Appellate Court's judgment. These are that permitting such an appeal: (1) "pits the children against their parents"—against their father by forcing him to destitution "probably without [their] knowing it," and against their mother, who chose not to contest the modification—in contravention of the public policy against unwarranted intrusions into the family unit; (2) encourages the pursuit of "merely colorable claims though the chances of winning are slim and the expense prohibitive," because "the children could not possibly suffer any harm from an appeal, not even an award of costs," and an unprincipled attorney for a child might appeal solely to generate a fee;[16] and (3) unduly burdens the legal system because "[w]hen a *94 judge has made a decision, and the parties have decided to live with it, there

is no reason to allow ... minor children to contest it."

Thus, both parties present this case as an all or nothing proposition. The minor children claim that they have an unrestricted right to appeal irrespective of the presence of a guardian ad litem or next friend. The defendant claims that the minor children have no right to appeal whatsoever, absent the presence of a guardian ad litem or next friend. We conclude, however, that the appropriate rule is somewhere in between: by analogy to § 46b–54, which articulates the standard for appointment of, and participation by, counsel for minor children in a dissolution of marriage case, the counsel for minor children in such a case may file an appeal on their behalf from an order regarding their support, without the intervention of a guardian ad litem or next friend, if the minor children first persuade the trial court that it is in their best interests to take such an appeal.

[2] [3] [4] We begin our analysis by acknowledging the strength of the precedents and policies urged by the defendant. The right to appeal is purely statutory, and only an aggrieved party may appeal. *Durso v. Misiorek,* **987 200 Conn. 656, 660, 512 A.2d 917 (1986). In the context of dissolution actions, only those who were parties to the underlying dissolution action may appeal. *Bergeron v. Mackler,* 225 Conn. 391, 391–92 n. 1, 623 A.2d 489 (1993). Moreover, "[o]rdinarily, the term party has a technical legal meaning, referring to those by or against whom a legal suit is brought ... the party plaintiff or defendant...." (Internal quotation marks omitted.) *Lieberman v. Reliable Refuse Co.,* 212 Conn. 661, 669, 563 A.2d 1013 (1989). We implicitly have recognized that definition to exclude the minor children of parents involved in a dissolution action, absent some additional effort to make the children formal parties to that action. *Salvio v. Salvio,* supra, 186 Conn. at 324, 441 A.2d 190.

[5] [6] [7] *95 Furthermore, the general rule is well established that "a child may bring a civil action only by a guardian or next friend, whose responsibility it is to ensure that the interests of the ward are well represented. *Cottrell v. Connecticut Bank & Trust Co.,* 175 Conn. 257, 261, 398 A.2d 307 (1978); *Collins v. York,* 159 Conn. 150, 153, 267 A.2d 668 (1970). When a guardian has been appointed to protect the interests of a child, the guardian is usually the proper person to bring an action on behalf of the child. *Williams v. Cleaveland,* 76 Conn. 426, 434, 56 A. 850 (1904). There are, however, certain exceptional circumstances; *Cottrell v. Connecticut Bank & Trust Co.,* supra, at 263, 398 A.2d 834; when a child may properly sue by next friend, notwithstanding the existence of such guardian, as when the guardian is absent, or is unwilling or unable to institute or prosecute the required action or appeal, and especially when, though declining to take such action himself, he does not forbid such proceeding, or when he is disqualified by interest hostile to that of the infant, or is for other reasons an improper or unsuitable person to prosecute such actions on behalf of the ward. *Williams v. Cleaveland,* supra, at 432, 56 A. 850. Although generally a person who brings an action as next friend need not obtain prior authorization from the court to do so; id., at 433, 56 A. 850; *McCarrick v. Kealy,* 70 Conn. 642, 646, 40 A. 603 (1898); the court must determine whether the person seeking to represent the child as next friend is a proper or suitable person to make a claim on behalf of the child. *Williams v. Cleaveland,* supra, at 433–34, 56 A. 850; *McCarrick v. Kealy,* supra, at 646, 40 A. 603." (Internal quotation marks omitted.) *Orsi v. Senatore,* 230 Conn. 459, 466–67, 645 A.2d 986 (1994).

[8] Although these precedents limit the right of a minor child to bring an action in the trial court, we see no reason not to apply their principles to the right of appeal as well. As a general matter, there is no reason to afford *96 a right of appeal greater than a right to sue in the first instance.

The policy arguments proffered by the defendant also have much to commend them. Affording the minor children in a dissolution action an unrestricted right to appeal orders regarding their support carries with it significant risks of widening the fissures in an already sorely tried family, and of imposing burdens on the non-custodial parent and the legal system that may well outweigh the potential benefits.

Furthermore, absent special circumstances; see, e.g., *Salvio v. Salvio,* supra, 186 Conn. at 324, 441 A.2d 190; there are good reasons not to consider the minor children as "parties" to the dissolution action or to require that they formally be made such parties. Treating the children as parties might well force them to choose sides and thus threaten to exacerbate their already heavy emotional burden, and would add a level of participation—even if only symbolic in most cases—that is inconsistent with a wise attempt to shield them as much as reasonably possible from the legal aspects of their parents' conflicts.

[9] Additionally, we are concerned about creating conflict in the attorney's role by conflating the role of counsel for a child with the role of a guardian ad litem or next friend. Typically, the child's attorney is an advocate for the child, while the guardian ad litem is the representative of the child's best interests. As an advocate, the attorney should honor the strongly articulated preference regarding taking an appeal of a child who is old enough to express a

reasonable preference; **988 as a guardian, the attorney might decide that, despite such a child's present wishes, the contrary course of action would be in the child's long term best interests, psychologically or financially. We recognized a similar concern in *State v. Garcia,* 233 Conn. 44, 90 n. 36, 658 A.2d 947 (1995), in which we concluded that, because his legal *97 interests and medical interests may diverge, an incompetent criminal defendant should have both legal counsel to represent his legal, or expressed, interests, and a guardian appointed to represent his medical, or best, interests. See also A. Lurie, "Representing the Child–Client: Kids are People Too," 11 N.Y.L.Sch.J.Hum.Rts. 205 (1993). Accordingly, we recognize that to the extent we allow the children to take an appeal through counsel, and not next friend or guardian, we can only allow such an appeal where such conflicts will not arise.

[10] At the same time, however, there is considerable persuasive power to much of what the minor children offer in support of their position. Although they are not parties to the underlying dissolution action, it cannot be denied that our statutes and precedents regarding the appointment of an attorney to represent their interests in dissolution proceedings do constitute legislative and judicial recognition that the orders entered by the trial courts in such proceedings may affect those interests. Furthermore, the fact that, in the trial court, the law deems it sufficient to protect those interests by way of an appointment of an attorney, rather than also requiring a simultaneous appointment of a guardian ad litem or the naming of a next friend, is an implicit recognition that, under most circumstances, that attorney is an appropriate adult to provide such protection. Also, contrary to the argument of the defendant that the minor children could not be aggrieved in this case because the defendant's legal obligation of support runs only to the plaintiff, the legal obligation of support for minor children runs, not solely to the custodial parent, but directly to the children as well. See *In re Bruce R.,* 234 Conn. 194, 209–10, 662 A.2d 107 (1995).

These considerations supporting the position of the minor children in this appeal are sufficient to persuade us that there may be circumstances in which the precedents and policies in favor of the general rule should *98 give way to a right of appeal in the minor children without the necessity of an appointment of a guardian ad litem or the naming of a next friend. For example, the custodial parent may not have the will or the wherewithal to prosecute an appeal, even if the court were to order the other party to pay attorney's fees for such an appeal; see *Miller v. Kirshner,* 225 Conn. 185, 210, 621 A.2d 1326 (1993) (court may award attorney's fees to prosecute appeal); and where the ruling at issue significantly and adversely may affect the child's interest in being provided with adequate support. In such a case, unless an appeal is permitted that interest may go unprotected.

Why, then, it may be asked, is it necessary in such a case to permit the minor children to appeal through their attorney, rather than simply to require them to secure the appointment of a guardian ad litem or the naming of a next friend—who conceivably could be the same attorney? The answer is that, if the law were to *require* that course in such a case, the law would be elevating form over substance. Presumably, if the trial court were to be asked to appoint a guardian ad litem or to pass upon the naming of a next friend; see *Orsi v. Senatore,* supra, 230 Conn. at 467, 645 A.2d 986; solely for the purpose of permitting such an appeal, the court in doing so would have to take into account the best interests of the child. Anything less would be an abdication of the court's independent obligation for the welfare of the children before it, an obligation that has deep roots in our jurisprudence. See *Apthorp v. Backus,* 1 Kirby (Conn.) 407, 409–10 (1788) ("the court under whose inspection the suit [by a minor's next friend] is prosecuted, is bound to take care for the infant; and if the prochein ami is not a responsible and proper person, or misconducts the suit, or institutes one not apparently for the benefit of the infant, will displace him, and, if need be, appoint another"). Thus, in such a case, if the *99 court were to conclude that the attorney for the minor child *would* be a proper person to be named as guardian ad litem or next friend for purposes of taking an **989 appeal, requiring the additional step of formally appointing the attorney as guardian ad litem or approving the attorney as next friend would add nothing substantive to the minor children's rights.

We conclude, therefore, that there is a need for a rule that will accommodate both the precedents and policies that we have outlined in favor of the general rule requiring that minor children may appeal only through a guardian or next friend and the limited circumstances where those precedents and policies may not sufficiently protect the best interests of the minor children. The question, then, is how to formulate that rule.

"It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the judge begins." B. Cardozo, The Nature of the Judicial Process (1921) p. 21. In this case, the colors do not match, and we are called upon to exercise our creativity as common law judges to create an exception to the general rule that will accomplish the accommodation between, on one hand, prior precedent

and policies and, on the other hand, the perceived need for a rule that will fill the interstices of those precedents and policies.

We find that accommodation in the contours of § 46b–54. See footnote 1. That statute governs the appointment of, and the degree of participation by, counsel for minor children in a dissolution action between their parents. It provides in relevant part that the court may appoint such counsel "if the court deems it to be in the best interests of the child or children"; General Statutes § 46b–54(a); and that such counsel "shall be heard on all matters pertaining to the interests *100 of any child ... so long as the court deems such representation to be in the best interests of the child." General Statutes § 46b–54(c). Under this statute, therefore, the governing standard is the best interests of the minor children.

Using that statutory standard for a determination of when minor children may appeal without the necessity of the court appointing a guardian ad litem or passing upon the naming of a next friend, we hold that they may do so if the minor children first persuade the trial court that such an appeal is in their best interests.[17] Although the children were not parties to the trial court action, we are persuaded that their interests were sufficiently implicated by the ruling at issue that, if the trial court determines that such an appeal is in their best interests, they ought to be deemed to be parties for purposes of taking that appeal pursuant to General Statutes § 52–263 and Practice Book § 4000. As we explain in more detail below, this standard ought to accommodate both the reasons for the general rule that a child may act only by a guardian or next friend and the limited circumstances in which the general rule arguably would prohibit an appeal that otherwise should be permitted.

We have on occasion looked to statutes as a source of policy for common law adjudication, particularly where there is a close relationship between the statutory and common law subject matters. See *Fahy v. Fahy,* 227 Conn. 505, 514–16, 630 A.2d 1328 (1993) (modification of alimony need not be based on change of circumstances *101 not contemplated at time of original order), and the authorities cited therein. "We consider this case to be a similarly appropriate instance for this adjudicative technique." Id., at 514, 630 A.2d 1328.

There is a close relationship between the protection of the interests of minor children in the trial court and the need for similar protection of those interests by way of an appeal from a trial court order regarding the support of those children, when no other appeal aimed at protection of those interests is being prosecuted. Thus, both ought to be governed by the same standard, namely, the best interests of the children.

**990 Furthermore, although the right of appeal is purely statutory pursuant to § 52–263, the definition of aggrievement for purposes of determining whether a party may appeal from a final judgment had its inception, and consistently has been applied as, a judicial, common law gloss on the term "aggrievement" in that statute, rather than having been drawn from any particular statutory definition or origin. See *Waterbury Trust Co. v. Porter,* 130 Conn. 494, 498–99, 35 A.2d 837 (1944); cf. *Water Pollution Control Authority v. Keeney, Commissioner of Environmental Protection,* 234 Conn. 488, 493, 662 A.2d 124 (1995). Thus, just as in *Fahy,* wherein we relied on the fact that a statutory requirement had its inception in judicial, common law adjudication, in this case we rely on the fact that the statutory concept of aggrievement has a similar origin. Moreover, the general rule requiring the appointment of a guardian or next friend for a minor to prosecute an action or appeal is a common law, judicially created rule, and is not statutory in origin. See *Apthorp v. Backus,* supra, 1 Kirby at 409. Thus, there is no jurisprudential impediment to creating, by way of common law adjudication, an exception to that rule.

There may be instances in which the functions of counsel for minor children differ fundamentally from *102 those of a guardian ad litem; see *Knock v. Knock,* 224 Conn. 776, 791, 621 A.2d 267 (1993) ("[t]he legislature has not delineated, nor has this court yet been presented with the opportunity to delineate, the obligations and limitations of the role of counsel for a minor child"); and before the trial court determines that the children should be allowed to take an appeal, it must be persuaded that, under the circumstances of the case before it, the children's attorney will not experience a conflict between her role as an advocate and the children's best interests. In other words, for the trial court to determine that the children may take an appeal, the court must consider and determine on the record that there is no conflict between the children's best interests and the children's articulated preference to bring the appeal. Such a finding is necessary to make sure that the attorney for the children will not be faced with the dilemma of reconciling such diverging interests while conforming to her role as advocate.

[11] [12] We turn next to the defendant's contention that the absence of a guardian ad litem or next friend deprives the minor children of standing to appeal because, in the absence of such representatives, the minor children have no right to set the appellate machinery in motion. We disagree, because that contention is inconsistent with the precedents that recognize the requirement of such

representatives. Lack of standing is a subject matter jurisdictional defect that cannot be waived. *Sadloski v. Manchester,* 228 Conn. 79, 83–84, 634 A.2d 888 (1993). As the Appellate Court aptly noted, however, "the bringing of an action for the minor child without the aid of a next friend or guardian ad litem is an amendable irregularity which could be waived. *Collins v. York,* supra, 159 Conn. at 154, 267 A.2d 668." (Internal quotation marks omitted.) *Newman v. Newman,* supra, 35 Conn.App. at 453–54, 646 A.2d 885. Thus, the lack of a guardian or next friend does not deprive the children of standing to appeal.

***103** We also conclude that, ordinarily, minor children will qualify as "aggrieved" by a trial court order that significantly diminishes or, as in this case, eliminates the amount of support payable for their benefit by the noncustodial parent to the custodial parent. The two-part test for aggrievement by a particular decision is well established. First, the person claiming to be aggrieved must have a specific, personal and legal interest in the subject matter of the decision, as distinguished from the general interest of the community as a whole. Second, the person must establish that his or her interest has been specially and injuriously affected by the decision. *Water Pollution Control Authority v. Keeney, Commissioner of Environmental Protection,* supra, 234 Conn. at 494, 662 A.2d 124. Moreover, with respect to the second part, the person need only establish a possibility, rather than a probability or certainty, of such injury. *Rose v. Freedom of Information Commission,* 221 Conn. 217, 230, 602 A.2d 1019 (1992).

As we have indicated, the first part of the test is met in a case such as this because the ****991** parent's support obligation runs, not only to the noncustodial parent, but directly to the minor children as well. The second part ordinarily also would be met by an order reducing or eliminating a support obligation, because there would be at least a possibility that the reduction or elimination of the amount of support payable by the noncustodial parent would mean a reduction in the total amount of money available to provide for such commonly indivisible items as food and shelter for the custodial family unit of which the minor children are a part.

Finally, we turn to the nature of the trial court's considerations in determining whether to authorize an appeal under the standards that we have articulated. Without attempting to limit the trial court's examination of all of the available facts and circumstances regarding ***104** whether to authorize an appeal by minor children from a trial court support order, we suggest the following as some of those factors: the nature of the particular trial court order at issue; whether there is likely to be an appeal of the order, irrespective of that requested by the minor children; the desires of the parent who would otherwise be an appellant but who does not intend to file such an appeal, and the reasons for that intention; whether the particular risks that underlie the general rule are likely to be realized by permitting such an appeal in the particular case; the potential for conflicts to arise between the best interests of the children and their desire to prosecute the appeal; the good faith of the attorney making the request for such an appeal on behalf of the children; the degree to which an appeal will unduly drain resources that could be better spent on the children; and whether there is any reasonable basis for such an appeal. We emphasize that this list is not exhaustive. The range of factors to be considered by the trial court is limited only by the applicable standard of the best interests of the children.

In summary, we conclude that the general rule is that minor children may not appeal from a trial court order in a dissolution case regarding their support in the absence of a guardian or next friend. An exception to that rule is that the counsel for the minor children appointed pursuant to § 46b–54 may file such an appeal on their behalf if the children, through their counsel, first persuade the trial court that it is in their best interests to do so. The court should take all available information into account in making that determination. If the court grants the request, the minor children will be deemed to be parties within the contemplation of General Statutes § 52–263 and Practice Book § 4000. If the court denies the request, the court's ruling will be subject to appellate review under an abuse of discretion standard. See footnote 17.

***105** Because the minor children took this appeal without the benefit of this new exception to the general rule, they must be given the opportunity to meet the requirements that we have now articulated. The case must therefore be remanded to the trial court for that determination.

The judgment of the Appellate Court is reversed, and the case is remanded to that court with direction to remand the case to the trial court for further proceedings in accordance with this opinion.

In this opinion PETERS, C.J., and CALLAHAN and KATZ, JJ., concurred.

BERDON, Associate Justice, concurring.

I agree with the majority that an attorney appointed for a minor child pursuant to General Statutes § 46b–54 may appeal on behalf of the child any judgment of the trial court that affects the child, provided the trial court determines that such an appeal is in the child's best interests.

I reach this conclusion, however, based solely on § 46b–54,[1] which authorizes the **992 trial judge to appoint an attorney for the minor child. First, § 46b–54 does not condition the court's power to appoint *106 an attorney for the child on the presence of a guardian ad litem or next friend. Second, according to the plain meaning of the statute, once an attorney is appointed for the child, he or she gains the status of a de facto party, the only limitation being that the court must consider the best interests of the child when deciding on which matters the attorney will be heard. General Statutes § 46b–54(c) ("[c]ounsel for the child or children shall be heard on *all matters* pertaining to the interests of any child, including the custody, care, support, education and visitation of the child, so long as the court deems such representation to be in the best interests of the child" [emphasis added]). It would defy common sense to interpret the statute to provide for the protection of a child's best interests only at trial and not during subsequent related proceedings. In my view, the broad language of the statute includes the right of the attorney on behalf of his or her minor client to appeal, subject to the approval of the trial court.

Section 46b–54 acknowledges what authorities on the subject have widely recognized—the need for children to be permitted separate party status and representation in divorce and custody proceedings. See J. Goldstein, A. Freud & A. Solnit, Beyond the Best Interests of the Child (1979) pp. 65–67 (regarding custody of child, "court cannot do 'complete justice' unless the child is recognized as a necessary, indeed, indispensable party to the proceedings.... This is because children, far from sharing the adults' concerns, are frequently put in direct conflict ... [and] their rights cannot be represented adequately by either the adult claimant or the adult defendant...."); see also S. Lefco, "The Child as a Party in Interest in Custody Proceedings," 10 Ga.St.B.J. 577, 581 (1974) (permitting only parental parties in divorce proceedings to argue their own most favorable *107 positions often overlooks best interests of child; similarly court often "rubber stamps" settlement agreement between parties subordinating best interests of child to interests of parents).

I recognize that very complex issues may arise in circumstances in which a child, without a guardian ad litem or next friend, is represented by an attorney appointed pursuant to § 46b–54. Nevertheless, none of these issues has been raised in this appeal. Furthermore, there is no evidence that by advocating the children's entitlement to support in this case, the children's attorney was not acting in their best interests. Therefore, such a conflict is not at issue here and those issues must be left for another day.

Accordingly, I agree with the result.

All Citations

235 Conn. 82, 663 A.2d 980

Footnotes

1 General Statutes § 46b–54 provides: "Counsel for minor children. Duties. (a) The court may appoint counsel for any minor child or children of either or both parties at any time after the return day of a complaint under section 46b–45, if the court deems it to be in the best interests of the child or children. The court may appoint counsel on its own motion, or at the request of either of the parties or of the legal guardian of any child or at the request of any child who is of sufficient age and capable of making an intelligent request.
"(b) Counsel for the child or children may also be appointed on the motion of the court or on the request of any person enumerated in subsection (a) of this section in any case before the court when the court finds that the custody, care, education, visitation or support of a minor child is in actual controversy, provided the court may make any order regarding a matter in controversy prior to the appointment of counsel where it finds immediate action necessary in the best interests of any child.
"(c) Counsel for the child or children shall be heard on all matters pertaining to the interests of any child, including the custody, care, support, education and visitation of the child, so long as the court deems such representation to be in the best interests of the child."

2 Thus, in this case we reach and decide the issue that we found unnecessary to decide in *Knock v. Knock,* 224 Conn. 776, 777 n. 1, 621 A.2d 267 (1993) ("[b]ecause the minor child's claims on appeal are also raised by the plaintiff, we need not decide whether the minor child is a party to this action and capable of individually appealing").

3 *Newman v. Newman,* 231 Conn. 928, 648 A.2d 879 (1994).

4 The plaintiff has not participated in this appeal.

5 The defendant had appealed from the judgment of the trial court, *Hull, J.,* and that appeal was pending at the time of the hearing on the motion to modify in this case. The defendant subsequently withdrew that appeal.

6 The defendant's financial affidavit disclosed deductions from his weekly unemployment compensation of $65 in income taxes, and $110 in court-ordered health insurance payments.

7 The following colloquy took place: "Ms. Dornfeld: I did have a few questions for Mr. Newman on cross that I had not—
"The Court: About what?
"Ms. Dornfeld: About his financial affidavit.
"The Court: Why? You represent the children.
"Ms. Dornfeld: Yes, Your Honor, and—
"The Court: Denied. You may take an appeal from that."

8 The defendant had moved to dismiss the appeal, claiming that the Appellate Court had no subject matter jurisdiction because of the lack of either a guardian ad litem or next friend. The defendant "contended that the minor children lacked standing to appeal, as they were not parties to the dissolution action and that, due to their status as minors, they could appeal only through a guardian [ad litem] or next friend." *Newman v. Newman,* 35 Conn.App. 449, 450, 646 A.2d 885 (1994). The court denied the motion to dismiss without prejudice to the defendant's raising it at oral argument. Id., at 451, 646 A.2d 885.

9 Indeed, the Appellate Court specifically did "not reach the issue of whether the children were aggrieved by the decision determining their support and whether they were, or must be, parties to the action in order to appeal." *Newman v. Newman,* supra, 35 Conn.App. at 455, 646 A.2d 885.

10 General Statutes § 46b–37 provides: "Joint duty of spouses to support family. Liability for purchases and certain expenses. Abandonment. (a) Any purchase made by either a husband or wife in his or her own name shall be presumed, in the absence of notice to the contrary, to be made by him or her as an individual and he or she shall be liable for the purchase.
"(b) Notwithstanding the provisions of subsection (a) of this section, it shall be the joint duty of each spouse to support his or her family, and both shall be liable for: (1) The reasonable and necessary services of a physician or dentist; (2) hospital expenses rendered the husband or wife or minor child while residing in the family of its parents; (3) the rental of any dwelling unit actually occupied by the husband and wife as a residence and reasonably necessary to them for that purpose; and (4) any article purchased by either which has in fact gone to the support of the family, or for the joint benefit of both.
"(c) Notwithstanding the provisions of subsection (a) of this section, a spouse who abandons his or her spouse without cause shall be liable for the reasonable support of such other spouse while abandoned.
"(d) No action may be maintained against either spouse under the provisions of this section, either during or after any period of separation from the other spouse, for any liability incurred by the other spouse during the separation, if, during the separation the spouse who is liable for support of the other spouse has provided the other spouse with reasonable support.
"(e) Abandonment without cause by a spouse shall be a defense to any liability pursuant to the provisions of subdivisions (1) to (4), inclusive, of subsection (b) of this section for expenses incurred by and for the benefit of such spouse. Nothing in this subsection shall affect the duty of a parent to support his or her minor child."

11 General Statutes § 46b–84 provides: "Parents' obligation for maintenance of minor child. Order for health insurance coverage. (a) Upon or subsequent to the annulment or dissolution of any marriage or the entry of a decree of legal separation or divorce, the parents of a minor child of the marriage, shall maintain the child according to their respective abilities, if the child is in need of maintenance.
"(b) If there is an unmarried child of the marriage who has attained the age of eighteen, is a full-time high school student and resides with a parent, the parents shall maintain the child according to their respective abilities if the child is in need of maintenance until such time as such child completes the twelfth grade or attains the age of nineteen, whichever first occurs. The provisions of this subsection shall apply only in cases where the decree of dissolution of marriage, legal separation or annulment is entered on or after July 1, 1994.
"(c) In determining whether a child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents,

and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child.

"(d) At any time at which orders are entered in a proceeding for dissolution of marriage, annulment, legal separation, custody, or support, whether before, at the time of, or after entry of a decree or judgment, if health insurance coverage for a child is ordered by the court to be maintained, the court shall provide in the order that (1) the signature of the custodial parent or custodian of the insured dependent shall constitute a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services, to the custodial parent or to the custodian, (2) neither parent shall prevent or interfere with the timely processing of any insurance reimbursement claim and (3) if the parent receiving an insurance reimbursement payment is not the parent or custodian who is paying the bill for the services of the medical provider, the parent receiving such insurance reimbursement payment shall promptly pay to the parent or custodian paying such bill any insurance reimbursement for such services. For purposes of subdivision (1), the custodial parent or custodian is responsible for providing the insurer with a certified copy of the order of dissolution or other order requiring maintenance of insurance for a child provided if such custodial parent or custodian fails to provide the insurer with a copy of such order, the commissioner of social services may provide the insurer with a copy of such order. Such insurer may thereafter rely on such order and is not responsible for inquiring as to the legal sufficiency of the order. The custodial parent or custodian shall be responsible for providing the insurer with a certified copy of any order which materially alters the provision of the original order with respect to the maintenance of insurance for a child. If presented with an insurance reimbursement claim signed by the custodial parent or custodian, such insurer shall reimburse the provider of the medical services, if payment is to be made to such provider under the policy, or shall otherwise reimburse the custodial parent or custodian.

"(e) After the granting of a decree annulling or dissolving the marriage or ordering a legal separation, and upon complaint or motion with order and summons made to the superior court by either parent or by the commissioner of administrative services in any case arising under subsection (a) or (b) of this section, the court shall inquire into the child's need of maintenance and the respective abilities of the parents to supply maintenance. The court shall make and enforce the decree for the maintenance of the child as it considers just, and may direct security to be given therefor, including an order to either party to contract with a third party for periodic payments or payments contingent on a life to the other party. The court may order either parent to name any child who is subject to the provisions of subsection (a) or (b) of this section as a beneficiary of any medical or dental insurance or benefit plan carried by such parent or available to such parent on a group basis through an employer or a union.

"(f) Whenever an obligor is before the court in proceedings to establish, modify or enforce a support order, and such order is not secured by a wage garnishment, the court may require the obligor to execute a bond or post other security sufficient to perform such order for support, provided the court finds that such a bond is available for purchase within the financial means of the obligor. Upon failure of such obligor to comply with such support order, the court may order the bond or the security forfeited and the proceeds thereof paid to the state in AFDC cases or to the obligee in non-AFDC cases."

12 Practice Book § 4056 provides: "Any claim that an appeal or writ of error should be dismissed, whether based on lack of jurisdiction, failure to file papers within the time allowed or other defect, shall be made by a motion to dismiss the appeal or writ. Any such motion must be filed in accordance with Secs. 4041 and 4042 within ten days after the filing of the appeal or the return day of the writ, or if the ground alleged subsequently occurs, within ten days after it has arisen, provided that a motion based on lack of jurisdiction may be filed at any time. The court may on its own motion order that an appeal be dismissed for lack of jurisdiction."

13 Some of the defendant's arguments consist of responses to the certified question as originally phrased. Some are presented in effect as alternate grounds on which to affirm the Appellate Court's judgment. We consider all of the arguments together.

14 General Statutes § 52–263 provides: "Appeals from superior court. Exceptions. Upon the trial of all matters of fact in any cause or action in the superior court, whether to the court or jury, or before any judge thereof when the jurisdiction of any action or proceeding is vested in him, if either party is aggrieved by the decision of the court or judge upon any question or questions of law arising in the trial, including the denial of a motion to set aside a verdict, he may appeal to the court having jurisdiction from the final judgment of the court or of such judge, or from the decision of the court granting a motion to set aside a verdict, except in small claims cases, which shall not be appealable, and appeals as provided in sections 8–8 and 8–9."

15 Practice Book § 4000 provides: "If a party is aggrieved by the decision of the court or judge upon any question or questions of law arising in the trial, including the denial of a motion to set aside a verdict, that party may appeal from the final judgment of the court or of such judge, or from a decision setting aside a verdict, except in small claims cases, which shall not be appealable, and appeals as provided in Gen.Stat. §§ 8–8, 8–9, 8–28 and 8–30."

16 The defendant in no way implies that this is the case in this appeal and, indeed, describes the children's counsel here as "highly principled."

17 In this respect, we also borrow from General Statutes § 52–470(b), which permits a habeas corpus litigant to appeal upon a certification by the trial court "that a question is involved which ... ought to be reviewed" on appeal. Similarly, if in a given case the trial court granted or denied the minor children's request to prosecute an appeal without either a guardian ad litem or next friend, that grant or denial would be subject to review on appeal under an abuse of discretion standard. Cf. *Simms v. Warden,* 229 Conn. 178, 188–89, 640 A.2d 601 (1994).

1 General Statutes § 46b–54 provides: "Counsel for minor children. Duties. (a) The court may appoint counsel for any minor child or children of either or both parties at any time after the return day of a complaint under section 46b–45, if the court deems it to be in the best interests of the child or children. The court may appoint counsel on its own motion, or at the request of either of the parties or of the legal guardian of any child or at the request of any child who is of sufficient age and capable of making an intelligent request.

"(b) Counsel for the child or children may also be appointed on the motion of the court or on the request of any person enumerated in subsection (a) of this section in any case before the court when the court finds that the custody, care, education, visitation or support of a minor child is in actual controversy, provided the court may make any order regarding a matter in controversy prior to the appointment of counsel where it finds immediate action necessary in the best interests of any child.

"(c) Counsel for the child or children shall be heard on all matters pertaining to the interests of any child, including the custody, care, support, education and visitation of the child, so long as the court deems such representation to be in the best interests of the child."

76 Conn.App. 693
Appellate Court of Connecticut.
In re TAYQUON H.*
No. 23219. | Argued Jan. 13, 2003. | Decided May 20, 2003.

Maternal grandmother appealed from decision of the Superior Court, Judicial District of Fairfield, Jones, J., finding that grandmother was not the guardian of eleven year old mother and that grandmother had no standing to contest order of temporary custody involving her grandchild. The Appellate Court, Bishop, J., held that, as matter of first impression, role of guardian ad litem superseded the role of the natural guardian, namely maternal grandmother, to speak for eleven year old mother's best interest, and thus, grandmother did not have standing to contest, on behalf of mother, order of temporary custody involving grandchild, where mother, a minor, had court-appointed guardian ad litem and was represented by attorney.

Affirmed.

Attorneys and Law Firms

**799 *694 Gary J. Wilson, Trumbull, for the appellant (maternal grandmother).

John Ashmeade, assistant attorney general, with whom, on the brief, were Richard Blumenthal, attorney general, and Susan T. Pearlman, assistant attorney general, for the appellee (petitioner).

Carl A. Massaro, Jr., Bridgeport, for the minor child.

*693 FLYNN, BISHOP and CRETELLA, Js.

Opinion

BISHOP, J.

The issue in this appeal is whether a child's maternal grandmother has standing to contest an order of temporary custody involving her grandchild when the child's mother, a minor, has a court-appointed guardian ad litem and is represented by an attorney. The resolution of that issue requires a discussion of the roles of guardian ad litem and attorney for the minor and the relationship between them when both are appointed for a minor in a juvenile matter. We affirm the judgment of the trial court.

I

The facts in this case are both unusual and sad. On April 4, 2002, the commissioner of children and families (commissioner) obtained an order of temporary custody (custody order) for S,[1] an eleven year old girl who was, at the time, six months pregnant. S had been sexually assaulted by a seventy-five year old man, regularly, for more than one year. When, in January, 2002, S had reported the assaults to her mother, C, C continued to allow the sexual perpetrator unsupervised access to the girl.[2] When a preliminary hearing was held on the custody order concerning S on April 11, 2002, C *695 acceded to the order and, further, agreed to undergo treatment for her chronic alcohol abuse.

S entered foster care, began receiving prenatal care and education and, on May 23, 2002, gave birth to a boy, twelve weeks prematurely. On May 24, after a preliminary determination by the commissioner that the eleven year old mother could not meet the infirmed infant's specialized needs, the commissioner sought and obtained the custody order for the infant, subsequently named Tayquon.

In the custody order concerning Tayquon, the court appointed attorney Ellen A. Morgan as guardian ad litem for S and attorney Mary Claire Collier as the attorney for S. The court appointed attorney Carl A. Massaro, Jr., as attorney and guardian ad litem for the infant. On May 30, 2002, a preliminary hearing was held on the custody order for Tayquon. At that juncture, Morgan, as guardian ad litem for **800 S, and attorney Collier were in accord to accede to the custody order for the infant on behalf of S. The grandmother, C, who was represented by counsel, sought, however, to contest the order. She presented the court with the argument that because S was her daughter and a minor, C automatically had standing as legal guardian to seek a ten day hearing on the custody order.[3] The commissioner argued in response that the presence of

the guardian ad litem for S effectively usurped the role of the legal guardian for the purposes of the litigation, and, thus, C, the grandmother, had no standing to contest the custody order. The court ordered briefs on the subject and scheduled a hearing for June 11, 2002.

In their briefs, both the grandmother and the commissioner largely reiterated their arguments to the court. *696 In his brief, Massaro, the attorney for Tayquon, argued that because no statute provided a grandmother (or any relative other than the biological or adoptive parents) with standing to contest an order of temporary custody, standing could be gained only by intervention.[4] Here, he argued, C had failed to file a motion to intervene, and, further, should one be filed, it should be denied because good reason exists for denying such a motion, namely, C's alleged neglect of S.

Collier, the attorney for S, who initially had supported the denial of standing for the grandmother at the May 30, 2002 hearing, later filed a brief in support of having a ten day hearing. She argued that the grandmother retained legal guardianship over S and, therefore, had standing and should be afforded an evidentiary hearing to contest the custody order. She wrote: "There would be no harm to the parties to allow the grandmother the right to a hearing concerning custody of [Tayquon]. The minor mother is in favor of her mother having a hearing concerning custody of the baby."

Morgan, the guardian ad litem for S, also filed a brief. She agreed with the commissioner and advocated a denial of standing for the grandmother. As to the conflict between herself and the grandmother, Morgan argued: "Once a [guardian ad litem] has been appointed for a minor child, the parent or legal guardian of the minor child loses the authority to assert the best interests of the minor child. That role belongs to the [guardian ad litem]."

On June 11, 2002, the parties reconvened and, after a brief oral argument, the court determined that the grandmother was not the guardian of S for the purposes of the present hearing and that she had no standing to contest the custody order. The grandmother subsequently *697 filed this appeal.[5] In this court, attorney Gary J. Wilson submitted a brief and made oral argument on behalf of the grandmother. Assistant attorney general John Ashmeade similarly argued and submitted a brief on behalf of the commissioner. Although he did not file a brief, Massaro, the attorney **801 for Tayquon, presented oral argument, with this court's permission. No one, however, appeared or spoke on behalf of S. Neither Collier nor Morgan filed an appellate brief or attended oral argument. Additional facts will be introduced as necessary.

II

[1] Historically, we have found that questions of standing do not involve inquiry into the merits of a case, but merely require assertions of injury to an interest that is, arguably, protected by statute or the common law. *Taff v. Bettcher,* 35 Conn.App. 421, 425, 646 A.2d 875 (1994). The question of standing raised by the grandmother is, therefore, a legal one. "When ... the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Fairfax Properties, Inc. v. Lyons,* 72 Conn.App. 426, 431, 806 A.2d 535 (2002).

Here, the grandmother seeks to contest the custody order on behalf of her daughter, who is a minor. Her claim rests on the assertion that as the legal guardian of S, she can maintain an action on her daughter's behalf, in this case, the request for the hearing on the *698 order of temporary custody. As the grandmother's legal status is central to her claim, we discuss as a threshold consideration the general parameters of a guardian's duties and responsibilities.

General Statutes § 45a–606 provides that the mother and father of a minor child are, *de facto,* guardians of that child. General Statutes § 45a–604 (5) enumerates the rights and responsibilities of a guardian of a minor, including: "(A) [t]he obligation of [the] care and control [of the minor]; (B) the authority to make major decisions affecting the minor's education and welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment; and (C) upon the death of the minor, the authority to make decisions concerning funeral arrangements and the disposition of the body of the minor...." General Statutes § 45a–605 (a) provides guidance on the interpretation of those expansive duties: "The provisions of [§ 45a–604 inclusive] ... shall

be liberally construed in the best interests of any minor child affected by them...." Arguably, the authority to make major decisions affecting the child's welfare intended to effectuate the child's best interest includes the authority to make legal decisions on behalf of the minor and would include, in this case, the authority to assert the child's legal rights in a court of law.

[2] [3] Reference to pertinent decisional law leaves no doubt that a guardian has the ability to assert his or her ward's legal rights. Although, generally speaking, a person has no standing to assert the rights of another,[6] when the parties include a guardian and a minor ward, as with a mother and daughter, the guardian is indeed entitled *699 to assert the legal rights of her ward. Our Supreme Court has opined: "It is well established that a child may bring a civil action only by a guardian ... whose responsibility it is to ensure that the interests of the ward are well represented." (Internal quotation marks omitted.) *Orsi v. Senatore,* 230 Conn. 459, 466–67, 645 A.2d 986 (1994). From our review of relevant statutory and decisional law, it is clear as a general proposition that guardianship includes both the duty and responsibility to safeguard a minor's best **802 interest as well as to protect the minor's legal rights.

[4] [5] In this case, we are mindful that the grandmother's claim to standing rests not only on those statutory and common-law bases, but that it also implicates a constitutional entitlement to family integrity. See *Pamela B. v. Ment,* 244 Conn. 296, 309, 709 A.2d 1089 (1998). "It is cardinal ... that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.... [T]he most essential and basic aspect of familial privacy [is] the right of the family to remain together without the coercive interference of the awesome power of the state." (Citations omitted; internal quotation marks omitted.) Id., at 309–10, 709 A.2d 1089.

[6] [7] [8] Nevertheless, this right to family integrity is not absolute. Our courts have long recognized that the state's intervention in family matters is justified when it is found to be in the best interest of the child. Id., at 310, 709 A.2d 1089. Our statutes authorize such intervention when it is found, inter alia, that a child has been neglected or uncared for. General Statutes § 46b–129 et seq. "[Parents'] rights are not absolute rights; they may be forfeited by their own conduct. The relation of parent and child is a status not a contract, and that status may be altered or abrogated by the State as *parens patriae* in the interests of society. The welfare of the child is *700 paramount to all other considerations, and the right of the parent to its ... control must yield to the State when, because of the neglect of its natural guardians, the State assumes its guardianship and protection." (Emphasis in original.) *Goshkarian's Appeal,* 110 Conn. 463, 468, 148 A. 379 (1930).

The appropriateness of the state's intervention under the unfortunate facts of this case can hardly be seriously questioned. We need not linger, therefore, on whether the state's intervention was warranted. From a child's perspective, family integrity consists of nurturance and protection. It is not conceptual; rather it is practical and tangible, moment by moment.

[9] Determining the respective rights of S's mother and the guardian ad litem to speak for S's best interest and to assert her rights is complicated, in this case, by the fact that the court additionally appointed counsel for S. Given the status of S as both a parent and a child, our observation that the court appointed both counsel and a guardian ad litem for S should not be taken as criticism. To the contrary, we note that the court has broad discretion to appoint counsel and guardians ad litem for minor parties. In particular, General Statutes § 46b–136 provides in relevant part: "In any proceeding on a juvenile matter the judge before whom such proceeding is pending shall, even in the absence of a request to do so, provide an attorney to represent the child or youth ... if such judge determines that the interests of justice so require...." Additionally, General Statutes § 45a–132 provides in relevant part: "(a) In any proceeding before a court of probate or the Superior Court ... the judge or magistrate may appoint a guardian ad litem for any minor or incompetent, undetermined or unborn person .... (b) The appointment shall not be mandatory, but shall be within the discretion of the judge or magistrate."[7]

**803 *701 Because the court appointed both a guardian ad litem and counsel for S, the question before us is whether the certain right that would allow S's mother to assert her daughter's legal right to a hearing on the order for temporary custody has been superseded by the appointment of a guardian ad litem by the court, and, additionally, whether the answer to that question is impacted by the appointment of a lawyer to represent the

daughter as well. Answers to those interrelated questions implicate the parameters of the guardian ad litem's role in juvenile proceedings and the relationship of the guardian ad litem to counsel when one is separately appointed.

We begin our analysis in that regard with the observation that nowhere in our decisional law or statutes are the duties and responsibilities of a guardian ad litem delineated. The actions of S's representatives in response to the issue of standing raised by S's mother evince confusion on the question of their respective roles and the delineation between them.[8]

Our Supreme Court has declined to formulate general instructions for either counsel or guardians ad litem in such situations. In *Schult v. Schult,* 241 Conn. 767, 769, 699 A.2d 134 (1997), the Supreme Court deliberated the ***702** question of whether, when a child had the representation of a guardian ad litem as well as counsel, it was permissible for counsel to advocate a position contrary to that of the guardian ad litem. The court eschewed a bright line rule, holding "that it is within the trial court's discretion to determine, on a case-by-case basis, whether such dual, conflicting advocacy of position is in the best interests of the child."[9] Id., at 777, 699 A.2d 134.

In *Ireland v. Ireland,* 246 Conn. 413, 717 A.2d 676 (1998) (en banc), our Supreme Court took up the question of the roles of a minor's representatives when both a guardian ad litem and an attorney are present. The court added definition to the role of counsel for a minor child by stating that the attorney's role when representing a minor should mirror as closely as possible the attorney's role when representing "unimpaired adults." Id., at 438, 717 A.2d 676.

Subsequently, in its 2001 session, the General Assembly, in Public Acts 2001, No. 01–148, § 1, amended General Statutes § 46b–129a (2), regarding the appointment of counsel and guardians ad litem, to provide in relevant part that in a proceeding under § 46b–129, "a child shall be represented by counsel knowledgeable ****804** about representing such children who shall be appointed by the court to represent the child and to act as guardian ad litem for the child. The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. ***703** When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. In the event that a separate guardian ad litem is appointed, the person previously serving as both counsel and guardian ad litem for the child shall continue to serve as counsel for the child and a different person shall be appointed as guardian ad litem, unless the court for good cause also appoints a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem...." General Statutes § 46b–129a.

[10] Our review of *Schult* and *Ireland* and that subsequent legislation instructs us that in the protection of a child who is the subject of a § 46b–129a petition, the court, in the first instance, must appoint a person to serve as guardian ad litem and counsel for the child, who is to be charged with protecting the child's best interest as well the child's legal rights in the process. It also is clear from that review that the obligation of the person appointed as counsel is shaped by the Rules of Professional Conduct, which, in pertinent part, obligate counsel to abide by a client's decisions concerning the objectives of representation. See Rules of Professional Conduct 1.2(a).[10] It is when counsel perceives that this obligation is in conflict with the child's actual best interest that counsel must bring that to the court's attention, and the court, in turn, must appoint a separate guardian ad litem to protect and to promote the child's ***704** best interest in the process.[11] Neither the cases nor the legislation, however, discuss the manner in which a guardian ad litem's duties should complement those of the attorney. The case before us further implicates questions concerning the role and responsibilities of a guardian ad litem, both in relation to the minor's natural guardian as well as to the minor's attorney.

It is well established that the role of the guardian ad litem is to speak on behalf of the best interest of the child. Although the term "best interest" is elusive to precise definition, one commission study aptly observed that "[t]he best interests of the child has been generally defined as a measure of a child's well-being, which

includes his physical (and material) needs, his emotional (and psychological) needs, his intellectual and his moral needs."[12] The specific duties of the **805 guardian ad litem necessary to execute that general mandate properly have been suggested by many experts and advisory committees. Some of the commonly discussed duties include investigation of the facts necessary to get a clear picture of the child's situation, a determination of the child's best interest, frequent communication with the child and the court, and the making of recommendations to the court through testimony.[13]

[11] *705 We also find useful principles that have been advanced by the National Court Appointed Special Advocate Association (NCASAA), an organization that trains and provides volunteer guardians ad litem for use by courts nationwide.[14] Among the responsibilities of a volunteer guardian ad litem are to maintain complete written records about the case, report any incidents of child abuse, interview the parties, including the child, determine if a permanent plan has been developed for the child, assure that the child's best interest is being represented at every stage of the case, attend all hearings, monitor the case by visiting the child as often as necessary to verify that court orders are being followed, participate in formulating the child's permanent plan and remain engaged in the case until discharged by the court.[15] See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 4, 1995 Sess., p. 1434.

Further illumination of the role of the guardian ad litem can be found in a publication of the American Academy of Matrimonial Lawyers (Academy) regarding standards for the representation of children in family proceedings. Although those standards focus primarily on the role of counsel for a minor child, in its discussion of guardians ad litem, the Academy espouses the view that the primary task for the guardian ad litem, at trial, is to make the decision maker aware of all the facts and to offer evidence as a sworn witness, subject to *706 cross-examination. Those standards also recommend that the guardian ad litem engage in frequent communication with the child, and generally help to expedite the process and to encourage settlement of disputes. American Academy of Matrimonial Lawyers, Representing Children (1995) p. 4. In the Academy's standards, the authors correctly observe that to ensure performance of those functions, the court must notify the guardian ad litem of all conferences and hearings, and make clear to the guardian ad litem his or her obligation to attend all court activities unless excused by the court. Id.

As a general matter, we endorse all of those enumerated functions as a menu of responsibilities from which a trial court may derive specific instructions to a guardian **806 ad litem at the time of his or her appointment.

While helpful in their instructions, the various guidelines for a guardian ad litem or counsel for a minor child offer little guidance to each concerning the delineation of their responsibilities when both are appointed. The absence of either general parameters or case specific directions has the potential to lead to confusion, which is neither in the best interest of a child nor consonant with the efficient use of resources.

[12] [13] Although we understand from the guidance of *Schult* that no bright line can be drawn to delineate, for all cases, the roles of a guardian ad litem and counsel for a minor child, it is useful to observe that the legal rights of a child often may be distinct from the child's best interest, and although there frequently may be overlap between the two, it is only because, in such cases, the rights of a child and the child's best interest coincide.[16] While the best interest of a child encompasses a catholic *707 concern with the child's human needs regarding his or her psychological, emotional, and physical well-being, the representation of a child's legal interests requires vigilance over the child's legal rights. Those legal rights have been enumerated as the right to be a party to a legal proceeding, the right to be heard at that hearing and the right to be represented by a lawyer.[17] When both a guardian ad litem and an attorney have been appointed for a child, their respective roles and the duties attendant to those roles should adhere to that basic distinction. Specifically, the guardian ad litem should refrain from acting as a second attorney for the child. Just as it is not normally the province of the attorney to testify, it is not the province of the guardian ad litem to file briefs with the court.[18]

**807 [14] [15] *708 The duties of the guardian ad litem, however, are contextually specific to the case at hand, and the scope of those duties should be set by the trial court judge and communicated to the guardian ad litem.[19] Because those duties may subsume those traditionally performed by counsel when counsel is the child's sole representative; see General Statutes § 46b–54 (c);

counsel's duties must be similarly articulated by the court.[20]

III

[16] [17] Although the issues are clouded by the appointment of an attorney as well as a guardian ad litem to represent the interests of the child, S, the absence of an enumerated list of the duties of the guardian ad litem does not prevent us from resolving the issues presented by this case because we conclude that the guardian ad litem supersedes the role of the natural guardian to speak for the child's best interest in the present litigation. In contrast to a guardian of a person who has physical control of the minor or a guardian of an estate who has legal control over the minor's financial affairs, the guardian ad litem is appointed by a court and granted *709 limited powers to represent the interest of the child in a particular court proceeding.[21]

Although it is a question of first impression whether the limited powers of a guardian ad litem usurp a parent's right to speak on behalf of the minor,[22] our Supreme Court has provided us with guidance in related decisions. In *Orsi,* the court opined: "When a guardian has been appointed to protect the interests of a child, the guardian is usually the proper person to bring an action on behalf of the child." *Orsi v. Senatore,* supra, 230 Conn. at 467, 645 A.2d 986; see also *Williams v. Cleaveland,* 76 Conn. 426, 56 A. 850 (1904). Although that is the general rule adopted by our courts, it allows for exceptions, such as when the nominal guardian is absent, unwilling or unable to fulfill his or her duties, or there exists a conflict of interest or other " 'exceptional circumstances.' " *Orsi v. Senatore,* supra, at 467, 645 A.2d 986. The court must therefore determine whether such circumstances exist and, if they do, who is best suited to make a claim on behalf of the child. Id.

**808 [18] Furthermore, where the court appoints counsel for a minor child, but no guardian ad litem to speak for the minor, we have concluded that because counsel for the child is more appropriately situated to exercise sound legal judgment, that creates a presumption that the court-appointed counsel is the proper person to fill the role of guardian for a particular legal action, absent an independent guardian ad litem. *Taff v. Bettcher,* supra, 35 Conn.App. at 428, 646 A.2d 875; see also *710 *Lord v. Lord,* 44 Conn.App. 370, 689 A.2d 509, cert. denied, 241 Conn. 913, 696 A.2d 985 (1997), cert. denied, 522 U.S. 1122, 118 S.Ct. 1065, 140 L.Ed.2d 125 (1998). In such a situation, if the court wanted to have an adult, other than a parent, speak for the child in a juvenile proceeding, and not merely advocate on behalf of the child, it would be well for the court either to appoint a separate guardian ad litem or to give specific instructions to counsel concerning the limits of his or her responsibilities of advocacy. Reciprocally, if counsel for a minor finds himself or herself in a conflict between advocating for the child's desires and speaking for the child's best interest, counsel should immediately bring that conflict to the court's attention.[23]

[19] On the basis of those allied decisions and amplified by our understanding of the fundamental role of a guardian ad litem, we believe that as between a guardian ad litem and a natural guardian, the presumption should be that the court-appointed guardian ad litem is the proper person to speak for the child for the purposes of the litigation, barring a showing that he or she cannot properly fulfill the guardian ad litem role and that another is better suited to the role. The maternal grandmother has made no showing that the court-appointed guardian ad litem could not fulfill her role, nor has the grandmother alleged that the guardian ad litem has misspoken or that the grandmother was more properly *711 suited to speak on behalf of S's best interest. The facts in the record support the opposite conclusion: The grandmother, who was seeking to act as S's guardian for the purposes of this proceeding, recently had acquiesced to an order of temporary custody removing S from her own custody and was undergoing substance abuse treatment.

From the record, it is apparent that the court weighed those considerations in its ruling. Judge Jones stated: "The court agrees with the position set forth by the commissioner that in [the] circumstances of this case, where the court has appointed a guardian ad litem ... and given the circumstances under which the child, the young mother [S], was removed from the care of ... [the maternal grandmother, the grandmother] is not the 'guardian' of the child for the purpose of this proceeding." We agree with the court.

The judgment is affirmed.

**809 In this opinion the other judges concurred. 76 Conn.App. 693, 821 A.2d 796

All Citations

Footnotes

* In accordance with the spirit and intent of General Statutes § 46b–142 (b) and Practice Book § 79–3, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

1 To protect the identity of the underage victim and her family, their names are not used in this opinion. See General Statutes § 54–86e.

2 The perpetrator currently is serving a twelve year term of incarceration, having been convicted of one count of sexual assault in the first degree and one count of risk of injury to a child.

3 General Statutes § 46b–129 (f) provides in relevant part: "Upon request, or upon its own motion, the court shall schedule a hearing on the order for temporary custody or the order to show cause to be held within ten days from the date of the preliminary hearing...."

4 See General Statutes § 46b–129 (c).

5 We note with approval that the commissioner has not challenged the party status of the grandmother to bring this appeal. Cf. *State v. Salmon,* 250 Conn. 147, 735 A.2d 333 (1999). The court found that the grandmother was served properly. We believe that her interest as the natural guardian of S, a minor, is adequate to accord her party status. Cf. Practice Book (1998) § 26–1(k)(2), now (h)(2); see also General Statutes § 46b–142 (b); *In re Jonathan M.,* 255 Conn. 208, 764 A.2d 739 (2001).

6 "It is axiomatic that due process rights are personal, and cannot be asserted vicariously." (Internal quotation marks omitted.) *Taff v. Bettcher,* supra, 35 Conn.App. at 425, 646 A.2d 875.

7 We disagree with the commissioner's claim that the provisions of General Statutes § 46b–129a provide authority for the appointment of counsel and a guardian ad litem for a minor parent in this setting. We believe, rather, that § 46b–129a relates to the appointment of counsel and guardian ad litem for the child whose protection is the object of a petition and not a parent who also happens to be a child, as is the case here.

8 Evidence of the confusion comes from the fact that the guardian ad litem submitted a brief to the court on the question of the grandmother's standing to request a hearing on the order of temporary custody. Also, as noted, neither counsel nor the guardian ad litem for S participated in the appellate proceedings. We note, too, that the record is silent as to whether the trial court issued any specific instructions to the guardian ad litem or to the attorney on their respective roles at the time they were appointed.

In fairness, we acknowledge that jurisprudence on the subject has been sparse and that both court-appointed guardians ad litem and attorneys provide invaluable services to the children of Connecticut and the judicial system alike, and are, generally speaking, grossly underpaid, if paid at all.

9 When a guardian ad litem is appointed, the court concluded that, while "*ordinarily* the attorney should look to the guardian [to ascertain the best interest of the minor-ward]"; (emphasis in original) *Schult v. Schult,* supra, 241 Conn. at 783, 699 A.2d 134; such action is not required in every case. The court further concluded that "[l]eaving the determination to the sound discretion of the trial court is particularly important in [these] difficult cases.... The trial court is in the best position to evaluate the child's need for representation as the case and the evidence unfold." Id., at 780–81, 699 A.2d 134.

10 But see Rules of Professional Conduct 1.14, titled "Client under a Disability," authorizing counsel to seek the appointment of a guardian when a client's ability to make an adequately considered decision is impaired.

11 We recognize that those cases and the 2001 amendment to General Statutes § 46b–129a concern the appointment of counsel and a guardian ad litem for a child who is the subject of a petition and not for a child who is the parent of an infant. Given the unfortunate reality, however, that the status of being a child as well as a parent in a juvenile proceeding is not a rarity, we believe a discussion of the respective responsibilities of counsel and guardian ad litem for a child, here, is equally germane.

12 Quebec Bar Committee, "The Legal Representation of Children: A Consultation Paper Prepared by the Quebec Bar Committee," 13 Can. J. Fam. L. 49, 54 (Robin Ward trans.) (1996).

13 See R. Heartz, "Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness," 27 Fam. L.Q. 327, 341–46 (1993); see also American Academy of Matrimonial Lawyers, Representing Children (1995) p. 4.

14 NCASAA, under a cooperative agreement with the office of juvenile justice and delinquency prevention in the United States Department of Justice, was formed to promote the development of Court Appointed Special Advocate—or volunteer guardian ad litem—programs. R. Heartz, "Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness," 27 Fam. L.Q. 327, 337 (1993). NCASAA trained volunteer guardians ad litem currently are serving in courts in every state. Id., at 328.

15 NCASAA includes among its recommendations that a guardian ad litem should submit written reports to the court. We find that suggestion troublesome, as we believe it more appropriate that a guardian ad litem testify as a witness, subject to cross-examination.

16 See also *Ireland v. Ireland,* supra, 246 Conn. at 439–40, 717 A.2d 676. While acknowledging that a distinction between the two roles was proper, the court stopped short of defining the "precise parameters of the functions of the guardian ad litem...." Id., at 440, 717 A.2d 676.

17 Quebec Bar Committee, "The Legal Representation of Children: A Consultation Paper Prepared by the Quebec Bar Committee," 13 Can. J. Fam. L. 49, 61–64 (Robin Ward trans.) (1996).

18 "We do not allow submission of attorneys' personal opinions in other areas of the law and we see no reason to do so in this case." *Ireland v. Ireland,* supra, 246 Conn. at 438, 717 A.2d 676.

Our Supreme Court also emphasized the restricted role of counsel in *Schult.* The court provided the following guidance: "[R]epresentation must be entrusted to the professional judgment of appointed counsel within the usual constraints applicable to such representation." *Schult v. Schult,* supra, 241 Conn. at 778, 699 A.2d 134. "[T]he attorney should honor the strongly articulated preference ... of a child who is old enough to express a reasonable preference." (Internal quotation marks omitted.) Id., at 779, 699 A.2d 134. In other words, the attorney should maintain, as closely as possible, a lawyer-client relationship that is as normal as possible. See Rules of Professional Conduct 1.14.

The guidelines for the Court Appointed Special Advocate (CASA) programs; see footnote 14; support that view. The guidelines list the duties that the guardian ad litem should *not* perform: (a) taking home or sheltering a child; (b) *giving legal advice* or therapeutic counseling; (c) making placement arrangements for a child; (d) giving money or expensive gifts to the family or to a child. See footnote 14. "The CASA volunteer does not provide legal representation in the courtroom. That is the role of the attorney. However, the CASA volunteer does provide crucial background information that assists attorneys in presenting their cases. It is important to remember that CASA volunteers do not represent a child's wishes in court. Rather, they speak to the child's best interests." Conn. Joint Standing Committee Hearings, supra, at p. 1433; see also American Academy of Matrimonial Lawyers, supra, at rule 3.1, p. 4.

Although we have observed that a distinguishing of the roles of attorney and guardian ad litem is proper, we find one fundamental overlap in their duties to the child; that is their appearance at all hearings to represent the child's interest in their respective capacities. See R. Heartz, "Guardians Ad Litem in Child Abuse and Neglect Proceedings:

Clarifying the Roles to Improve Effectiveness," 27 Fam. L.Q. 327, 341–46 (1993); see also 43 C.J.S. 610, Infants § 234 (1978).

19 "A guardian ad litem ... is always subject to the supervision and control of the court, and he may act only in accordance with the instructions of the court." 43 C.J.S. 609, Infants § 234 (1978).

20 "[A][t]rial judge who appoints counsel for [a] child in [a] custody matter should tell [the] appointed counsel what is expected since, absent firm guidelines from [the] legislature or other sources, [the] best solution regarding [the] counsel's role appears to lie in precise, clear-cut orders by [the] court after input from counsel." 43 C.J.S. 609, Infants § 234 (1999). We conclude that this is especially true when the court has also appointed a guardian ad litem, and equally true with respect to the duties of the guardian ad litem.

21 E. Sokolnicki, "The Attorney as Guardian Ad Litem for a Child in Connecticut," 5 Conn. Prob. L.J. (1991); see also 43 C.J.S. 609, Infants § 234 (1978) ("rights and powers of a guardian ad litem ... are strictly limited to the performance of the precise duties imposed on him by law. Ordinarily, his authority is recognized only for certain specific purposes").

22 In the Texas case, *Grunewald v. Technibilt Corp.*, 931 S.W.2d 593 (Tex.App.1996), however, the court found that a minor's parents had no standing when a guardian ad litem had been appointed. Id., at 596.

23 See General Statutes § 46b–129a. The question of when a child can express a reasonable preference is one that is particularly ill-suited to a bright line rule. It is nevertheless a question that requires the trial court's guidance and counsels vigilance. "One view is that a child's ability to make a thoughtful decision depends on his or her abilities to understand, to reason, and to communicate, together with having a set of values. Another recommendation is that the advocate respond differently to the very young child, and the middle child aged seven to fourteen, while allowing the child's wishes to be determinative at age fourteen." R. Heartz, "Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness," 27 Fam. L.Q. 327, 335 (1993). The question is best left to the discretion of the trial court and the minor's representatives.

280 Conn. 474
Supreme Court of Connecticut.
In re CHRISTINA M. et al.*
Nos. 17511, 17512. | Argued Sept. 18, 2006. | Decided Nov. 7, 2006.

Synopsis
Background: Commissioner of Children and Families filed petition seeking termination of mother's and father's parental rights to children. The Superior Court, Judicial District of Windham, Driscoll, J., granted petition. Parents appealed. The Appellate Court, 90 Conn.App. 565, 877 A.2d 941, affirmed. Parents filed petitions for certification to appeal.

Holdings: Upon grant of petitions, the Supreme Court, Katz, J. held that:

[1] parents had standing to assert claim that their children were denied their constitutional right to conflict free representation, and

[2] trial court had no duty, sua sponte, to ensure that no conflict of interest existed between what children wanted and what their attorney advocated.

Affirmed.

Attorneys and Law Firms

**1076 Raymond J. Rigat, for the appellant in Docket No. SC 17511 (respondent father).

Cheryl A. Juniewic, New Haven, for the appellant in Docket No. SC 17512 (respondent mother).

John Tucker, assistant attorney general, with whom, on the brief, were Richard Blumenthal, attorney general, and Paula D. Sullivan and Susan T. Pearlman, assistant attorneys general, for the appellee (petitioner).

David T. Stone, Vernon, for the minor children.

Christina D. Ghio and Martha Stone, Hartford, filed a brief for the Center for Children's Advocacy, Inc., et al. as amici curiae.

BORDEN, NORCOTT, KATZ, PALMER and VERTEFEUILLE, Js.

Opinion

KATZ, J.

*476 The principal issue in this certified appeal is whether parents who are respondents to a termination of parental rights petition have standing to assert the constitutional rights of their children who are the subject of the termination action. Specifically, we must consider whether parents have standing to assert a claim that their children were denied their constitutional right to conflict free representation in the termination proceeding because the children were denied the appointment of an attorney to advocate for their express wishes during the termination proceeding. We conclude that parents have standing to assert such claims. We further determine that, even if we were to assume without deciding that such a constitutional right **1077 exists, the factual record must reflect that there was an apparent conflict between the wishes of the children and the position advocated by their attorney. Because, in the present case, the record is not adequate to establish such a conflict, we do not reach the substantive issues inherent in such a claim.

The record reveals the following undisputed facts. The petitioner, the commissioner of children and families (commissioner), sought to terminate the parental rights of the respondents, Anthony M. and Jessica C., with respect to their three minor children, Christina M., Lynndora M. and Betty Ann M., alleging that the respondents, who had been found to have neglected the children, were unable or unwilling to benefit from the reunification efforts of the department of children and families (department) and that, accordingly, their parental rights should be terminated pursuant to General Statutes § 17a–112(j)(3)(B)(ii). The trial court *477 appointed separate counsel for the respondent mother and father, as well as counsel for the respondents' children, as required under General Statutes § 46b–129a(2).[1] During the three day evidentiary hearing on the petitions, the attorney representing the respondents' children supported the position of the commissioner that termination of the respondents' parental rights was in the best interest of the children.[2] Although the trial court acknowledged the mutual love between the respondents and their children, it found that the commissioner *478 had proven her allegations and,

accordingly, rendered judgments terminating the respondents' parental rights.

In their appeals to the Appellate Court from the judgments terminating their parental rights, the respondents raised the **1078 following three issues. First, they challenged the validity of the trial court's findings that the commissioner had presented clear and convincing evidence to establish, in accordance with § 17a–112(j), that, despite efforts by the department to improve the respondents' ability to provide proper care for their daughters, the parents had not achieved sufficient rehabilitation.[3] Second, the respondents faulted the trial court for having failed to appoint, on its own initiative, not only an attorney to represent the children's legal rights, but also a guardian ad litem to advocate for their best interests. Finally, the respondent father claimed that, as a matter of law, in order to protect the procedural due process rights of economically disadvantaged parents, under *479 article first, §§ 8 and 10, of our state constitution, courts must require proof beyond a reasonable doubt of the grounds for termination of parental rights. The Appellate Court disagreed with each of these claims and affirmed the judgments. *In re Christina M.*, 90 Conn.App. 565, 877 A.2d 941 (2005).

Thereafter, we granted the respondents' petitions for certification to appeal from the Appellate Court, limited to the following issues: "1. Whether the Appellate Court properly concluded that the trial court does not have a constitutional obligation to appoint an independent attorney to advocate for the express wishes of a child, who is the subject of a termination of parental rights petition, when those wishes conflict with the position advocated by the child's present counsel? [and] 2. If the answer to the first question is 'no,' whether deprivation of that right by an attorney who advocates a position contrary to the express wishes of the child causes 'structural error' in a termination proceeding creating a presumption of prejudice?" *In re Christina M.*, 276 Conn. 903, 884 A.2d 1024 (2005).

The respondents contend that children subject to a petition for termination of parental rights have a constitutional right to effective assistance of counsel.[4] They **1079 further contend that the trial court in the present case had an obligation, sua sponte, to ensure that there was no conflict between the children's legal interest and *480 their best interest because there was evidence in the record that the children's attorney was not advocating for the expressed wishes of the children. In response, the commissioner contends that this court should not consider the respondents' claim because they lack standing to assert the constitutional rights of their children. The commissioner further contends that the right of children to representation by counsel in termination proceedings is statutory, not constitutional, but even if such a right exists, the record is inadequate to demonstrate that the position advocated by the children's attorney reflected a conflict of interest. We conclude that we cannot address the merits of the certified questions because, although the respondents have standing to assert their claim, the record does not reflect that there was a conflict of interest that would implicate the effectiveness of the children's representation.

I

[1] [2] [3] [4] [5] [6] Before addressing the merits of the respondents' claims, we first must consider the commissioner's assertion that the respondents lack standing to raise these issues. "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause.... Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it.... [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction.... The objection of want of jurisdiction may be made at any time ... [a]nd the court or tribunal may act on its own motion, and should do so when the lack of jurisdiction is called to its attention.... The requirement of subject matter jurisdiction cannot be waived by any party and can be raised at any stage in the proceedings." (Internal quotation marks omitted.) *Frillici v. Westport*, 264 Conn. 266, 280, 823 A.2d 1172 (2003).

[7] [8] [9] [10] *481 "Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.... Two broad yet distinct categories of aggrievement exist, classical and statutory.... Classical aggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest that all members of the community share.... Second, the party must also show that the ... decision has specially and injuriously affected that

specific personal or legal interest.... Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Missionary Society of Connecticut v. Board of Pardons & Paroles,* 278 Conn. 197, 201–202, 896 A.2d 809 (2006).

[11] Although this court previously has not addressed standing in this context, the issue of a parent's standing to raise concerns about his or her child's representation is an issue with which the Appellate Court has had some familiarity. In **1080 *In re Shaquanna M.,* 61 Conn.App. 592, 593–94, 767 A.2d 155 (2001), the primary issue was whether the respondent mother, whose parental rights in her three sons had been terminated, had been denied procedural due process when the trial court denied her motion for a mistrial or, alternatively, for a continuance, made during the course of trial, based on the death of the attorney whom the court had appointed as both counsel and guardian ad litem for *482 her sons.[5] The respondent mother challenged that decision in her appeal from the judgments terminating her parental rights, and the commissioner had claimed that the respondent lacked standing to pursue a claim that the denial of her motion for a continuance violated due process. Id., at 597, 767 A.2d 155. Acknowledging that no statute gave the respondent the specific right to seek the remedy of a mistrial or a continuance because of the death of the counsel or guardian ad litem for her children, she claimed classical aggrievement, contending that she had a colorable claim of a direct injury, which was peculiar and personal to her, that she was likely to suffer by the denial of her motion. Id., at 597–98, 767 A.2d 155.

In addressing the issue of standing, the Appellate Court first identified the competing interests at stake: the freedom of personal choice in matters of family life, which is a fundamental liberty interest protected by the fourteenth amendment; and the state's interest in preserving and promoting the welfare of a child. Id., at 598, 767 A.2d 155, citing *Santosky v. Kramer,* 455 U.S. 745, 753, 766, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). The Appellate Court then noted that, "[t]he desire and right of a parent to maintain a familial relationship with a child cannot *483 be separated from the desire and best interest of a child either to maintain or to abandon that relationship, or the interest of the state in safeguarding the welfare of children"; *In re Shaquanna M.,* supra, 61 Conn.App. at 598, 767 A.2d 155; and that, in resolving the struggle between parents and the state to determine what is in the child's best interest, with the child being the focus of the struggle, "[i]t is difficult to separate the right to federal due process of the respondent from those of her children." Id., at 599, 767 A.2d 155. Recognizing that the respondent mother had a stake in the outcome of her motion for a continuance because the trial court's action on that motion could affect the course of the trial and, ultimately, whether her rights as a parent would be terminated, the court made the following determination: "At stake was the possible or probable direct injury to her of her right to retain her status as a mother. It is hard to understand how she could be more specially involved. The inadequate representation of her children by an attorney or guardian ad litem could, at the very least, colorably harm her. A colorable claim of direct injury to her that she may suffer or is likely to suffer gives her standing.... **1081 Inadequate representation of her children in the capacity of guardian ad litem could particularly harm her because it is in that capacity that the best interests of her children must be determined. A mother has standing to challenge a ruling that involves an alleged interference with her status as a parent." (Citation omitted.) Id., at 599–600, 767 A.2d 155. Accordingly, the court held that the respondent had standing to pursue her claim that her motion for a continuance should have been granted. Id., at 600, 767 A.2d 155; see also *In re Brendan C.,* 89 Conn.App. 511, 520 n. 4, 874 A.2d 826 (relying on *In re Shaquanna M.* for conclusion that respondent parent had standing to raise claim, on behalf of child, that child had received inadequate representation in termination proceeding), cert. denied, 274 Conn. 917, 879 A.2d 893, cert. denied, 275 Conn. 910, 882 A.2d 669 (2005).

*484 Indeed, it is beyond dispute that, "the interest of parents in the care, custody, and control of their children ... is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme Court]." *Troxel v. Granville,* 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); see *Meyer v. Nebraska,* 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) (liberty protected by due process clause includes right of parents to establish home and bring up children and to control education of their own); *Pierce v. Society of Sisters,* 268 U.S. 510, 534–35, 45 S.Ct. 571, 69 L.Ed. 1070 (1925) (liberty of parents and guardians includes right "to direct the upbringing and education of children under their control"); *Prince v. Massachusetts,* 321 U.S. 158, 166, 64 S.Ct. 438, 88 L.Ed. 645 (1944) ("[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither

supply nor hinder"); *Stanley v. Illinois,* 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) ("[i]t is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this [c]ourt with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' "); *Wisconsin v. Yoder,* 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."); *Quilloin v. Walcott,* 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) ("[w]e have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham v. J. R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) ("Our ***485** jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course."); *Santosky v. Kramer,* supra, 455 U.S. at 753, 102 S.Ct. 1388 (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"). Thus, in the present action, both the respondents and the children have a mutual interest in the preservation of family integrity, and the termination of parental status is irretrievably destructive of that most fundamental family relationship.

This case does not implicate merely the inability of the respondents' children to raise their *own* claims, such that we must consider whether the respondents have standing to vindicate their children's rights on that basis. See *Powers v. Ohio,* 499 U.S. 400, 411, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991) (criminal defendants may assert equal protection rights of potential jurors whose equal protection rights have been ****1082** violated by discriminatory jury selection). Rather, the respondents have a direct, personal stake in the outcome of the termination proceeding. See *In re Elizabeth M.,* 232 Cal.App.3d 553, 565, 283 Cal.Rptr. 483 (1991) ("father has standing to assert his child's right to independent counsel, because independent representation of the children's interests impacts upon the father's interest in the parent-child relationship"). Theirs is not an abstract concern.[6] Inadequate representation of the children, either ***486** as a guardian ad litem or as their counsel, could harm the respondents because those roles help shape the court's view of the best interests of the children, which serves as the basis upon which termination of parental rights is determined. See General Statutes §§ 17a–112(j) and 45a–132(b).

[12] The impact of the representation of children on their parents' interest in the termination proceeding and vice versa was acknowledged in *Wright v. Alexandria Division of Social Services,* 16 Va.App. 821, 825, 433 S.E.2d 500 (1993), cert. denied, 513 U.S. 1050, 115 S.Ct. 651, 130 L.Ed.2d 555 (1994), wherein the Virginia Court of Appeals determined that the minor child who was the subject of the state's termination petition had standing to raise the issue of whether her mother's constitutional rights had been violated because the child's rights directly were involved in view of the fact that termination of the parent-child relationship was at stake. "A party has standing in a case if he or she allege[s] such a *personal stake in the outcome of the controversy* as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.... In cases involving parental rights, the rights of the child coexist and are intertwined ***487** with those of the parent. The legal disposition of the parent's rights with respect to the child necessarily affects and alters the rights of the child with respect to his or her parent. [The child] ha[d] a personal stake in the outcome of the proceeding to terminate her mother's parental rights and, therefore, ha[d] standing to challenge the propriety of the trial judge's decision to terminate those rights."[7] (Citations omitted; ****1083** emphasis in original; internal quotation marks omitted.) Id.

Similarly, in the present case, the rights of the respondents are inextricably intertwined with those of their children. The ruling at issue involves irrevocable interference with their status as parents, and the legal disposition of their rights in the proceeding necessarily could affect and alter the rights of the respondents with respect to their parental rights. We, therefore, conclude that the respondents have standing to raise their claim before this court.

II

We now address the respondents' claim. They contend that, when a trial court has reason to believe that an attorney for a minor child is not advocating for that child's expressed wishes, the court has an independent obligation to intervene and conduct an inquiry to

determine whether the attorney is representing the child in accordance with the Rules of Professional Conduct. The respondents contend that, despite the fact that the trial court had appointed counsel for the children pursuant to § 46b–129a; see footnote 1 of this opinion; their daughters did not receive the benefit of the conflict free legal representation to which they *constitutionally* *488 were entitled. Because the children's attorney had agreed with the commissioner that the parental rights of the respondents should be terminated despite, according to the respondents, the expressed wishes of the children to remain with their parents, there existed a conflict of interest that constitutionally required the trial court sua sponte to appoint independent counsel to advocate in accordance with the children's wishes. We conclude that the record in this case does not support the existence of a conflict of interest as claimed by the respondents.

Inherent in the respondents' claim are several layers of significant constitutional issues, beginning with the most fundamental one of whether children who are the subject of a termination proceeding have a federal and state constitutional right to counsel in addition to the statutory right established by the legislature in § 46b–129a. The respondents contend that, because such a constitutional right to counsel exists, it was incumbent upon the trial court in this case to recognize that the obligation of the children's counsel to abide by his or her client's decisions concerning the objectives of representation; see Rules of Professional Conduct 1.2(a); was not being met and that the court needed to intercede.[8]

[13] [14] [15] Although the parties do not analogize to the criminal context, because the respondents claim that the children's right to representation is of constitutional dimension, as it is in the criminal context, it is useful to *489 examine the requirements for demonstrating conflict free representation of counsel in that context. In other words, we presume that, should such a **1084 constitutional right exist in the termination of parental rights context, the requirements for establishing a violation would, at a minimum, be comparable to those applied to establish the violation in the criminal context. "The sixth amendment to the United States constitution, as applied to the states through the fourteenth amendment, and article first, § 8, of the Connecticut constitution both guarantee a defendant the right to effective assistance of counsel in a criminal proceeding.... Where a constitutional right to counsel exists, our [s]ixth [a]mendment cases hold that there is a correlative right to representation that is free from conflicts of interest.... Moreover, one of the principal safeguards of this right is the rule announced by this court that [a trial] court must explore the possibility of a conflict ... when it knows or reasonably should know of a conflict....

[16] [17] [18] "There are two circumstances under which a trial court has a duty to inquire with respect to a conflict of interest: (1) when there has been a timely conflict objection at trial ... or (2) when the trial court knows or reasonably should know that a particular conflict exists.... A trial court's failure to inquire in such circumstances constitutes the basis for reversal of a defendant's conviction.... In the absence of an affirmative duty by the trial court to inquire, however, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his [or her] lawyer's performance in order to obtain reversal of his [or her] conviction.... Before the trial court is charged with a duty to inquire, the evidence of a specific conflict must be sufficient to alert a reasonable trial judge that the defendant's sixth amendment right to effective assistance of counsel is in jeopardy....

[19] [20] [21] *490 "It is firmly established that a trial court is entitled to rely on the silence of the defendant and his attorney, even in the absence of inquiry, when evaluating whether a potential conflict of interest exists.... [D]efense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial. Absent special circumstances, therefore, trial courts may assume either that [the potentially conflicted] representation entails no conflict or that the lawyer and his clients knowingly accept such risk of conflict as may exist.... [T]rial courts necessarily rely in large measure upon the good faith and good judgment of defense counsel. An attorney [facing a possible conflict] in a criminal matter is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop in the course of a trial." (Citations omitted; internal quotation marks omitted.) *State v. Gaines*, 257 Conn. 695, 706–709, 778 A.2d 919 (2001). Accordingly, it is a high threshold that must be satisfied before the trial court affirmatively must inquire as to whether a conflict exists.

We conclude that, drawing on the constitutional right to conflict free representation in the criminal context, the record in the present case is insufficient to support a determination that the trial court knew or reasonably should have known that a conflict existed between what the respondents' children wanted and what their attorney advocated. We therefore leave resolution of the

significant issues raised by the respondents for another day.

We view the adequacy of the record through the lens of § 46b–129a, which acknowledges and addresses the tension between the dual roles imposed upon the attorney appointed to represent children who are at risk of removal from their parents and who are entitled to *491 and **1085 need the assistance of counsel.[9] Section 46b–129a authorizes a court initially to appoint an attorney who will serve the dual roles of advocate and guardian ad litem for a child. The statute provides in relevant part: "[A] child shall be represented by counsel knowledgeable about representing such children who shall be appointed by the court to represent the child and to act as guardian ad litem for the child. The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. In the event that a separate guardian ad litem is appointed, the person previously serving as both counsel and guardian ad litem for the child shall continue to serve as counsel for the child and a different person shall be appointed as guardian ad litem, unless the court for good cause also appoints a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem...." General Statutes § 46b–129a(2).

[22] [23] Although there is often no bright line between the roles of a guardian ad litem and counsel for a minor *492 child, the legal rights of a child may be distinct from the child's best interest. When the roles do overlap, "it is only because, in such cases, the rights of a child and the child's best interest coincide. While the best interest of a child encompasses a catholic concern with the child's human needs regarding his or her psychological, emotional, and physical well-being, the representation of a child's legal interests requires vigilance over the child's legal rights. Those legal rights have been enumerated as the right to be a party to a legal proceeding, the right to be heard at that hearing and the right to be represented by a lawyer. When both a guardian ad litem and an attorney have been appointed for a child, their respective roles and the duties attendant to those roles should adhere to that basic distinction. Specifically, the guardian ad litem should refrain from acting as a second attorney for the child. Just as it is not normally the province of the attorney to testify, it is not the province of the guardian ad litem to file briefs with the court." *In re Tayquon H.*, 76 Conn.App. 693, 706–707, 821 A.2d 796 (2003). Generally speaking, then, counsel bears responsibility for representing the legal interest of a child while a guardian ad litem must promote and protect the best interest of a child.

[24] The respondents recognize that, as a general matter, counsel, rather than the court, has the responsibility for requesting the appointment of a guardian ad litem. See American Bar Association/National Association of Counsel for Children, Revised Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1999), standard B–2 (1) **1086 and accompanying commentary. They further acknowledge that, when counsel perceives that his or her role is in conflict with the child's actual best interest, he or she has an obligation to bring that conflict to the court's attention, and the court, in turn, must appoint a separate guardian ad litem to protect and to promote the child's best interests. See *493 id., standards B–2 (1) and B–4 (4) and accompanying commentaries. Because in this case the children's counsel failed to ask the trial court to take any action, the respondents must look to the trial court itself, claiming that its failure to appoint an independent attorney or a guardian ad litem; see footnote 1 of this opinion; on the court's own initiative, resulted in a clear violation of their daughters' constitutional rights. As we have stated, there are two circumstances implicating the constitutional right to conflict free representation in the criminal context under which a trial court has a duty to inquire with respect to a conflict of interest: when there has been a timely conflict objection at trial or when the trial court knows or reasonably should know that a particular conflict exists.

Even were we to assume that the children had a constitutional right, in addition to the statutory right under § 46b–129a, to conflict free representation, and that the trial court had the obligation to act, sua sponte, if the court knew or reasonably should have known that a particular conflict existed, the record in this case does not support the respondents' claim that the trial court knew or should have known that a conflict existed. The only evidence that there was a conflict between the wishes of *any* of the children and their attorney's position at trial pertained to the respondents' eldest daughter, Christina M., and involved representations she had made to the

court-appointed psychologist, Michael Haynes, in the course of a clinical interview contained in a January 17, 2003 psychological evaluation, almost eleven months prior to trial, when she was approximately six and one-half years old. As reflected in Haynes' report, Christina, who at that time had no memories of any abuse or violence she had experienced in the respondents' home and who was living with foster parents with whom she could not remain, stated that her wishes were to "go home with mommy and daddy" ***494** and for "mommy and daddy to take care of us." Christina also had drawn a picture placing her parents in the smallest of three concentric circles that was to signify the people who are "the most important people in her life" and whom "she could not imagine living without." At the time of trial, however, in December, 2003, Christina's then foster mother, with whom the respondents' children had been living for the six and one-half months prior to trial and who was anxious to adopt Christina and her sisters, testified that Christina had told her and her husband that she wanted to live with them forever. Accordingly, although the trial court acknowledged that the record reflects the mutual love between the children and the respondents, the record is insufficient to support a determination that the trial court knew or reasonably should have known that a particular conflict existed between what Christina wanted at the time of trial and what her attorney had advocated.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

All Citations

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Footnotes

* In accordance with the spirit and intent of General Statutes § 46b–142(b) and Practice Book § 79–3, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

1 General Statutes § 46b–129a provides in relevant part: "In proceedings in the Superior Court under section 46b–129 ... (2) a child shall be represented by counsel knowledgeable about representing such children who shall be appointed by the court to represent the child and to act as guardian ad litem for the child. The primary role of any counsel for the child including the counsel who also serves as guardian ad litem, shall be to advocate for the child in accordance with the Rules of Professional Conduct. When a conflict arises between the child's wishes or position and that which counsel for the child believes is in the best interest of the child, the court shall appoint another person as guardian ad litem for the child. The guardian ad litem shall speak on behalf of the best interest of the child and is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. In the event that a separate guardian ad litem is appointed, the person previously serving as both counsel and guardian ad litem for the child shall continue to serve as counsel for the child and a different person shall be appointed as guardian ad litem, unless the court for good cause also appoints a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem. The counsel and guardian ad litem's fees, if any, shall be paid by the parents or guardian, or the estate of the child, or, if such persons are unable to pay, by the court...."

2 The transcript of the trial court's oral decision reflects its understanding of the position of the attorney representing the respondents' children as follows: "The attorney for the children supports termination of parental rights and adoption. The attorney indicated that he supported this reluctantly because there was no agreement or promise of direct contact between the parents and the [children] and more importantly, between the [children] and their baby brother, although the foster mother [who had taken custody of the children after they had been removed from the respondents' home] testified that she would consider doing what was necessary for the best interest of the [children]." As the trial court's comment indicates, the respondents had another child who was born and who remained in their custody after the three older children were removed from the respondents' home.

3 In their appeal to the Appellate Court, the respondents did not challenge the accuracy or completeness of the evidence on which the trial court had relied to conclude that the commissioner had established, by clear and convincing evidence, the § 17a–112(j)(3)(B)(ii) requirements for termination of parental rights. Rather, they claimed that the trial

court's findings were clearly erroneous because the court had failed to consider the special problems caused by their poverty, their cognitive limitations and their responsibility to provide care for their minor son. See footnote 2 of this opinion. With respect to the trial court's finding that they had failed to rehabilitate themselves, the parents claimed that the court should have attached greater weight to evidence that showed that they had created a safe environment for all of their children and that their limited parental resources should not have been a consideration in deciding disputes about parental skills. The Appellate Court concluded that it was proper for the trial court to have found "that the commissioner had established, by clear and convincing evidence, that, despite the training in parental skills that the department had provided, the [respondents] did not have the ability to care for their daughters, either at the time of the termination proceedings or in the immediately foreseeable future." *In re Christina M.*, 90 Conn.App. 565, 574–75, 877 A.2d 941 (2005). These determinations are not at issue in this appeal.

4 The Center for Children's Advocacy, Inc., the Office of the Child Advocate, the National Association of Counsel for Children, the Legal Assistance Resource Center, Connecticut Legal Services, Inc., Greater Hartford Legal Aid, the New Haven Legal Assistance Association, Inc., and the Children's Law Center jointly filed a brief as amici curiae in support of the respondents' contentions that children who are the subject of termination of parental rights proceedings constitutionally are entitled to conflict free representation and that when the court has reason to believe that the attorney for the child is not advocating for the expressed wishes of the child, the court has an obligation sua sponte to determine whether the attorney is acting in accordance with the Rules of Professional Conduct.

5 In *In re Shaquanna M.*, supra, 61 Conn.App. at 596, 767 A.2d 155, the Appellate Court noted that, at the hearing on the respondent mother's motion for a continuance, the substitute attorney and guardian ad litem for the respondent's sons stated his position opposing the respondent's motion as follows: "I have an obligation, I think, a legal professional obligation, to represent these children competently. It's difficult calculus in this case based on the information that I have. If I felt in doing the calculus, if I felt the need, it's a close call in my view. And in some technical sense I would have loved to have been able to read through the transcript, however, with all the other information I've been able to look at and the investigation I've done into the matter, I don't believe it would serve the best interest of these children to prolong the matter at all. I mean that's the bottom line for me.... I don't think it's absolutely essential that I review the trial transcripts up to this point to fulfill my obligation to represent these children competently." (Internal quotation marks omitted.)

6 The commissioner relies on several dissolution cases in support of her contention that the respondents lack standing to bring the present claim. In our view, these cases do not support the commissioner's position under the facts of the present case. For example, the commissioner cites *Strobel v. Strobel,* 64 Conn.App. 614, 781 A.2d 356, cert. denied, 258 Conn. 937, 786 A.2d 426 (2001), wherein the Appellate Court held that the defendant parent lacked standing to seek disqualification of the child's counsel. Although the *Strobel* court cited the rule that, "*[g]enerally,* the defendant [parent] has no standing to raise a claim on behalf of her child"; (emphasis added) id., at 620, 781 A.2d 356; it noted that, in the case before it, "[t]he defendant did not claim that her request was made to prevent prejudice to her own case." Id. Similarly, in *Lord v. Lord,* 44 Conn.App. 370, 375–76, 689 A.2d 509, cert. denied, 241 Conn. 913, 696 A.2d 985 (1997), cert. denied, 522 U.S. 1122, 118 S.Ct. 1065, 140 L.Ed.2d 125 (1998), the Appellate Court concluded that the parent had lacked standing to assert a claim on behalf of the child, in the absence of any assertion that the claimed impropriety had prejudiced the parent's own case, and contrasted the facts before it with its decision in *Schult v. Schult,* 40 Conn.App. 675, 687 n. 10, 672 A.2d 959 (1996), aff'd, 241 Conn. 767, 699 A.2d 134 (1997), wherein the court had found standing on the basis of the parent's claim that the alleged impropriety prejudiced her own case. As we have stated throughout this opinion, the respondents involved herein had a personal stake in the preservation of family integrity, and because parental status termination is irretrievably destructive of that fundamental family relationship, they have an interest that may be prejudiced by the outcome of the termination proceeding.

7 The Virginia Court of Appeals concluded, however, notwithstanding that the child had standing to raise her mother's constitutional right to effective assistance of counsel, that the child had not provided the court with evidence or any basis on which it could determine that her mother had not received effective assistance of counsel. *Wright v. Alexandria Division of Social Services,* supra, 16 Va.App. at 826, 433 S.E.2d 500.

8 It is unclear, based on a comparison of the briefs and oral argument to this court and the Appellate Court opinion, whether the respondents are claiming that the children had been denied their constitutional right to effective legal representation because their attorney did not represent their wishes or that the trial court was obligated to appoint a guardian ad litem to advocate for their best interests as well as an attorney to represent their legal rights. Because we conclude that the record was insufficient to alert the trial court that there was a conflict between the children and the

attorney then representing them, we need not resolve this uncertainty.

9 In *Ireland v. Ireland,* 246 Conn. 413, 438–39, 717 A.2d 676 (1998), we explored the tension between the dual roles imposed upon the attorney appointed to represent children who are at risk of removal from their parents and are entitled to and need the assistance of counsel. Subsequently, that issue was addressed by the General Assembly in Public Acts 2001, No. 01–148, § 1, when it amended § 46b–129a(2) to make express the independent obligations of an attorney and a guardian ad litem when a conflict arises between the wishes of the child and the best interests of the child.

End of Document

Obtaining Special Immigrant Juvenile Status Findings
in Connecticut Probate Courts

Chapter Two

TVPRA: Special Immigrant Juvenile Status

8 U.S.C.A. § 1101

§ 1101. Definitions

Effective: January 17, 2014

Currentness

(a) As used in this chapter--

(27) The term "special immigrant" means--

(J) an immigrant who is present in the United States--

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that--

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

Code of Federal Regulations
Title 8. Aliens and Nationality
Chapter I. Department of Homeland Security (Refs & Annos)
Subchapter B. Immigration Regulations
Part 204. Immigrant Petitions (Refs & Annos)
Subpart A. Immigrant Visa Petitions (Refs & Annos)

8 C.F.R. § 204.11

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

Effective: July 6, 2009

(a) Definitions.

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) Petition for special immigrant juvenile. An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant. The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(c) Eligibility. An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual

residence of the beneficiary or his or her parent or parents; or

(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I–360 before June 1, 1994.

(d) Initial documents which must be submitted in support of the petition.

(1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) Decision. The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

Credits

[58 FR 42849, 42850, Aug. 12, 1993; 74 FR 26937, June 5, 2009]

SOURCE: 52 FR 30900, Aug. 18, 1987; 52 FR 33797, Sept. 8, 1987; 54 FR 11161, March 17, 1988; 53 FR 30016, Aug. 10, 1988; 56 FR 60905, Nov. 29, 1991; 57 FR 41056, Sept. 9, 1992; 59 FR 38881, Aug. 1, 1994; 62 FR 60771, Nov. 13, 1997; 63 FR 12986, March 17, 1998; 68 FR 10923, March 6, 2003; 68 FR 35275, June 13, 2003; 72 FR 56853, Oct. 4, 2007; 73 FR 78127, Dec. 19, 2008, unless otherwise noted.

AUTHORITY: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1641; 8 CFR part 2.

Notes of Decisions (40)

Current through Oct. 22, 2015; 80 FR 64298.

End of Document

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy and Domestic Operations
Washington, DC 20529-2140

U.S. Citizenship and Immigration Services

HQOPS 70/8.5

Memorandum

TO: Field Leadership

FROM: Donald Neufeld /s/
Acting Associate Director
Domestic Operations

Pearl Chang /s/
Acting Chief
Office of Policy & Strategy

DATE: March 24, 2009

SUBJECT: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions

1. Purpose

This memorandum will inform immigration service officers working Special Immigrant Juvenile (SIJ) petitions about new legislation affecting adjudication of petitions filed for SIJ status.

2. Background

On December 23, 2008, the President signed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (2008). Section 235(d) of the TVPRA 2008 amends the eligibility requirements for SIJ status at section 101(a)(27)(J) of the Immigration and Nationality Act (INA), and accompanying adjustment of status eligibility requirements at section 245(h) of the INA. Most SIJ provisions of the TVPRA 2008 take effect March 23, 2009, although some provisions took effect on December 23, 2008, the date of enactment of the TVPRA 2008.

3. Field Guidance

Eligibility for Special Immigrant Juvenile Status

The TVPRA 2008 amended the definition of a "Special Immigrant Juvenile" at section 101(a)(27)(J) of the INA in two ways. First, it expanded the group of aliens eligible for SIJ status. An eligible SIJ alien now includes an alien:

- who has been declared dependent on a juvenile court;
- whom a juvenile court has legally committed to, or placed under the custody of, an agency or department of a State; or
- who has been placed under the custody of *an individual or entity appointed by a State or juvenile court.*

Accordingly, petitions that include juvenile court orders legally committing a juvenile to or placing a juvenile under the custody of an individual or entity appointed by a juvenile court are now eligible. For example, a petition filed by an alien on whose behalf a juvenile court appointed a guardian now may be eligible. In addition, section 235(d)(5) of the TVPRA 2008 specifies that, if a state or an individual appointed by the state is acting *in loco parentis*, such a state or individual is not considered a legal guardian for purposes of SIJ eligibility.

The second modification made by the TVPRA 2008 to the definition of special immigrant juvenile concerns the findings a juvenile court must make in order for a juvenile court order to serve as the basis for a grant of SIJ status. Previously, the juvenile court needed to deem a juvenile eligible for long term foster care due to abuse, neglect or abandonment. Under the TVPRA 2008 modifications, the juvenile court must find that the juvenile's *reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.* In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care and replaced it with a requirement that the juvenile court find reunification with one or both parents not viable. If a juvenile court order includes a finding that reunification with one or both parents is not viable due to *a similar basis found under State law*, the petitioner must establish that such a basis is similar to a finding of abuse, neglect, or abandonment. Officers should ensure that juvenile court orders submitted as evidence with an SIJ petition filed on or after March 23, 2009, include this new language.

A petitioner is still required to demonstrate that he or she has been the subject of a determination in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

Age Requirements

Section 235(d)(6) of the TVPRA 2008 provides age-out protection to SIJ petitioners. As of December 23, 2008, if an SIJ petitioner was a "child" on the date on which an SIJ petition was properly filed, U.S. Citizenship and Immigration Services (USCIS) cannot deny SIJ status to anyone, regardless of the petitioner's age at the time of adjudication. *Officers must now consider the petitioner's age at the time of filing to determine whether the petitioner has met the age requirement.* Officers must not deny or revoke SIJ status based on age if the alien was a child on

the date the SIJ petition was properly filed if it was filed on or after December 23, 2008, or if it was pending as of December 23, 2008. USCIS interprets the use of the term "child" in section 235(d)(6) of the TVPRA 2008 to refer to the definition of child found at section 101(b)(1) of the INA, which states that a child is an unmarried person under 21 years of age. The SIJ definition found at section 101(a)(27)(J) of the INA does not use the term "child," but USCIS had previously incorporated the child definition at section 101(b)(1) of the INA into the regulation governing SIJ petitions.

Consent

The TVPRA 2008 also significantly modifies the two types of consent required for SIJ petitions.

Consent to the grant of SIJ status (previously express consent)

The TVPRA 2008 simplified the "express consent" requirement for an SIJ petition. *The Secretary of Homeland Security (Secretary) must consent to the grant of special immigrant juvenile status.* This consent is no longer termed "express consent" and is no longer consent to the dependency order serving as a precondition to a grant of SIJ status.

The consent determination by the Secretary, through the USCIS District Director, is an acknowledgement that the request for SIJ classification is bona fide. This means that the SIJ benefit was not "sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment." See H.R. Rep. No. 105-405, at 130 (1997). An approval of an SIJ petition itself shall be evidence of the Secretary's consent.

Specific consent

The TVPRA 2008 completely altered the "specific consent" function for those juveniles in federal custody. The TVPRA 2008 vests this function with the Secretary of Health and Human Services (HHS) rather than the Secretary of the Department of Homeland Security as previously delegated to Immigration and Customs Enforcement (ICE). In addition, Congress simplified the language to refer simply to "custody," not actual or constructive custody, as was previously delineated. However, the requirement remains that an SIJ petitioner need only seek specific consent if the SIJ petitioner seeks a juvenile court order determining or altering the SIJ petitioner's custody status or placement. If an SIJ petitioner seeks to obtain or obtains a juvenile court order that makes no findings as to the SIJ petitioner's custody status or placement, the SIJ petitioner is not required to have sought specific consent from HHS. Therefore, on or after March 23, 2009, *officers must ensure that juveniles in the custody of HHS obtained specific consent from HHS to juvenile court jurisdiction where the juvenile court order determines or alters the juvenile's custody status or placement.* USCIS will provide HHS guidance regarding adjudications of specific consent as soon as it is available.

Due to the complex nature and changing requirements of specific consent determinations, USCIS Headquarters (HQ) is temporarily assisting in making the determination on specific consent

requirements. As outlined in the February 20, 2009 guidance email, Field Officers are instructed to forward certain documents to HQ for those SIJ petitions that may involve specific consent that are filed prior to March 23, 2009. HQ will notify the Field Office of the decision on specific consent. The Field Office will then complete adjudication of the petition. This temporary guidance providing HQ assistance with specific consent determinations will remain in effect until further notice.

Expeditious Adjudication

Section 235(d)(2) of the TVPRA 2008 *requires USCIS to adjudicate SIJ petitions within 180 days of filing*. Field Offices need to be particularly aware of this new requirement and take measures locally to ensure timely adjudication. Officers are reminded that under 8 CFR 245.6 an interview may be waived for SIJ petitioners under 14 years of age, or when it is determined that an interview is unnecessary. Eliminating unnecessary interviewing of SIJ petitioners may help in expeditiously adjudicating petitions. Necessary interviews should be scheduled as soon as possible. During an interview, an officer should focus on eligibility for adjustment of status and should avoid questioning a child about the details of the abuse, abandonment or neglect suffered, as those matters were handled by the juvenile court, applying state law. Under no circumstances can an SIJ petitioner, at any stage of the SIJ process, be required to contact the individual (or family members of the individual) who allegedly abused, abandoned or neglected the juvenile. This provision was added by the Violence Against Women Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (2006) and is incorporated at section 287(h) of the INA. Officers must ensure proper completion of background checks, including biometric information clearances and name-checks.

Adjustment of Status for Special Immigrant Juveniles

The TVPRA 2008 amends the adjustment of status provisions for those with SIJ classification at section 245(h) of the INA, to include four new exemptions. Approved SIJ petitioners are now exempted from seven inadmissibility grounds of the INA:

- 212(a)(4) (public charge);
- 212(a)(5)(A) (labor certification);
- *212(a)(6)(A) (aliens present without inspection);*
- *212 (a)(6)(C) (misrepresentation);*
- *212(a)(6)(D) (stowaways);*
- 212(a)(7)(A) (documentation requirements); and
- *212(a)(9)(B) (aliens unlawfully present).*

On or after March 23, 2009, none of the above listed grounds of inadmissibility shall apply to SIJ adjustment of status applicants.

Officers are reminded that this list of exemptions is in addition to the waivers available for most other grounds of inadmissibility for humanitarian purposes, family unity, or otherwise being in the public interest. The only unwaivable grounds of inadmissibility for SIJ petitioners are those listed at INA 212(a)(2)(A)-(C) (conviction of certain crimes, multiple criminal convictions, and

controlled substance trafficking (except for a single instance of simple possession of 30 grams or less of marijuana)), and 212(a)(3)(A)-(C), and (E) (security and related grounds, terrorist activities, foreign policy, and participants in Nazi persecution, genocide, torture or extrajudicial killing).

4. Use

This guidance is created solely for the purpose of USCIS personnel in performing their duties relative to adjudication of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantial or procedural, enforceable at law by any individual or any other party in removal proceedings, in litigation with the United States, or in any other or form or matter.

5. Contact Information

This guidance is effective immediately. Please direct any questions concerning these changes through appropriate supervisory channels to Rosemary Hartmann, Office of Policy and Strategy or Tina Lauver, Office of Field Operations.

Distribution List:
Regional Directors
District Directors
Service Center Directors
Field Office Directors
National Benefits Center Director

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

PM-602-0034

April 4, 2011

Policy Memorandum

SUBJECT: Implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement

Purpose
This policy memorandum (PM) guides USCIS personnel in processing requests to reopen petitions for Special Immigrant Juvenile status and related applications for adjustment of status filed under the *Perez-Olano* Settlement Agreement ("Settlement Agreement").

Scope
Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

Authority
Immigration and Nationality Act (INA) section 101(a)(27)(J), 8 U.S.C.§1101(a)(27)(J), INA § 245(h), 8 U.S.C. § 1255(h), as amended by Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law No. 110-457, 122 State. 5044 (2008), section 235(d); 8 CFR 204.11, 205.1(a)(3)(iv) and 245.1(e)(3). Memorandum, "Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions," HQOPS 70/8.5, March 24, 2009. *Perez-Olano, et al. v. Holder, et. al*, Case No. CV 05-3604 (C.D. Cal. 2005).

Background
Certain juveniles who have been abused, abandoned, or neglected may request a special immigrant classification known as Special Immigrant Juvenile (SIJ) status in order to remain legally in the United States. Aliens granted SIJ classifications are immediately eligible to apply for lawful permanent resident status.

Perez-Olano v. Holder is a class-action lawsuit filed on behalf of juvenile aliens who may have been eligible for SIJ status or SIJ-based adjustment of status because they were abused, abandoned, or neglected. The *Perez-Olano* Settlement Agreement took effect December 14, 2010 and expires December 13, 2016. The Settlement Agreement defines class members as all juveniles, "including, but not limited to, SIJ applicants, who, on or after May 13, 2005, apply or applied for SIJ status or SIJ-based adjustment of status based upon their alleged SIJ eligibility." Settlement Agreement at ¶ 3. Juveniles whose applications for SIJ status or SIJ-based adjustment of status were denied or revoked since May 13, 2005, may be eligible to file a motion to reopen. The class-specific standard for eligibility to file motions to reopen, particularly with

regard to timeliness, is distinct from the general standards for eligibility to file motions to reopen under 8 CFR 103.5.

In accordance with the Settlement Agreement, USCIS will not, based on age or dependency status, deny or revoke any SIJ petition if, at the time the class member files or filed the petition, the class member was under 21 years of age and was the subject of a valid dependency order that was later terminated based on age. Similarly, USCIS may not, based on age or dependency status, deny an SIJ-based application for adjustment of status if, the class member files or filed the application when he or she was under 21 and was the subject of a valid dependency order.

In addition, to comply with the Settlement Agreement, this guidance applies to all SIJ petitions and SIJ-based applications for adjustment of status that are filed while the Settlement Agreement is in effect. USCIS will not, based on age or dependency status, deny or revoke any new, pending, or reopened SIJ petition if, at the time of filing, the petitioner was under 21 years of age and was the subject of a valid dependency order that was later terminated based on age. Similarly, USCIS may not, based on age or dependency status, deny any new, pending, or reopened SIJ-based application for adjustment of status if, the class member filed the application when he or she was under 21 and was the subject of a valid dependency order.

Filing Requirements

Class members filing a motion to reopen under the Settlement Agreement will file Form I-290B, *Notice of Appeal or Motion*, with the appropriate fee or Form I-912, *Request for Fee Waiver*, if desired, at:

U.S. Postal Service (USPS):	or	*Courier/ Express (non-USPS) Deliveries*:
USCIS **P.O. Box 5510** **Chicago, IL 60680-5510**		**USCIS** **Attn: Perez-Olano Settlement Agreement** **or "POSA"** **131 S. Dearborn – 3rd Floor** **Chicago, IL 60603-5517**

When filing a From I-290B, class members are instructed to:

- Check "box F" in "Part 2," *Information about the Appeal or Motion*, and
- Write "Perez-Olano Settlement Agreement" or "POSA" in Part 3, *Basis for the Appeal or Motion*.

These specific Settlement Agreement filing instructions are posted on the landing page of the Form I-290B at www.uscis.gov.

The Lockbox will forward the Forms I-290B to the National Benefits Center (NBC) for standard pre-processing. The NBC will then route the Form I-290B and the underlying Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*, and, if applicable, the Form I-485, *Application to Register Permanent Residence or Adjust Status*, to the appropriate field office for

adjudication, along with an appropriate cover sheet identifying it as a Settlement Agreement case. It is the responsibility of the NBC to forward the A-file to the proper field office if the juvenile has moved jurisdictions.

Adjudication
The field office that denied the underlying Form I-360 and, if applicable, the Form I-485 has jurisdiction over each Motion to Reopen filed under the Settlement Agreement, as stated in 8 CFR 103.5(a)(1)(ii). If the applicant has moved to the geographical jurisdiction of a different field office, that field office assumes jurisdiction.

The immigration service officers (ISOs) will grant the Motion to Reopen if the case meets *all four* prongs of the following test:

1. The applicant applied for SIJ status or SIJ-based adjustment of status on or after May 13, 2005.

2. The applicant filed a complete Form I-360 for SIJ classification before his or her 21st birthday.

3. At the time of filing the Form I-360, the applicant was the subject of a valid order(s) issued by a state juvenile court within the United States that:

    - Made a finding of abuse, abandonment or neglect, or a similar basis found under state law (see Juvenile Court Orders below for more information); *and*

    - Determined that it would not be in the applicant's best interest to be returned to the applicant's or parent's previous country of nationality or country of last habitual residence; *and*

    - Did *one* of the following:

        - Declared the applicant dependent on the court, *or*

        - Legally committed the applicant to or placed the applicant under the custody of a state agency or department, *or*

        - Placed the applicant under the custody of an individual or entity appointed by a guardianship.

4. The Form I-360 was denied or revoked *solely* because of *one* of the three following reasons:

   - The applicant, who was under 21 years of age at the time of filing, turned 21 years of age after filing the Form I-360 but before adjudication of the Form I-360 or Form I-485 (age-out); *or*

   - The applicant's dependency order, which was valid and in effect at the time of filing the Form I-360, was terminated based on age after filing the Form I-360 but before adjudication of the Form I-360 or Form I-485 (dependency age-out); *or*

   - The applicant did not receive a grant of specific consent *before* invoking the jurisdiction of the state juvenile court and the juvenile court order did *not* determine or alter the applicant's custody status or placement. As a reminder, specific consent from the Department of Health and Human Services (and, before December 23, 2008, U.S. Immigration and Customs Enforcement) is needed only if the applicant was in federal custody at the time the juvenile court issued the order and the juvenile court order altered or determined custody status or placement. (Such an order is more than a restatement of current placement; it requires a change to the applicant's placement.)

If the Motion to Reopen is granted, the ISO will adjudicate the Form I-360 in accordance with INA § 101(a)(27)(J), as amended by the TVPRA 2008, and in accordance with the Settlement Agreement.

Denials of a Motion to Reopen and of a reopened Form I-360 can be appealed to the Administrative Appeals Office. 8 CFR 103.5(a)(6).

Juvenile Court Orders
Before enactment of the TVPRA 2008, INA § 101(a)(27)(J) required SIJ applicants to have been deemed eligible by a juvenile court for long-term foster care due to abuse, neglect, or abandonment. USCIS will not deny or revoke an SIJ petition or SIJ-based adjustment application on account of ineligibility for long-term foster care, as this is no longer a statutory requirement. But where a class member files a Motion to Reopen and the juvenile court order submitted in support of the original Form I-360 contains the outdated statutory language of eligibility for long-term foster care, adjudicators do not need to request an updated juvenile court order. Some Motions to Reopen will be from applicants who, due to their age, will no longer be able to invoke the jurisdiction of the juvenile court to obtain an updated order. In those cases, adjudicators can rely on the original juvenile court order to establish the current statutory requirement of non-viability of reunification with one or both parents due to abuse, neglect, abandonment, or a similar basis found under State law.

Statistics
Under the Settlement Agreement, USCIS must compile, and make available to the public via Internet posting, annual reports disclosing the number of SIJ-based Forms I-360 received, approved, and denied. The number should include the filing and adjudication of Forms I-360 under the Settlement Agreement, as well as regularly filed SIJ-based Forms I-360. Therefore, ISOs must ensure that all decisions are properly entered into the Interim Case Management System.

Implementation
This PM is effective as of April 4, 2011. Any USCIS personnel handling these Settlement Agreement cases will apply the guidance in this PM.

Use
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Contact Information
Questions or suggestions regarding this PM and USCIS policy on the Settlement Agreement should be addressed through appropriate channels to Headquarters Field Operations Directorate, Adoptions and Humanitarian Branch.

UPDATE ON LEGAL RELIEF OPTIONS FOR UNACCOMPANIED ALIEN CHILDREN FOLLOWING THE ENACTMENT OF THE WILLIAM WILBERFORCE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008

Practice Advisory

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February 19, 2009

This practice advisory will discuss recent developments in legal relief for unaccompanied alien children[2] brought about by the enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457; "TVPRA") on December 23, 2008. In addition to expanding protections for trafficking victims generally, the TVPRA made procedural and substantive changes to immigration legal relief for unaccompanied alien children. Specifically, section 235 of the TVPRA increased many protections for unaccompanied alien children seeking relief from removal, including Special Immigrant Juvenile status and asylum.[3] This section of the TVPRA also provides more child-sensitive procedures for those in immigration custody and at imminent risk of removal. The following is a practice advisory regarding some of these significant developments for unaccompanied alien children created by the TVPRA.[4]

While this advisory's focus is on the expansion in legal relief options for unaccompanied alien children, it is strongly encouraged that legal advocates carefully review the TVPRA in order to understand the full scope of changes this new law provides. Some of these changes are not

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[2] The term 'unaccompanied alien child' means one who:

(A) has no lawful immigration status in the United States;
(B) has not attained 18 years of age; and
(C) with respect to whom–
  (i) there is no parent or legal guardian in the United States; or
  (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

See Homeland Security Act of 2002 § 462(g); 6 U.S.C. § 276(g); adopted by TVPRA § 235(g).

[3] For a summary of many changes under TVPRA § 235, please see Attachment A: Summary Chart of Changes Affecting Legal Relief Options Post-William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457; "TVPRA").

[4] As certain logistics regarding the implementation of the TVPRA have not been resolved and regulations have yet to be issued, future practice advisories will most likely be needed to further guide practitioners in their representation and advocacy for unaccompanied alien child clients.

directly related to legal relief or unaccompanied alien children, however, and will therefore not be addressed in this practice advisory.[5]

I. STATUTORY OVERVIEW OF TVPRA § 235 CHANGES TO LEGAL RELIEF OPTIONS FOR UNACCOMPANIED ALIEN CHILDREN

A. Unaccompanied Alien Children Apprehended By Immigration Authorities And Facing Imminent Removal

With the exception of children arriving from contiguous countries,[6] unaccompanied alien children apprehended by immigration authorities and subject to removal from the United States are afforded expanded rights, including being placed in removal proceedings under Immigration and Nationality Act ("INA") § 240.[7] The TVPRA provides that these children shall be eligible for Voluntary Departure under INA § 240B at no cost to the child.[8] For legal practitioners, Voluntary Departure at no cost to the child is significant because many unaccompanied alien children are indigent and have no other means to assume the financial cost of returning to their home country. For those children who may have a legal means of returning to the United States in the future, and who do not want to incur the time-barred consequences of a prior removal order, this availability of Voluntary Departure under INA § 240B is now a viable legal relief option.

In addition to the availability of Voluntary Departure under INA § 240B, unaccompanied alien children should now have broader access to legal counsel to assist them with their removal proceedings. "To the greatest extent practicable," the Secretary of Health and Human Services is obliged to provide these children access to counsel, including pro bono counsel, to provide free legal services to these children.[9] While this provision of the TVPRA appears subject to financial appropriations and other resource constraints, the Secretary of Health and Human Services now has a clear duty to ensure that unaccompanied alien children are able to access legal counsel to assist them in their immigration proceedings.

B. SPECIAL IMMIGRANT JUVENILE STATUS

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[5] Some of these changes include mandating a pilot program to ensure the safe repatriation of unaccompanied alien children, creating more safety and suitability assessments for the release of unaccompanied alien children within the United States, authorizing the Secretary of Health and Human Services to appoint independent child advocates who will promote the child's best interests, mandating training by the Secretaries of State, Homeland Security, Health and Human Services and the Attorney General for personnel who deal with unaccompanied alien children. *See* TVPRA §§ 235(a)(5); (c)(3); (c)(6); (e).

[6] Unaccompanied alien children from contiguous countries, i.e., Mexico and Canada, have limited rights under TVPRA § 235(a)(2).

[7] *See* TVPRA § 235(a)(5)(E)(i).

[8] *See* TVPRA § 235(a)(5)(E)(ii).

[9] *See* TVPRA § 235(a)(5)(E)(iii); *see also* TVPRA § 235(c)(5).

The TVPRA makes significant changes regarding Special Immigrant Juvenile status, a form of legal relief available to unaccompanied alien children who have been abused, abandoned or neglected.

1. CHANGE IN SPECIAL IMMIGRANT JUVENILE DEFINITION

The TVPRA clarifies and expands the definition of Special Immigrant Juvenile. A Special Immigrant Juvenile is now defined as an immigrant who is present in the United States:

> (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody of, an agency or department of a *State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law*;
>
> (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.[10]

The TVPRA eliminates the "eligible for long-term foster care" language for Special Immigrant Juveniles, which has over the years been a source of confusion for U.S. Citizenship and Immigration Services (USCIS).[11] Given 8 C.F.R. § 204.11, "eligible for long-term foster care" has always meant that family reunification was not a viable option for a Special Immigrant Juvenile. Now, this family reunification prong of the Special Immigrant Juvenile definition is clarified and should finally resolve any misinterpretation of the law that a child must literally have been in or remain in a foster home in order to qualify for Special Immigrant Juvenile status.

The TVPRA also expands the Special Immigrant Juvenile definition to allow for a juvenile court to consider family reunification with one or both of the child's parents.[12] The plain language of this statutory revision says that family reunification need only be "not viable" with one parent, not both parents. Further, the juvenile court may consider whether family reunification is viable due to abuse, abandonment, neglect or a similar basis under state law.[13] The plain language of the provision is that a juvenile court would only need to find abuse, abandonment, neglect, or a

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[10] *See* TVPRA § 235(d)(1) (amendments to Special Immigrant Juvenile definition are italicized); *see also* INA § 101(a)(27)(J).

[11] *See* Matter of Perez Quintanilla, A097383010 (AAO June 7, 2007). Among other issues, the Administrative Appeals Office found that the Special Immigrant Juvenile self-petitioner was "eligible for long-term foster care," as prescribed by 8 C.F.R. § 204.11(a), because the juvenile court had determined that family reunification was not a viable option.

[12] *See* TVPRA § 235(d)(1).

[13] *See id.* (emphasis added).

similar basis under state law with one parent, not both, when considering family reunification. For example, in the case of a child who has experienced abuse, abandonment or neglect at the hands of his father, the juvenile court need only consider whether family reunification with the father is viable. [14] It appears that reunification possibilities with the child's mother would not bar the child from qualifying for Special Immigrant Juvenile status. As such, the expansion in the definition of Special Immigrant Juvenile allows for more vulnerable and mistreated children to qualify for this form of legal relief.[15]

2. TRANSFER OF SPECIFIC CONSENT AUTHORITY TO U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

In addition to expanding the definition of Special Immigrant Juvenile, the TVPRA also amends a procedural hurdle for those in immigration custody[16] seeking Special Immigrant Juvenile status: obtaining specific consent from the federal government to enter into a state juvenile court. This "specific consent" provision is derived from a subsection within the Special Immigrant Juvenile definition which states, in relevant part, that:

> No juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the [Department of Homeland Security] unless the [Department of Homeland Security] specifically consents to such jurisdiction...

INA § 101(a)(27)(J)(iii)(I).

Previously, the U.S. Department of Homeland Security required that children in actual or constructive custody obtain "specific consent" from it in order to proceed forward in a state court proceeding, and ultimately to pursue Special Immigrant Juvenile status.[17] The TVPRA transfers the authority to grant this "specific consent" from the U.S. Department of Homeland Security to the U.S. Department of Health and Human Services.[18] This transfer of specific consent authority to the Secretary of Health and Human Services is noteworthy, as the Department of Homeland Security's policies and practices regarding specific consent have been convoluted, inconsistent, and detrimental to the legal rights of these unaccompanied alien children. As many legal practitioners working with unaccompanied alien children already know, these violations of legal

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[14] This is assuming that the mother's own failure to remove her child from the abusive environment did not, in and of itself, constitute abuse or neglect under state law.

[15] Despite this change in only needing to establish that reunification with one parent is not viable due to abuse, abandonment, neglect or other similar basis under state law, practitioners should keep in mind that the TVPRA did not eliminate the statutory provision prohibiting a Special Immigrant Juvenile from petitioning from their natural or prior adoptive parent. A Special Immigrant Juvenile still cannot file a family petition on behalf of their natural or prior adoptive parent. *See* INA § 101(a)(27)(J)(iii)(II).

[16] The TVPRA clarifies that this specific consent is only needed when a child is in the custody of the U.S. Department of Health and Human Services. *See* TVPRA § 235(d)(1).

[17] *See* INA § 101(a)(27)(J)(iii)(I); *see also* Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions ("Yates Memo"), William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, HQADN 70/23 (May 27, 2004).

[18] *See* TVPRA § 235(d)(1).

rights of unaccompanied alien children to pursue Special Immigrant Juvenile status led to recent federal litigation in Perez-Olano v. Gonzales, et al., No. 05-03604 (C.D. CA, Jan. 8, 2007) regarding, among other issues, the need to obtain specific consent (from the U.S. Department of Homeland Security) where the unaccompanied alien child does not seek a transfer in her custody or placement. This litigation even led to the U.S. District Court for the Central District of California enjoining the U.S. Department of Homeland Security, since January 8, 2008, from requiring specific consent except in cases in which the state juvenile court seeks to exercise jurisdiction to change the child's custody status or placement.

This transfer of specific consent authority to the U.S. Department of Health and Human Services overlaps with this on-going litigation in Perez-Olano v. Gonzales, but does not appear to alter the conditions under which a child needs to obtain specific consent. Section 235(d)(1)(B)(ii) of the TVPRA leaves intact the existing limitation that specific consent may be required of a Special Immigrant Juvenile self-petitioner only where a state court seeks to exercise jurisdiction to "determine custody status or placement." Therefore, the transfer of authority to grant specific consent to the Secretary of Health and Human Services does not expand the circumstances in which specific consent is required.

At the present time, it is unclear how the U.S. Department of Health and Human Services will exercise its specific consent authority, as well as the effective date of its authority to grant specific consent. The U.S. Department of Health and Human Services has stated that it will not have specific consent authority until March 23, 2009, ninety days from the December 23, 2008 enactment of this Act.[19] The U.S. Department of Homeland Security acknowledges that this transfer in specific consent authority, effective March 23, 2009, but apparently will not act on pending cases in which a state court seeks to exercise jurisdiction to determine custody status or placement.[20]

In apparent contradiction to the positions of the U.S. Department of Health and Human Services and the U.S. Department of Homeland Security, section 235(h) of the TVPRA provides that amendments to the Special Immigrant Juvenile definition, including the specific consent authority amendment, are immediately effective "to all aliens in the United States in pending proceedings before the Department of Homeland Security or the Executive Office for

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[19] *See* TVPRA § 235(h); *see also* January 8, 2009 Redacted Letter from the U.S. Department of Health and Human Services to A. Michelle Abarca, Florida Immigrant Advocacy Center, stating that the Department of Health and Human Services' specific consent authority would not be effective until 90 days after the December 23, 2008 enactment of the TVPRA (on file with authors).

[20] *See* February 6, 2009 Redacted Letter from the U.S. Department of Homeland Security to Deborah Lee, Florida Immigrant Advocacy Center, stating the TVPRA transferred specific consent authority to the U.S. Department of Health and Human Services, effective 90 days after the December 23, 2008 enactment of the TVPRA (on file with authors). The letter is in response to a renewed request for specific consent so that a state court could exercise jurisdiction to transfer a Special Immigrant Juvenile self-petitioner into the custody of the state's child welfare agency. The U.S. Department of Homeland Security does not address the underlying request for specific consent, despite stating that the change in specific consent authority would not be effective for 90 days.

Immigration Review, or related administrative or Federal appeals, on the date of the enactment..." Since specific consent is required only for juveniles in immigration custody, nearly all of whom are in removal proceedings, the effective date exception appears to authorize the U.S. Department of Health and Human Services, not the U.S. Department of Homeland Security, to grant specific consent at the present time. As stated above, however, the U.S. Department of Health and Human Services does not appear to interpret the effective date exception in this way.

3. 180-DAY TIMELINE FOR ADJUDICATION OF SPECIAL IMMIGRANT JUVENILE APPLICATIONS

The TVPRA mandates the expeditious adjudication of Special Immigrant Juvenile applications, requiring that the Secretary of Homeland Security process these applications within 180 days after the application is filed.[21] Requiring the Secretary of Homeland Security to more quickly adjudicate Special Immigrant Juvenile applications should resolve long delays in the handling of these cases and mandate that all USCIS offices prioritize Special Immigrant Juvenile cases.

4. SPECIFIC EXEMPTIONS TO GROUNDS OF INADMISSIBILITY FOR SPECIAL IMMIGRANT JUVENILES SEEKING ADJUSTMENT OF STATUS

The TVPRA creates specific waivers to various grounds of inadmissibility for those Special Immigrant Juveniles seeking Adjustment of Status. The TVPRA amends INA § 245(h)(2) to specifically waive the following grounds of inadmissibility: INA § 212(a)(4) (Public Charge); INA § 212(a)(5)(A) (Labor Certification); INA § 212(a)(6)(A) (Present Without Admission or Parole); INA § 212(a)(6)(C) (Misrepresentation/Fraud); INA § 212(a)(6)(D) (Stowaway); INA § 212(a)(7)(A) (Lack of Valid Entry Documentation); and INA § 212(a)(9)(B) (Unlawful Presence).[22] This expanded list of specific waivers for Special Immigrant Juveniles seeking adjustment of status will make it easier for otherwise eligible children to become lawful permanent residents.

5. TRANSITION PROTECTION FOR THOSE ALREADY SEEKING SPECIAL IMMIGRANT JUVENILE STATUS BEFORE THE DATE OF ENACTMENT OF TVPRA

The TVPRA provides protection to those who were already seeking Special Immigrant Juvenile status before its December 23, 2008 enactment but may otherwise "age-out" of either state juvenile court jurisdiction or the pre-existing cap of being under 21 years old for the Special Immigrant Juvenile eligibility.[23] Specifically, the TVPRA states that one:

> may not be denied special immigrant [juvenile] status...after the date of the enactment of this Act based on age if the alien was a child on the date on which the alien applied for such status.

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[21] *See* TVPRA § 235(d)(2).
[22] *See* TVPRA § 235(d)(3).
[23] *See* 8 C.F.R. § 204.11(c)(1).

TVPRA § 235(d)(6). U.S. Citizenship and Immigration Services is prohibited now from denying Special Immigrant Juvenile status to a self-petitioner, solely based on age, if she was a child[24] on the date of her application. Special Immigrant Juvenile self-petitioners should not fear aging out of eligibility, so long as they were eligible at the time of filing.

However, legal practitioners should note that 8 C.F.R. § 204.11(c)(5) still maintains a continuing jurisdictional requirement for the juvenile court, in order for the Special Immigrant Juvenile self-petitioner to remain eligible for this immigration status. It appears that this regulation will need to be amended to reflect the TVPRA's statutory age-out protection.[25] Practitioners should be cautious about age-out cases and might wish to seek adjustment of status for their Special Immigrant Juvenile clients before the lapse of juvenile court jurisdiction.

C. ASYLUM AND RELATED RELIEF FROM REMOVAL

Recognizing the unique and vulnerable situation of unaccompanied alien children, the TVPRA provides additional protections for those applying for asylum. INA § 208 is amended to specifically exempt unaccompanied alien children from the standard safe third country limitation on asylum.[26] Unaccompanied alien children are also exempted from the one-year deadline for applying for asylum.[27] Legal practitioners should take note especially of this exemption of the one-year deadline for unaccompanied alien children applying for asylum. Many unaccompanied alien children have had little control over the circumstances of their entry into the United States or their subsequent life in this country. Virtually none have knowledge of immigration laws or options for seeking legal relief. These additional protections are much-needed recognition of the specialized needs of this class of vulnerable asylum applicants.

The TVPRA also amends the procedure for processing asylum applications of unaccompanied alien children. An asylum officer from USCIS has initial jurisdiction over any asylum application filed by an unaccompanied alien child, including applications filed by children in removal proceedings.[28] Given the non-adversarial nature of asylum interviews, in contrast to the inherently adversarial and formalized nature of removal proceedings before an Immigration Judge, this manner of processing asylum applications is a welcome change. This procedural change in the processing of asylum applications more appropriately addresses the needs of unaccompanied children applying for asylum.

The TVPRA also states that an unaccompanied alien child's application for asylum and other relief from removal should take into account the child's status and developmental needs as an

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[24] *See* INA § 101(b)(1).
[25] This is in addition, of course, to the need to amend 8 C.F.R. § 204.11(c)(1)'s requirement that one must be under 21 years of age in order to be eligible for Special Immigrant Juvenile status.
[26] *See* TVPRA § 235(d)(7)(A).
[27] *See id.*
[28] *See* TVPRA § 235(d)(7)(B).

unaccompanied alien child. The TVPRA mandates that regulations be implemented to govern the procedural and substantive aspects of adjudicating an unaccompanied alien child's case.[29]

If representing an unaccompanied alien child seeking asylum in removal proceedings, legal practitioners should inform the particular Immigration Judge presiding over the child's removal proceedings, as well as Department of Homeland Security opposing counsel, that USCIS' Asylum Office has initial jurisdiction over the asylum application. Practitioners should consider requesting termination of proceedings, or alternatively seeking administrative closure, as this may be the most efficient use of the Immigration Court's time and resources, as well as being in the child's legal interests.

D. EFFECTIVE DATE OF SECTION 235 OF THE TVPRA

Section 235 of the TVPRA will take effect 90 days after its December 23, 2008 enactment, i.e, March 23, 2009.[30] However, as noted above, there appears to be some confusion regarding the effective date of this section for those unaccompanied alien children in pending proceedings. The effective date subsection within section 235 of the TVPRA reads:

> This section---
>
> (1) Shall take effect on the date that is 90 days after the enactment of this Act; and
> (2) Shall also apply to all aliens in the United States in pending proceedings before the U.S. Department of Homeland Security, Executive Office for Immigration Review, or related administrative or federal appeals, on the date of the enactment of this Act.

TVPRA § 235(h).

To the authors of this advisory, it appears that section 235 of the TVPRA would generally take effect on March 23, 2009 but that an exception was carved out to essentially protect and "grandfather in" those already in pending proceedings. Thus, those who are in pending proceedings are immediate beneficiaries of different provisions within section 235 of the TVPRA, including provisions regarding Special Immigrant Juvenile status and asylum. For legal practitioners, it is important to note that local practice with USCIS District Offices, Asylum Offices, and Immigration Courts may vary and these governmental agencies may differ in their interpretation of the effective date of section 235 of the TVPRA. Given this uncertainty, it is critical that legal practitioners advocate for a valid interpretation of the effective date provision that is in the best interests of their client while, at the same time, be cognizant of how the provision is being interpreted by the different agencies.

II. QUESTIONS AND ANSWERS

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[29] *See* TVPRA § 235(d)(8).
[30] *See* TVPRA § 235(h).

The following questions and answers address some emerging issues since the passage of the TVPRA.

Q1: My client filed an asylum application prior to his 18th birthday, but he has since turned 18. He is scheduled for an individual hearing before the Immigration Judge on his pending asylum application. Will the TVPRA changes regarding children's asylum claims apply to my case? Does the Asylum Office still have initial jurisdiction if my client was an "unaccompanied alien child" when he filed his asylum application?

The Asylum Office has initial jurisdiction over your client's case. TVPRA § 235(d)(7)(C) states that the Asylum Office has initial jurisdiction over "any asylum application filed by an unaccompanied alien child" (emphasis added). *Id.* Therefore, as long as your client's application was filed when he was an unaccompanied alien child, the Asylum Office would have jurisdiction even if he has since turned 18.

For those in removal proceedings with a pending asylum application which was filed when the applicant was (or remains) an unaccompanied alien child, practitioners should notify the court of TVPRA § 235(d)(7)(C) and move that proceedings be terminated or administratively closed pending the processing of the applicant's asylum application with the Asylum Office.

Q2: While the one-year filing deadline no longer applies to children's asylum claims, will the deadline be triggered once the unaccompanied alien child turns 18? Will the client need to file within one year of turning 18?

The TVPRA amends the statute to excuse unaccompanied alien children altogether from the one-year filing deadline. *See* TVPRA § 235(d)(7)(A). It is unclear from the TVPRA if the one-year filing deadline would go into effect if the unaccompanied alien child later turns 18. However, pursuant to 8 C.F.R. § 208.4(a)(5)(ii), status as an unaccompanied minor has long been considered an extraordinary circumstance that could excuse failure to meet the one-year filing deadline.

Practitioners are strongly advised to file a client's asylum application as soon as possible after their client's last entry into the United States. These legal advocates may cite to TVPRA § 235(d)(7)(A) and 8 C.F.R. § 208(a)(5)(ii) in order to argue against any application of the one-year filing deadline for their clients.

Q3: Several years ago, my unaccompanied alien child client was ordered removed *in absentia* by an immigration judge. This client is eligible for asylum. Do I need to file a Motion to Reopen with the immigration judge even though the Asylum Office should have initial jurisdiction over my client's application?

It is not entirely clear from the TVPRA how this situation would be resolved. The TVPRA, however, states that "An asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child..." TVPRA § 235(d)(7)(C) (emphasis added).

Despite your client's *in absentia* order, it appears that she would still file an asylum application with the Asylum Office and that it would have jurisdiction to adjudicate the application.[31]

Practitioners should be extremely cautious, however, in situations in which their client has an *in absentia* order and whose removal may be enforced at any time. Without a stay of removal, either from the Executive Office for Immigration Review or the U.S. Department of Homeland Security, filing an affirmative application alerts DHS to your client's whereabouts and could result in your client's apprehension and placement in federal custody. For those unaccompanied alien children already in federal custody who, despite a prior *in absentia* removal order, have a claim for asylum, the need to obtain a stay of removal is imperative.

[31] If the Asylum Office grants asylum to this client, the legal practitioner should then move to reopen and, presumably, terminate the client's removal proceedings before the Executive Office for Immigration Review.

ATTACHMENT A:

Summary Chart of Changes Affecting Legal Relief Options Post-William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457; "TVPRA")

What has changed under section 235 of the TVPRA?	Under TVPRA	Prior to TVPRA
TVPRA amends INA § 101(a)(27)(J)(i) & (ii), making changes to the definition of a Special Immigrant Juvenile.	In relevant part, the definition of Special Immigrant Juvenile requires that: (1) The juvenile is dependent on a juvenile court or the juvenile court has committed or placed the juvenile into custody of an agency or department of the state, or to an entity or individual appointed by a State or juvenile court; (2) Reunification with 1 or both parents is not viable due to abuse, neglect, abandonment, or other similar basis found under State law; AND (3) It is not in the juvenile's best interests to return to his or her country of residence, or his or her parent's country of residence	Previously, the definition of Special Immigrant Juvenile required that: (1) The juvenile is dependent on a juvenile court or the juvenile court has committed or placed the juvenile into custody of an agency or department of the state; (2) The Juvenile is eligible for long-term foster care due to abuse, neglect, or abandonment; AND (3) It is not in the juvenile's best interests to return to his or her country of residence, or his or her parent's country of residence
TVPRA amends INA § 101(a)(27)(J)(iii), making changes to which federal entity has jurisdiction to grant specific consent so that a state court may exercise jurisdiction to determine custody status or placement over an unaccompanied alien child.	Now, the Secretary of Health and Human Services has specific consent authority.	Previously, the Attorney General (and then, afterwards the Department of Homeland Security) had this authority.
TVPRA creates a	The Department of Homeland	Previously, there was no

deadline by which the Department of Homeland Security must adjudicate a Special Immigrant Juvenile application.	Security must adjudicate a Special Immigrant Juvenile application within 180 days from the date the application is filed. TVPRA § 235(d)(2).	statute that required the Department of Homeland Security to adjudicate Special Immigrant Juvenile applications within a certain time frame.
TVPRA amends INA § 245(h)(2)(A), specifically waiving additional grounds of inadmissibility for Special Immigrant Juveniles.	These grounds of inadmissibility are specifically waived for Special Immigrant Juveniles: • INA § 212(a)(4) (Public Charge) • INA § 212(a)(5)(A) (Labor Certification) • INA § 212(a)(6)(A) (Present Without Admission or Parole) • INA § 212(a)(6)(C) (Misrepresentation/Fraud) • INA § 212(a)(6)(D) (Stowaway) • INA § 212(a)(7)(A) (Lack of Valid Entry Documentation) • INA § 212(a)(9)(B) (Unlawful Presence)	Previously, INA § 245(h)(2)(A) specifically waived only the following grounds of inadmissibility: • INA § 212(a)(4) (Public Charge) • INA § 212(a)(5)(A) (Labor Certification) • INA § 212(a)(7)(A) (Lack of Valid Entry Documentation) INA § 245(h)(2)(B) allowed for the discretionary waiver of many other grounds of inadmissibility.
TVPRA increases access to federal funds to assist Special Immigrant Juveniles and states providing services to them.	TVPRA § 235(d)(4)(A) provides that: • Special Immigrant Juveniles (who were either in the custody of the Department of Health and Human Services or receiving services pursuant to section 501(a) of the Refugee Education Assistance Act of 1980 at the time a dependency order was granted) are eligible for placement and services under INA § 412(d), in parity with refugee children. This includes, among other things, eligibility for Title IV federal financial aid. TVPRA § 235(d)(4)(B) provides	Previously, there were no federal funds to assist Special Immigrant Juveniles or states providing services to them.

	that: • "[s]ubject to the availability of appropriations," the federal government shall reimburse the state for state foster care funds expended on behalf of children granted Special Immigrant Juvenile status.	
TVPRA protects those self-petitioners who may "age-out" of eligibility for Special Immigrant Juvenile status.	TVPRA § 235(d)(6) provides that U.S. Citizenship and Immigration Services is prohibited from denying Special Immigrant Juvenile status to a self-petitioner, solely based on age, if she was a child on the date the petition was filed. NOTE: 8 C.F.R. § 204.11(c)(5) still maintains a continuing jurisdictional requirement for the juvenile court, in order for the Special Immigrant Juvenile self-petitioner to remain eligible for this immigration status. It appears that this regulation will need to be amended to reflect the TVPRA's statutory protection from "aging out."	8 C.F.R. § 204.11(c)(1) required that a self-petitioner be under 21 years old in order to be eligible for Special Immigrant Juvenile status.

Connecticut General Statutes Annotated
Title 45a. Probate Courts and Procedure (Refs & Annos)
Chapter 802H. Protected Persons and Their Property (Refs & Annos)
Part II. Guardians of the Person of a Minor (Refs & Annos)

C.G.S.A. § 45a-608*o*

§ 45a-608*o*. Designation of minor child as having special immigrant juvenile status pursuant to pending petition to terminate parental rights or approve adoption

Effective: October 1, 2014

Currentness

(a) At any time during the pendency of a petition to terminate parental rights under any provision of sections 45a-715 to 45a-717, inclusive, or to approve an adoption under section 45a-727, a party may file a petition requesting the Probate Court to make findings under this section to be used in connection with a petition to the United States Citizenship and Immigration Services for designation of the minor child as having special immigrant juvenile status under 8 USC 1101(a)(27)(J). The Probate Court shall cause notice of the hearing on the petition to be given by first class mail to each person listed in subsection (b) of section 45a-716, and such hearing may be held at the same time as the hearing on the underlying petition to terminate parental rights or approve an adoption. If the court grants the petition to terminate parental rights or approve the adoption, the court shall make written findings on the following: (1) The age of the minor child; (2) the marital status of the minor child; (3) whether the minor child is dependent upon the court; (4) whether reunification of the minor child with one or both of the minor child's parents is not viable due to any of the grounds set forth in subdivision (2) of subsection (g) of section 45a-717; and (5) whether it is not in the best interests of the minor child to be returned to the minor child's or parent's country of nationality or last habitual residence.

(b) If the court has previously granted a petition to terminate parental rights under section 45a-717 or to approve an adoption under section 45a-727, a statutory parent, guardian, adoptive parent or attorney for the minor child may file a petition requesting that the court make findings under this section to be used in connection with a petition to the United States Citizenship and Immigration Services for designation of the minor child as having special immigrant juvenile status under 8 USC 1101(a)(27)(J). The court shall order notice of the hearing on the petition to be given by first class mail to the statutory parent, each guardian, adoptive parent and attorney for the minor child, to the minor child if the minor child is twelve years of age or older and to other persons as the court determines. The court shall make written findings in accordance with subsection (a) of this section.

Credits

(2014, P.A. 14-104, § 9;2015, P.A. 15-14, § 12.)

C. G. S. A. § 45a-608*o*, CT ST § 45a-608o
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

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Chapter 802H. Protected Persons and Their Property (Refs & Annos)
Part II. Guardians of the Person of a Minor (Refs & Annos)

C.G.S.A. § 45a-608n

§ 45a-608n. Designation of minor child as having special immigrant juvenile status pursuant to pending petition for removal or appointment of guardian

Effective: October 1, 2014

Currentness

(a) For the purposes of this section and section 45a-608*o*, a minor child shall be considered dependent upon the court if the court has (1) removed a parent or other person as guardian of the minor child, (2) appointed a guardian or coguardian for the minor child, (3) terminated the parental rights of a parent of the minor child, or (4) approved the adoption of the minor child.

(b) At any time during the pendency of a petition to remove a parent or other person as guardian under section 45a-609 or 45a-610, or to appoint a guardian or coguardian under section 45a-616, a party may file a petition requesting the Probate Court to make findings under this section to be used in connection with a petition to the United States Citizenship and Immigration Services for designation of the minor child as having special immigrant juvenile status under 8 USC 1101(a)(27)(J). The Probate Court shall cause notice of the hearing on the petition to be given by first class mail to each person listed in subsection (b) of section 45a-609, and such hearing may be held at the same time as the hearing on the underlying petition for removal or appointment. If the court grants the petition to remove the parent or other person as guardian or appoint a guardian or coguardian, the court shall make written findings on the following: (1) The age of the minor child; (2) the marital status of the minor child; (3) whether the minor child is dependent upon the court; (4) whether reunification of the minor child with one or both of the minor child's parents is not viable due to any of the grounds sets forth in subdivisions (2) to (5), inclusive, of section 45a-610; and (5) whether it is not in the best interests of the minor child to be returned to the minor child's or parent's country of nationality or last habitual residence.

(c) If the court has previously granted a petition to remove a parent or other person as guardian under section 45a-609 or 45a-610 or to appoint a guardian or coguardian under section 45a-616, a parent, guardian or attorney for the minor child may file a petition requesting that the court make findings under this section to be used in connection with a petition to the United States Citizenship and Immigration Services for designation of the minor child as having special immigrant juvenile status under 8 USC 1101(a)(27)(J). The court shall cause notice of the hearing on the petition to be given by first class mail to each parent, guardian and attorney for the minor child, to the minor child if the minor child is twelve years of age or older and to other persons as the court determines. The court shall make written findings on the petition in accordance with subsection (b) of this section.

Credits

(2014, P.A. 14-104, § 8;2015, P.A. 15-14, § 11.)

C. G. S. A. § 45a-608n, CT ST § 45a-608n
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

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Center for Children's Advocacy

Obtaining Special Immigrant Juvenile Status Findings
in Connecticut Probate Courts

Chapter Three

Conn. Law: Abuse, Neglect, Abandonment

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C.G.S.A. § 45a-604

§ 45a-604. Definitions

Effective: October 1, 2012

Currentness

As used in sections 45a-603 to 45a-622, inclusive:

(1) "Mother" means a woman who can show proof by means of a birth certificate or other sufficient evidence of having given birth to a child and an adoptive mother as shown by a decree of a court of competent jurisdiction or otherwise;

(2) "Father" means a man who is a father under the law of this state including a man who, in accordance with section 46b-172, executes a binding acknowledgment of paternity and a man determined to be a father under chapter 815y;[1]

(3) "Parent" means a mother as defined in subdivision (1) of this section or a "father" as defined in subdivision (2) of this section;

(4) "Minor" or "minor child" means a person under the age of eighteen;

(5) "Guardianship" means guardianship of the person of a minor, and includes: (A) The obligation of care and control; (B) the authority to make major decisions affecting the minor's education and welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment; and (C) upon the death of the minor, the authority to make decisions concerning funeral arrangements and the disposition of the body of the minor;

(6) "Guardian" means a person who has the authority and obligations of "guardianship", as defined in subdivision (5) of this section;

(7) "Termination of parental rights" means the complete severance by court order of the legal relationship, with all its rights

and responsibilities, between the child and the child's parent or parents so that the child is free for adoption, except that it shall not affect the right of inheritance of the child or the religious affiliation of the child;

(8) "Permanent guardianship" means a guardianship, as defined in subdivision (5) of this section, that is intended to endure until the minor reaches the age of majority without termination of the parental rights of the minor's parents; and

(9) "Permanent guardian" means a person who has the authority and obligations of a permanent guardianship, as defined in subdivision (8) of this section.

Credits

(1958 Rev., § 45-42a; 1979, P.A. 79-460, § 1; 1981, P.A. 81-472, § 100, eff. July 8, 1981; 1996, P.A. 96-130, § 1; 1999, P.A. 99-84, § 4; 2000, P.A. 00-5; 2000, P.A. 00-157, § 7, eff. July 1, 2000; 2000, P.A. 00-196, § 31; 2012, June 12 Sp.Sess., P.A. 12-1, § 274.)

Editors' Notes

C. G. S. A. § 45a-604, CT ST § 45a-604
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

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§ 45a-605. Provisions construed in best interest of minor child, CT ST § 45a-605

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C.G.S.A. § 45a-605

§ 45a-605. Provisions construed in best interest of minor child

Currentness

(a) The provisions of sections 45a-603 to 45a-622, inclusive, shall be liberally construed in the best interests of any minor child affected by them, provided the requirements of such sections are otherwise satisfied.

(b) All proceedings held under said sections shall, in the best interests of the minor child, be held without unreasonable delay.

Credits

(1958 Rev., § 45-42b; 1979, P.A. 79-460, § 2; 1985, P.A. 85-244, § 1, eff. May 30, 1985.)

Notes of Decisions (16)

C. G. S. A. § 45a-605, CT ST § 45a-605
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C.G.S.A. § 45a-606

§ 45a-606. Father and mother joint guardians

Currentness

The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor.

Credits

(1949 Rev., § 6850; 1958 Rev., § 45-43; 1959, P.A. 177; 1969, P.A. 691, § 1; 1972, P.A. 127, § 66; 1973, P.A. 73-156, § 19; 1974, P.A. 74-164, § 13, eff. May 10, 1974; 1975, P.A. 75-420, § 4, eff. June 25, 1975; 1977, P.A. 77-614, § 521, eff. Jan. 1, 1979; 1979, P.A. 79-460, § 4.)

Notes of Decisions (40)

C. G. S. A. § 45a-606, CT ST § 45a-606
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

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C.G.S.A. § 45a-607

§ 45a-607. Temporary custody of minor pending application to probate court for removal of guardian or termination of parental rights

Effective: June 29, 2009

Currentness

(a) (1) When application has been made for the removal of one or both parents as guardians or of any other guardian of the person of a minor child, or when an application has been made for the termination of the parental rights of any parties who may have parental rights with regard to any minor child, or when, in any proceeding the court has reasonable grounds to believe that any minor child has no guardian of his or her person, the court of probate in which the proceeding is pending may issue an order awarding temporary custody of the minor child to a person other than the parent or guardian, with or without the parent's or guardian's consent, but such order may only be issued in accordance with the provisions of this section. There shall be a rebuttable presumption that the awarding of temporary custody to a relative is in the best interests of such child or youth. This presumption may be rebutted by a preponderance of the evidence that such awarding of custody is not in the best interests of such child or youth. As used in this subsection and subsections (b) and (d) of this section, "relative" means a person related to the child by blood or marriage.

(2) In any proceeding under this section, any relative of the minor child may make a motion to intervene and the court shall grant such motion except for good cause shown. Upon the granting of such motion, such relative may appear by counsel or in person.

(b) In the case of a minor child in the custody of the parent or other guardian, no application for custody of such minor child may be granted ex parte, except in accordance with subdivision (2) of this subsection. In the case of a minor child in the custody of a person other than the parent or guardian, no application for custody may be granted ex parte, except in accordance with subdivisions (1) to (3), inclusive, of this subsection.

(1) An application for immediate temporary custody shall be accompanied by an affidavit made by the custodian of such minor child under penalty of false statement, stating the circumstances under which such custody was obtained, the length of time the affiant has had custody and specific facts which would justify the conclusion that determination cannot await the hearing required by subsection (c) of this section. Upon such application, the court may grant immediate temporary custody to the affiant, a relative, or some other suitable person if the court finds that: (A) The minor child was not taken or kept from the parent, parents or guardian, and (B) there is a substantial likelihood that the minor child will be removed from the

jurisdiction prior to a hearing under subsection (c) of this section, or (C) to return the minor child to the parent, parents or guardian would place the minor child in circumstances which would result in serious physical illness or injury, or the threat thereof, or imminent physical danger prior to a hearing under subsection (c) of this section.

(2) In the case of a minor child who is hospitalized as a result of serious physical illness or serious physical injury, an application for immediate temporary custody shall contain a certificate signed by two physicians licensed to practice medicine in this state stating that (A) the minor child is in need of immediate medical or surgical treatment, the delay of which would be life threatening, (B) the parent, parents or guardian of the minor child refuses or is unable to consent to such treatment, and (C) determination of the need for temporary custody cannot await notice of hearing. Upon such application, the court may grant immediate temporary custody to a relative or some other suitable person if it finds that (i) a minor child has suffered from serious physical illness or serious physical injury and is in need of immediate medical or surgical treatment, (ii) the parent, parents or guardian refuses to consent to such treatment, and (iii) to delay such treatment would be life threatening.

(3) If an order of temporary custody is issued ex parte, notice of the hearing required by subsection (c) of this section shall be given promptly, and the hearing shall be held not later than five business days after the date of such ex parte order of temporary custody, provided the respondent shall be entitled to continuance upon request. Upon the issuance of an order granting temporary custody of the minor child to the Commissioner of Children and Families, or not later than sixty days after the issuance of such order, the court shall make a determination whether the Department of Children and Families made reasonable efforts to keep the minor child with his or her parent, parents or guardian prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the minor child's best interests, including the minor child's health and safety. Upon issuance of an ex parte order of temporary custody, the court shall promptly notify the Commissioner of Children and Families, who shall cause an investigation to be made forthwith, in accordance with section 17a-101g, and shall present the commissioner's report to the court at the hearing on the application for temporary custody. The hearing on an ex parte order of temporary custody shall not be postponed, except with the consent of the respondent, or, if notice cannot be given as required by this section, a postponement may be ordered by the court for the purpose of a further order of notice.

(c) Except as provided in subsection (b) of this section, upon receipt of an application for temporary custody under this section, the court shall promptly set the time and place for a hearing to be held on such application. The court shall order notice of the hearing on temporary custody to be given, at least five days prior to the date of the hearing, to the Commissioner of Children and Families by first class mail and to both parents and to the minor child, if over twelve years of age, by personal service or service at the parent's usual place of abode or the minor's usual place of abode, as the case may be, in accordance with section 52-50, except that in lieu of personal service on, or service at the usual place of abode of, a parent or the father of a minor child born out of wedlock who is either an applicant or who signs under penalty of false statement a written waiver of such service on a form provided by the Probate Court Administrator, the court may order notice to be given by first class mail at least five days prior to the date of the hearing. If the whereabouts of the parents are unknown, or if such delivery cannot reasonably be effected, then notice shall be ordered to be given by publication. Such notice may be combined with the notice under section 45a-609 or with the notice required under section 45a-716. If the parents are not residents of the state or are absent from the state, the court shall order notice to be given by first class mail at least five days prior to the date of the hearing. If the whereabouts of the parents are unknown, or if delivery cannot reasonably be effected, the court may order notice to be given by publication. Any notice by publication under this subsection shall be in a newspaper which has a circulation at the last-known place of residence of the parents. In either case, such notice shall be given at least five days prior to the date of the hearing, except in the case of notice of a hearing on immediate temporary custody under subsection (b) of this section. If the applicant alleges that the whereabouts of a respondent are unknown, such allegation shall be made under penalty of false statement and shall also state the last-known address of the respondent and the efforts which have been made

by the applicant to obtain a current address. The applicant shall have the burden of ascertaining the names and addresses of all parties in interest and of proving to the satisfaction of the court that the applicant used all proper diligence to discover such names and addresses. Except in the case of newspaper notice, such notice shall include: (1) The time and place of the hearing, (2) a copy of the application for removal or application for termination of parental rights, (3) a copy of the motion for temporary custody, (4) any affidavit or verified petition filed with the motion for temporary custody, (5) any other documents filed by the applicant, (6) any other orders or notices made by the court of probate, and (7) any request for investigation by the Department of Children and Families or any other person or agency. Such notice shall also inform the respondent of the right to have an attorney represent the respondent and, if the respondent is unable to obtain or pay for an attorney, the respondent may request the court of probate to appoint an attorney to represent the respondent. Newspaper notice shall include such facts as the court may direct.

(d) If, after hearing, the court finds by a fair preponderance of the evidence (1) that the parent or other guardian has performed acts of omission or commission as set forth in section 45a-610, and (2) that, because of such acts, the minor child is suffering from serious physical illness or serious physical injury, or the immediate threat thereof, or is in immediate physical danger, so as to require that temporary custody be granted, the court may order the custody of the minor child to be given to one of the following, taking into consideration the standards set forth in section 45a-617 and subsection (a) of this section: (A) A relative of such minor child; (B) the Commissioner of Children and Families; (C) the board of managers of any child-caring institution or organization; (D) any children's home or similar institution licensed or approved by the Commissioner of Children and Families; or (E) any other person. The fact that an order of temporary custody may have been issued ex parte under subsection (b) of this section shall be of no weight in a hearing held under this subsection. The burden of proof shall remain upon the applicant to establish the applicant's case. The court may issue the order without taking into consideration the standards set forth in this section and section 45a-610 if the parent or other guardian consents to the temporary removal of the minor child, or the court finds that the minor child has no guardian of his or her person. Upon the issuance of an order giving custody of the minor child to the Commissioner of Children and Families, or not later than sixty days after the issuance of such order, the court shall make a determination whether the Department of Children and Families made reasonable efforts to keep the minor child with his or her parent, parents or guardian prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the minor child's best interests, including the minor child's health and safety.

(e) Such order for temporary custody shall be effective until disposition of the application for removal of parents or guardians as guardian or for termination of parental rights or until a guardian is appointed for a minor child who has no guardian, unless modified or terminated by the court of probate. Any respondent, temporary custodian or attorney for the minor child may petition the court of probate issuing such order at any time for modification or revocation thereof, and such court shall set a hearing upon receipt of such petition in the same manner as subsection (c) of this section. If the court finds after such hearing that the conditions upon which it based its order for temporary custody no longer exist, and that the conditions set forth in subsection (b) of this section do not exist, then the order shall be revoked and the minor child shall be returned to the custody of the parent or guardian.

(f) A copy of any order issued under this section shall be mailed immediately to the last known address of the parent or other guardian from whose custody the minor child has been removed.

Credits

(1949 Rev., § 6851; 1958 Rev., § 45-44; 1963, P.A. 151; 1974, P.A. 74-164, § 16, eff. May 10, 1974; 1975, P.A. 75-420, § 4,

eff. June 25, 1975; 1977, P.A. 77-21; 1977, P.A. 77-614, § 521, eff. Jan. 1, 1979; 1979, P.A. 79-460, § 7; 1983, P.A. 83-481, § 1; 1984, P.A. 84-294, § 2; 1986, P.A. 86-264, § 1; 1993, P.A. 93-91, § 1, eff. July 1, 1993; 1996, P.A. 96-246, § 31; 1999, P.A. 99-84, § 23; 2000, P.A. 00-75, § 5; 2002, May 9 Sp.Sess., P.A. 02-7, § 31, eff. Aug. 15, 2002; 2007, P.A. 07-184, § 1; 2009, P.A. 09-185, § 4, eff. June 29, 2009.)

Notes of Decisions (1)

C. G. S. A. § 45a-607, CT ST § 45a-607
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

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C.G.S.A. § 45a-609

§ 45a-609. Application for removal of parent as guardian. Hearing. Notice. Examination

Effective: October 1, 2007

Currentness

(a) Upon application for removal of a parent or parents as guardian, the court shall set a time and place for hearing to be held within thirty days of the application, unless the court requests an investigation in accordance with the provisions of section 45a-619. In that case, the court shall set a day for hearing not more than thirty days following receipt of the results of the investigation.

(b) The court shall order notice of the hearing to be given, at least ten days before the date of the hearing, to the Commissioner of Children and Families by first class mail and to both parents and to the minor, if over twelve years of age, by personal service or service at the parent's usual place of abode or the minor's usual place of abode, as the case may be, in accordance with section 52-50, except that in lieu of personal service on, or service at the usual place of abode of, a parent or the father of a child born out of wedlock who is either a petitioner or who signs under oath a written waiver of such service on a form provided by the Probate Court Administrator, the court may order notice to be given by first class mail at least ten days prior to the date of the hearing. If such delivery cannot reasonably be effected, then notice shall be ordered to be given by publication. If the parents reside out of or are absent from the state, the court shall order notice to be given by first class mail at least ten days prior to the date of the hearing. If the whereabouts of the parents are unknown, or if delivery cannot reasonably be effected, the court may order notice to be given by publication. Any notice by publication under this subsection shall be in a newspaper which has a circulation at the parents' last-known place of residence. In either case, such notice shall be given at least ten days before the date of the hearing. If the applicant alleges that the whereabouts of a respondent are unknown, such allegation shall be made under penalty of false statement and shall also state the last-known address of the respondent and the efforts which have been made by the applicant to obtain a current address. The applicant shall have the burden of ascertaining the names and addresses of all parties in interest and of proving to the satisfaction of the court that the applicant used all proper diligence to discover such names and addresses. Except in the case of newspaper notice, the notice of hearing shall include the following: (1) The notice of hearing, (2) the application for removal of parent as guardian, (3) any supporting documents and affidavits filed with such application, (4) any other orders or notices made by the Court of Probate, and (5) any request for investigation by the Department of Children and Families or any other person or agency. Such notice shall also inform the respondent of the right to have an attorney represent the respondent in the matter, and if the respondent is unable to obtain or to pay an attorney, the respondent may request the Court of Probate to appoint an attorney to represent the respondent. Newspaper notice shall include such facts as the court may direct.

(c) If a parent is over eighteen years of age he or she may sign and file a written waiver of notice with the court.

§ 45a-609. Application for removal of parent as guardian...., CT ST § 45a-609

(d) Upon finding at the hearing or at any time during the pendency of the proceeding that reasonable cause exists to warrant an examination, the court, on its own motion or on motion by any party, may order the child to be examined at a suitable place by a physician, psychiatrist or licensed clinical psychologist appointed by the court. The court may also order examination of a parent or custodian whose competency or ability to care for a child before the court is at issue. The expenses of any examination, if ordered by the court on its own motion, shall be paid for by the applicant, or if ordered on motion by a party, shall be paid for by the party moving for such an examination. If such applicant or party is unable to pay the expense of any such examination, it shall be paid from the Probate Court Administration Fund, or, if the matter has been removed to the Superior Court, from funds appropriated to the Judicial Department.

Credits

(1958 Rev., § 45-44b; 1979, P.A. 79-460, § 9; 1983, P.A. 83-481, § 2; 1986, P.A. 86-264, § 2; 1993, P.A. 93-91, § 1, eff. July 1, 1993; 1996, P.A. 96-202, § 6; 1999, P.A. 99-84, § 24; 2000, P.A. 00-75, § 6; 2007, P.A. 07-184, § 2.)

Notes of Decisions (1)

C. G. S. A. § 45a-609, CT ST § 45a-609
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

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C.G.S.A. § 45a-610

§ 45a-610. Removal of parent as guardian

Currentness

If the Court of Probate finds that notice has been given or a waiver has been filed, as provided in section 45a-609, it may remove a parent as guardian, if the court finds by clear and convincing evidence one of the following: (1) The parent consents to his or her removal as guardian; or (2) the minor child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility for the minor child's welfare; or (3) the minor child has been denied the care, guidance or control necessary for his or her physical, educational, moral or emotional well-being, as a result of acts of parental commission or omission, whether the acts are the result of the physical or mental incapability of the parent or conditions attributable to parental habits, misconduct or neglect, and the parental acts or deficiencies support the conclusion that the parent cannot exercise, or should not in the best interests of the minor child be permitted to exercise, parental rights and duties at the time; or (4) the minor child has had physical injury or injuries inflicted upon the minor child by a person responsible for such child's health, welfare or care, or by a person given access to such child by such responsible person, other than by accidental means, or has injuries which are at variance with the history given of them or is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment; or (5) the minor child has been found to be neglected or uncared for, as defined in section 46b-120. If, after removal of a parent as guardian under this section, the minor child has no guardian of his or her person, such a guardian may be appointed under the provisions of section 45a-616. Upon the issuance of an order appointing the Commissioner of Children and Families as guardian of the minor child, or not later than sixty days after the issuance of such order, the court shall make a determination whether the Department of Children and Families made reasonable efforts to keep the minor child with his or her parents prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the minor child's best interests, including the minor child's health and safety.

Credits

(1958 Rev., § 45-44c; 1979, P.A. 79-460, § 10; 1983, P.A. 83-481, § 3; 1984, P.A. 84-294, § 3; 2000, P.A. 00-75, § 3; 2001, P.A. 01-195, § 28, eff. July 11, 2001; 2002, May 9 Sp.Sess., P.A. 02-7, § 32, eff. Aug. 15, 2002.)

C. G. S. A. § 45a-610, CT ST § 45a-610
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

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C.G.S.A. § 45a-616a

§ 45a-616a. Appointment of permanent guardian for minor. Reinstatement of parent as guardian or appointment of successor guardian or permanent guardian

Effective: October 1, 2012

Currentness

(a) In appointing a guardian of the person of a minor pursuant to section 45a-616 or at any time following such appointment, the Court of Probate may establish a permanent guardianship if the court provides notice to each parent that the parent may not petition for reinstatement as guardian or petition to terminate the permanent guardianship, except as provided in subsection (b) of this section, or the court indicates on the record why such notice could not be provided, and the court finds by clear and convincing evidence that the establishment of a permanent guardianship is in the best interests of the minor and that the following have been proven by clear and convincing evidence:

(1) One of the grounds for termination of parental rights, as set forth in subparagraphs (A) to (G), inclusive, of subdivision (2) of subsection (g) of section 45a-717 exists, or the parents have voluntarily consented to the appointment of a permanent guardian;

(2) Adoption of the minor is not possible or appropriate;

(3) (A) If the minor is at least twelve years of age, such minor consents to the proposed appointment of a permanent guardian, or (B) if the minor is under twelve years of age, the proposed permanent guardian is a relative or already serving as the permanent guardian of at least one of the minor's siblings;

(4) The minor has resided with the proposed permanent guardian for at least one year; and

(5) The proposed permanent guardian is suitable and worthy and committed to remaining the permanent guardian and assuming the rights and responsibilities for the minor until the minor reaches the age of majority.

(b) If a permanent guardian appointed under this section becomes unable or unwilling to serve as permanent guardian, the court may appoint a successor guardian or permanent guardian in accordance with this section and sections 45a-616 and 45a-617, or may reinstate a parent of the minor who was previously removed as guardian of the person of the minor if the court finds that the factors that resulted in the removal of the parent as guardian have been resolved satisfactorily, and that it is in the best interests of the child to reinstate the parent as guardian.

Credits

(2012, June 12 Sp.Sess., P.A. 12-1, § 275.)

C. G. S. A. § 45a-616a, CT ST § 45a-616a
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

Connecticut General Statutes Annotated
Title 45a. Probate Courts and Procedure (Refs & Annos)
Chapter 802H. Protected Persons and Their Property (Refs & Annos)
Part II. Guardians of the Person of a Minor (Refs & Annos)

C.G.S.A. § 45a-617

§ 45a-617. Appointment of guardian, coguardians or permanent guardian of the person of a minor

Effective: October 1, 2012

Currentness

When appointing a guardian, coguardians or permanent guardian of the person of a minor, the court shall take into consideration the following factors: (1) The ability of the prospective guardian, coguardians or permanent guardian to meet, on a continuing day to day basis, the physical, emotional, moral and educational needs of the minor; (2) the minor's wishes, if he or she is over the age of twelve or is of sufficient maturity and capable of forming an intelligent preference; (3) the existence or nonexistence of an established relationship between the minor and the prospective guardian, coguardians or permanent guardian; and (4) the best interests of the child. There shall be a rebuttable presumption that appointment of a grandparent or other relative related by blood or marriage as a guardian, coguardian or permanent guardian is in the best interests of the minor child.

Credits

(1958 Rev., § 45-45b; 1979, P.A. 79-460, § 12; 1996, P.A. 96-238, § 18, eff. July 1, 1996; 2009, P.A. 09-185, § 5; 2012, June 12 Sp.Sess., P.A. 12-1, § 279.)

Notes of Decisions (3)

C. G. S. A. § 45a-617, CT ST § 45a-617
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

Connecticut General Statutes Annotated
Title 45a. Probate Courts and Procedure (Refs & Annos)
Chapter 802H. Protected Persons and Their Property (Refs & Annos)
Part II. Guardians of the Person of a Minor (Refs & Annos)

C.G.S.A. § 45a-619

§ 45a-619. Investigation by Commissioner of Children and Families

Currentness

In any proceeding under sections 45a-603 to 45a-624, inclusive, in which the applicant has alleged that the minor has been abused or neglected, as those terms are defined in section 46b-120, or in which the probate judge has reason to believe that the minor may have been abused or neglected, the Court of Probate shall request the Commissioner of Children and Families or any organization, agency or individual licensed or approved by the commissioner, to make an investigation and written report to it, within ninety days from the receipt of such request, unless the request concerns an application for immediate temporary custody or temporary custody, in which case the commissioner shall render the report by such date as is reasonably ordered by the court. The report shall indicate the physical, mental and emotional status of the minor and shall contain such facts as may be relevant to the court's determination of whether the proposed court action will be in the best interests of the minor, including the physical, social, mental, and financial condition of the parties, and such other factors which the commissioner or agency finds relevant to the court's determination of whether the proposed action will be in the best interests of the minor. In any other proceeding under sections 45a-603 to 45a-624, inclusive, the court shall request an investigation and report unless this requirement is waived for cause shown. The report shall be admissible in evidence, subject to the right of any interested party to require that the person making it appear as a witness, if available, and subject to examination.

Credits

(1958 Rev., § 45-45d; 1979, P.A. 79-460, § 16; 1993, P.A. 93-91, § 1, eff. July 1, 1993; 2000, P.A. 00-75, § 7.)

C. G. S. A. § 45a-619, CT ST § 45a-619
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

Connecticut General Statutes Annotated
Title 45a. Probate Courts and Procedure (Refs & Annos)
Chapter 802H. Protected Persons and Their Property (Refs & Annos)
Part II. Guardians of the Person of a Minor (Refs & Annos)

C.G.S.A. § 45a-620

§ 45a-620. Appointment of counsel. Appointment of guardian ad litem to speak on behalf of best interests of minor

Currentness

The Court of Probate may appoint counsel to represent or appear on behalf of any minor in proceedings brought under sections 45a-603 to 45a-622, inclusive, and sections 45a-715 to 45a-717, inclusive. In any proceeding in which abuse or neglect, as defined in section 46b-120, is alleged by the applicant, or reasonably suspected by the court, a minor shall be represented by counsel appointed by the court to represent the minor. In all cases in which the court deems appropriate, the court shall also appoint a person, other than the person appointed to represent the minor, as guardian ad litem for such minor to speak on behalf of the best interests of the minor, which guardian ad litem is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children. The Court of Probate shall appoint counsel to represent any respondent who notifies the court that he or she is unable to obtain counsel, or is unable to pay for counsel. The cost of such counsel shall be paid by the person whom he or she represents, except that if such person is unable to pay for such counsel and files an affidavit with the court demonstrating his or her inability to pay, the reasonable compensation of appointed counsel shall be established by, and paid from funds appropriated to, the Judicial Department, however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund. In the case of a minor, such affidavit may be filed by a suitable person having knowledge of the financial status of such minor.

Credits

(1958 Rev., § 45-45e; 1979, P.A. 79-460, § 17; 1983, P.A. 83-481, § 4; 1984, P.A. 84-294, § 4; 1990, P.A. 90-31, § 3, eff. May 2, 1990; 1996, P.A. 96-170, § 16, eff. July 1, 1998; 2000, P.A. 00-75, § 4.)

Notes of Decisions (1)

C. G. S. A. § 45a-620, CT ST § 45a-620
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

Connecticut General Statutes Annotated
Title 45a. Probate Courts and Procedure (Refs & Annos)
Chapter 802H. Protected Persons and Their Property (Refs & Annos)
Part II. Guardians of the Person of a Minor (Refs & Annos)

C.G.S.A. § 45a-621

§ 45a-621. Appointment of guardian ad litem

Currentness

The Court of Probate shall appoint a guardian ad litem to make any application under sections 45a-603 to 45a-622, inclusive, to represent or appear on behalf of any parent who is less than eighteen years of age or incompetent.

Credits

(1958 Rev., § 45-45f; 1979, P.A. 79-460, § 18.)

C. G. S. A. § 45a-621, CT ST § 45a-621
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

Connecticut General Statutes Annotated
Title 45a. Probate Courts and Procedure (Refs & Annos)
Chapter 802H. Protected Persons and Their Property (Refs & Annos)
Part II. Guardians of the Person of a Minor (Refs & Annos)

C.G.S.A. § 45a-623

§ 45a-623. Transfer of proceeding to Superior Court or regional children's probate court

Effective: January 1, 2013

Currentness

Before a hearing on the merits in any case under sections 45a-603 to 45a-622, inclusive, that is contested, the Court of Probate shall, on motion of any party other than a party who made application for the removal of a parent as a guardian, or may, on the court's own motion or motion of the party who made application for the removal of a parent as a guardian, transfer the case to the Superior Court in accordance with rules adopted by the judges of the Supreme Court. In addition to the provisions of this section, the Court of Probate may, on the court's own motion or motion of any interested party, transfer any proceeding under sections 45a-603 to 45a-622, inclusive, to a regional children's probate court established pursuant to section 45a-8a. If the case is transferred and venue altered, the clerk of the Court of Probate shall transmit to the clerk of the Superior Court or the regional children's probate court to which the case was transferred, the original files and papers in the case.

Credits

(1993, P.A. 93-344; 1995, P.A. 95-316, § 7; 2000, P.A. 00-75, § 8; 2004, P.A. 04-142, § 2; 2012, P.A. 12-66, § 9, eff. Jan. 1, 2013.)

Notes of Decisions (2)

C. G. S. A. § 45a-623, CT ST § 45a-623
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

§ 46b-120. Definitions, CT ST § 46b-120

Connecticut General Statutes Annotated
Title 46b. Family Law (Refs & Annos)
Chapter 815T. Juvenile Matters (Refs & Annos)
Part I. General Provisions

C.G.S.A. § 46b-120

§ 46b-120. Definitions

Effective: October 1, 2014

Currentness

The terms used in this chapter shall, in its interpretation and in the interpretation of other statutes, be defined as follows:

(1) "Child" means any person under eighteen years of age who has not been legally emancipated, except that (A) for purposes of delinquency matters and proceedings, "child" means any person who (i) is at least seven years of age at the time of the alleged commission of a delinquent act and who is (I) under eighteen years of age and has not been legally emancipated, or (II) eighteen years of age or older and committed a delinquent act prior to attaining eighteen years of age, or (ii) is subsequent to attaining eighteen years of age, (I) violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to a delinquency proceeding, or (II) wilfully fails to appear in response to a summons under **section** 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, and (B) for purposes of family with service needs matters and proceedings, child means a person who is at least seven years of age and is under eighteen years of age;

(2) "Youth" means any person sixteen or seventeen years of age who has not been legally emancipated;

(3) A child may be found "mentally deficient" who, by reason of a deficiency of intelligence that has existed from birth or from early age, requires, or will require, for such child's protection or for the protection of others, special care, supervision and control;

(4) (A) A child may be convicted as "delinquent" who has, while under sixteen years of age, (i) violated any federal or state law, except **section** 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, or violated a municipal or local ordinance, except an ordinance regulating behavior of a child in a family with service needs, (ii) wilfully failed to appear in response to a summons under **section** 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, (iii) violated any order of the Superior Court in a delinquency proceeding, except as provided in **section** 46b-148, or (iv) violated conditions of probation in a delinquency proceeding as ordered by the court;

(B) A child may be convicted as "delinquent" who has (i) while sixteen or seventeen years of age, violated any federal or

state law, other than (I) an infraction, except an infraction under subsection (d) of **section** 21a-267, (II) a violation, except a violation under subsection (a) of **section** 21a-279a, (III) a motor vehicle offense or violation under title 14, (IV) a violation of a municipal or local ordinance, or (V) a violation of **section** 51-164r, 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, (ii) while sixteen years of age or older, wilfully failed to appear in response to a summons under **section** 46b-133 or at any other court hearing in a delinquency proceeding of which the child had notice, (iii) while sixteen years of age or older, violated any order of the Superior Court in a delinquency proceeding, except as provided in **section** 46b-148, or (iv) while sixteen years of age or older, violated conditions of probation in a delinquency proceeding as ordered by the court;

(5) "Family with service needs" means a family that includes a child who is at least seven years of age and is under eighteen years of age who (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode, (B) is beyond the control of the child's or youth's parent, parents, guardian or other custodian, (C) has engaged in indecent or immoral conduct, (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations, or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child or youth;

(6) A child or youth may be found "neglected" who, for reasons other than being impoverished, (A) has been abandoned, (B) is being denied proper care and attention, physically, educationally, emotionally or morally, or (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth;

(7) A child or youth may be found "abused" who (A) has been inflicted with physical injury or injuries other than by accidental means, (B) has injuries that are at variance with the history given of them, or (C) is in a condition that is the result of maltreatment, including, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment;

(8) A child or youth may be found "uncared for" (A) who is homeless, (B) whose home cannot provide the specialized care that the physical, emotional or mental condition of the child or youth requires, or (C) who has been identified as a victim of trafficking, as defined in **section** 46a-170. For the purposes of this **section**, the treatment of any child or youth by an accredited Christian Science practitioner, in lieu of treatment by a licensed practitioner of the healing arts, shall not of itself constitute neglect or maltreatment;

(9) "Delinquent act" means (A) the violation by a child under the age of sixteen of any federal or state law, except the violation of **section** 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, or the violation of a municipal or local ordinance, except an ordinance regulating behavior of a child in a family with service needs, (B) the violation by a child sixteen or seventeen years of age of any federal or state law, other than (i) an infraction, except an infraction under subsection (d) of **section** 21a-267, (ii) a violation, except a violation under subsection (a) of **section** 21a-279a, (iii) a motor vehicle offense or violation under title 14, (iv) the violation of a municipal or local ordinance, or (v) the violation of **section** 51-164r, 53a-172, 53a-173, 53a-222, 53a-222a, 53a-223 or 53a-223a, (C) the wilful failure of a child, including a child who has attained the age of eighteen, to appear in response to a summons under **section** 46b-133 or at any other court hearing in a delinquency proceeding of which the child has notice, (D) the violation of any order of the Superior Court in a delinquency proceeding by a child, including a child who has attained the age of eighteen, except as provided in **section** 46b-148, or (E) the violation of conditions of probation in a delinquency proceeding by a child, including a child who has attained the age of

eighteen, as ordered by the court;

(10) "Serious juvenile offense" means (A) the violation of, including attempt or conspiracy to violate, **section** 21a-277, 21a-278, 29-33, 29-34, 29-35, subdivision (2) or (3) of subsection (a) of **section** 53-21, 53-80a, 53-202b, 53-202c, 53-390 to 53-392, inclusive, 53a-54a to 53a-57, inclusive, 53a-59 to 53a-60c, inclusive, 53a-64aa, 53a-64bb, 53a-70 to 53a-71, inclusive, 53a-72b, 53a-86, 53a-92 to 53a-94a, inclusive, 53a-95, 53a-100aa, 53a-101, 53a-102a, 53a-103a or 53a-111 to 53a-113, inclusive, subdivision (1) of subsection (a) of **section** 53a-122, subdivision (3) of subsection (a) of **section** 53a-123, **section** 53a-134, 53a-135, 53a-136a or 53a-167c, subsection (a) of **section** 53a-174, or **section** 53a-196a, 53a-211, 53a-212, 53a-216 or 53a-217b, or (B) running away, without just cause, from any secure placement other than home while referred as a delinquent child to the Court Support Services Division or committed as a delinquent child to the Commissioner of Children and Families for a serious juvenile offense;

(11) "Serious juvenile offender" means any child convicted as delinquent for the commission of a serious juvenile offense;

(12) "Serious juvenile repeat offender" means any child charged with the commission of any felony if such child has previously been convicted as delinquent or otherwise convicted at any age for two violations of any provision of title 21a, 29, 53 or 53a that is designated as a felony;

(13) "Alcohol-dependent" means a psychoactive substance dependence on alcohol as that condition is defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders"; and

(14) "Drug-dependent" means a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders". No child shall be classified as drug-dependent who is dependent (A) upon a morphine-type substance as an incident to current medical treatment of a demonstrable physical disorder other than drug dependence, or (B) upon amphetamine-type, ataractic, barbiturate-type, hallucinogenic or other stimulant and depressant substances as an incident to current medical treatment of a demonstrable physical or psychological disorder, or both, other than drug dependence.

Credits

(1949 Rev., § 2802; 1958 Rev., §§ 17-53, 51-301; 1959, P.A. 28, § 52; 1967, P.A. 630, § 1, eff. June 22, 1967; 1969, P.A. 794, § 1; 1971, P.A. 72, § 14; 1975, P.A. 75-602, § 1, eff. Jan. 1, 1976; 1976, P.A. 76-436, § 668, eff. July 1, 1978; 1977, P.A. 77-577, § 4; 1979, P.A. 79-567, § 1; 1979, P.A. 79-581, § 1; 1985, P.A. 85-226, § 1; 1987, P.A. 87-373, § 13; 1990, P.A. 90-161, § 1, eff. July 1, 1990; 1990, P.A. 90-240, § 2; 1990, P.A. 90-325, § 19; 1991, P.A. 91-303, § 11, eff. July 1, 1991; 1992, June Sp.Sess., P.A. 92-1, § 2; 1992, June Sp.Sess., P.A. 92-3; 1993, P.A. 93-91, § 1, eff. July 1, 1993; 1993, P.A. 93-340, § 16, eff. Oct. 1, 1993; 1995, P.A. 95-225, § 9, eff. Oct. 1, 1995; 1997, P.A. 97-319, § 18, eff. July 1, 1997; 1998, P.A. 98-256, § 1; 2000, P.A. 00-177, § 1, eff. July 1, 2001; 2002, P.A. 02-109, § 1, eff. June 7, 2002; 2002, P.A. 02-132, § 18; 2005, P.A. 05-250, § 1, eff. Oct. 1, 2007; 2007, June Sp.Sess., P.A. 07-4, § 73, eff. Jan. 1, 2010; 2009, Sept.Sp.Sess., P.A. 09-7, § 69, eff. Jan. 1, 2010; 2009, Sept.Sp.Sess., P.A. 09-7, § 82, eff. July 1, 2012; 2010, June Sp.Sess., P.A. 10-1, § 28, eff. June 22, 2010; 2011, P.A. 11-71, §§ 7, 8, eff. July 1, 2011; 2011, P.A. 11-240, § 2, eff. July 1, 2011; 2011, P.A. 11-157, §§ 9 to 11; 2011, P.A. 11-71, §§ 9, 10, eff. July 1, 2012; 2011, P.A. 11-157, § 12, eff. July 1, 2012; 2011, P.A. 11-240, § 3, eff.

§ 46b-120. Definitions, CT ST § 46b-120

July 1, 2012; 2012, June 12 Sp.Sess., P.A. 12-1, §§ 266, 267; 2014, P.A. 14-186, § 5.)

Editors' Notes

C. G. S. A. § 46b-120, CT ST § **46b-120**
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

Center for Children's Advocacy

Obtaining Special Immigrant Juvenile Status Findings
in Connecticut Probate Courts

Chapter Four

Probate Court Jurisdiction

Connecticut General Statutes Annotated
Title 46b. Family Law (Refs & Annos)
Chapter 815P. Uniform Child Custody Jurisdiction and Enforcement Act (Refs & Annos)
Part II. Jurisdiction

C.G.S.A. § 46b-115k

§ 46b-115k. Initial child custody jurisdiction

Currentness

(a) Except as otherwise provided in **section** 46b-115n, a court of this state has jurisdiction to make an initial child custody determination if:

(1) This state is the home state of the child on the date of the commencement of the child custody proceeding;

(2) This state was the home state of the child within six months of the commencement of the child custody proceeding, the child is absent from the state, and a parent or a person acting as a parent continues to reside in this state;

(3) A court of another state does not have jurisdiction under subdivisions (1) or (2) of this subsection, the child and at least one parent or person acting as a parent have a significant connection with this state other than mere physical presence, and there is substantial evidence available in this state concerning the child's care, protection, training and personal relationships;

(4) A court of another state which is the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under a provision substantially similar to **section** 46b-115q or **section** 46b-115r, the child and at least one parent or person acting as a parent have a significant connection with this state other than mere physical presence, and there is substantial evidence available in this state concerning the child's care, protection, training and personal relationships;

(5) All courts having jurisdiction under subdivisions (1) to (4), inclusive, of this subsection have declined jurisdiction on the ground that a court of this state is the more appropriate forum to determine custody under a provision substantially similar to **section** 46b-115q or **section** 46b-115r; or

(6) No court of any other state would have jurisdiction under subdivisions (1) to (5), inclusive, of this subsection.

§ 46b-115k. Initial child custody jurisdiction, CT ST § 46b-115k

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Credits

(1999, P.A. 99-185, § 12, eff. July 1, 2000.)

Editors' Notes

C. G. S. A. § 46b-115k, CT ST § **46b-115k**
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 115. Evidence; Documentary (Refs & Annos)

28 U.S.C.A. § 1738A

§ 1738A. Full faith and credit given to child custody determinations

Effective: October 28, 2000

Currentness

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term--

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there

is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced

during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

CREDIT(S)

(Added Pub.L. 96-611, § 8(a), Dec. 28, 1980, 94 Stat. 3569; amended Pub.L. 105-374, § 1, Nov. 12, 1998, 112 Stat. 3383; Pub.L. 106-386, Div. B, Title III, § 1303(d), Oct. 28, 2000, 114 Stat. 1512.)

Notes of Decisions (48)

28 U.S.C.A. § 1738A, 28 USCA § 1738A
Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

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Connecticut General Statutes Annotated
Title 46b. Family Law (Refs & Annos)
Chapter 815P. Uniform Child Custody Jurisdiction and Enforcement Act (Refs & Annos)
Part IV. Foreign Child Custody

C.G.S.A. § **46b-115ii**

§ **46b-115ii**. Foreign child custody determination

Currentness

A court of this state shall treat a foreign child custody determination made under factual circumstances in substantial conformity with the jurisdictional standards of this chapter, including reasonable notice and opportunity to be heard to all affected persons, as a child custody determination of another state under sections 46b-115 to 46b-115t, inclusive, unless such determination was rendered under child custody law which violates fundamental principles of human rights or unless such determination is repugnant to the public policy of this state.

Credits

(1999, P.A. 99-185, § 37, eff. July 1, 2000.)

C. G. S. A. § 46b-115ii, CT ST § **46b-115ii**
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

C.G.S.A. § 46b-115h

§ 46b-115h. Communication between courts

Currentness

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Credits

(1999, P.A. 99-185, § 9, eff. July 1, 2000.)

C. G. S. A. § 46b-115h, CT ST § 46b-115h
The statutes and Constitution are current with enactments from the 2015 Regular Session and the June Special Session.

End of Document

HCCH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

28. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION[1]

(Concluded 25 October 1980)

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a)* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

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[1] This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions" or under the "Child Abduction Section". For the full history

of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Quatorzième session (1980)*, Tome III, *Child abduction* (ISBN 90 12 03616 X, 481 pp.).

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention –

a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

a) to discover the whereabouts of a child who has been wrongfully removed or retained;

b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d) to exchange, where desirable, information relating to the social background of the child;

e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;

g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain –

a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
b) where available, the date of birth of the child;
c) the grounds on which the applicant's claim for return of the child is based;
d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

e) an authenticated copy of any relevant decision or agreement;
f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.
The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.
The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalisation or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.
However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.
Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.
However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.
Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units –
a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.
Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.
It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.
The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.
The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.
Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.
Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force –

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following –

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
(2) the accessions referred to in Article 38;
(3) the date on which the Convention enters into force in accordance with Article 43;
(4) the extensions referred to in Article 39;
(5) the declarations referred to in Articles 38 and 40;
(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
(7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

Connecticut General Statutes Annotated
Title 45a. Probate Courts and Procedure (Refs & Annos)
Chapter 801A. Probate Court: Jurisdictions, Powers

C.G.S.A. § 45a-98

§ 45a-98. General powers

Effective: [See Text Amendments] to June 30, 2016

Currentness

<Section effective until July 1, 2016. See, also, section effective July 1, 2016.>

(a) Courts of probate in their respective districts shall have the power to (1) grant administration of intestate estates of persons who have died domiciled in their districts and of intestate estates of persons not domiciled in this state which may be granted as provided by section 45a-303; (2) admit wills to probate of persons who have died domiciled in their districts or of nondomiciliaries whose wills may be proved in their districts as provided in section 45a-287; (3) except as provided in section 45a-98a or as limited by an applicable statute of limitations, determine title or rights of possession and use in and to any real, tangible or intangible property that constitutes, or may constitute, all or part of any trust, any decedent's estate, or any estate under control of a guardian or conservator, which trust or estate is otherwise subject to the jurisdiction of the Probate Court, including the rights and obligations of any beneficiary of the trust or estate and including the rights and obligations of any joint tenant with respect to survivorship property; (4) except as provided in section 45a-98a, construe the meaning and effect of any will or trust agreement if a construction is required in connection with the administration or distribution of a trust or estate otherwise subject to the jurisdiction of the Probate Court, or, with respect to an inter vivos trust, if that trust is or could be subject to jurisdiction of the court for an accounting pursuant to section 45a-175, provided such an accounting need not be required; (5) except as provided in section 45a-98a, apply the doctrine of cy pres or approximation; (6) to the extent provided for in section 45a-175, call executors, administrators, trustees, guardians, conservators, persons appointed to sell the land of minors, and attorneys-in-fact acting under powers of attorney created in accordance with section 45a-562, to account concerning the estates entrusted to their charge; and (7) make any lawful orders or decrees to carry into effect the power and jurisdiction conferred upon them by the laws of this state.

(b) The jurisdiction of courts of probate to determine title or rights or to construe instruments or to apply the doctrine of cy pres or approximation pursuant to subsection (a) of this section is concurrent with the jurisdiction of the Superior Court and does not affect the power of the Superior Court as a court of general jurisdiction.

Credits

(1949 Rev., § 6813; 1958 Rev., § 45-4; 1980, P.A. 80-410, § 1, eff. Oct. 1, 1980; 1980, P.A. 80-476, § 2, eff. Oct. 1, 1980; 1993, P.A. 93-279, § 6, eff. Oct. 1, 1993; 1998, P.A. 98-219, § 4.)

Center for Children's Advocacy

Obtaining Special Immigrant Juvenile Status Findings
in Connecticut Probate Courts

Chapter Five

Selected Portions of the Probate Court Rules of Procedure

Probate Court Rules of Procedure

CONTAINING

GENERAL PROVISIONS RULES FOR ALL

CASE TYPES

RULES FOR SPECIFIC CASE TYPES RULES FOR

HEARINGS

REFERENCES TO CONNECTICUT GENERAL STATUTES

Published by

PROBATE COURT ADMINISTRATOR STATE OF CONNECTICUT

West Hartford 2015

Explanatory Notes

Probate Court Rules of Procedure first became effective on July 1, 2013. This 2015 edition contains the rules as amended since then. Original effective dates and the dates of subsequent amendments are summarized at the end of each rule. Changes are also listed in the Table of Changes at the back of this volume.

Annotations are contained in parentheses following certain sections of these rules. The purpose of the annotations is to alert users to statutes, cases, rules and other sources of law that are related to the subject matter of the section.

State of Connecticut

Probate Court Rules of Procedure
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Probate Court Rules of Procedure
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RULES FOR HEARINGS

Preface

Connecticut's Probate Courts are responsible for a broad range of cases involving decedents' estates, children, the elderly and persons with disabilities. In handling those matters, Probate Courts are called upon to protect the rights and interests of our state's most vulnerable citizens. The mission of the Probate Court system, given the sensitivity of these matters, is to provide an accessible and approachable forum in which cases can be resolved promptly, economically and equitably. The purpose of *Probate Court Rules of Procedure* is to promote that mission.

This publication establishes efficient and uniform procedures for probate matters. It provides guidance in all areas of probate jurisdiction and is written in plain language to assist all those who have cases in the Probate Courts, including both self-represented individuals and attorneys. Streamlined procedures are designed to minimize expenses for parties and expedite resolution of cases.

Probate Court Rules of Procedure was first published in 2013. Since then, many who use the rules in their daily work have offered ideas on ways to improve the rules. We are grateful for the feedback and have incorporated many of your suggestions in this 2015 edition. Other revisions seek to improve clarity and consistency and address recent legislative changes. This 2015 edition includes revisions to rules 5, 8, 13, 18, 30, 31, 32, 33, 34, 35, 36, 40, 44, 45, 47, 61, 67 and 72.

I want to thank the members of the Probate Court Rules Advisory Committee for their invaluable assistance in developing these rules and helping to keep them up to date. The exceptionally dedicated volunteers who serve on the committee are listed on the following page. They are judges, retired judges, court staff, attorneys and individuals with professional backgrounds in accounting and social services who have given generously of their time and expertise. I am truly indebted to them for their service. Credit for the heavy lifting of drafting and editing the rules belongs to Attorney David Biklen, the committee reporter, and my colleagues at probate administration, Attorney Tom Gaffey and Attorney Bonnie Bennet. I am very grateful also to Supreme Court Justice Peter Zarella, who has provided support and guidance throughout the process.

As I said two years ago when *Probate Court Rules of Procedure* was first introduced, the rules should be considered a work in progress. There are still many opportunities for improvement and biennial updates are planned. I welcome suggestions from those who use the courts.

Paul J. Knierim
Probate Court Administrator

Probate Court Rules Advisory Committee
2013-2014

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David D. Biklen, Esq.

Rule 6
Probate Fees

Section 6.1 Entry fee

(a) Except in a proceeding concerning a decedent's estate or an accounting, a petitioner shall submit the statutory entry fee at the time of filing a petition, unless:

(1) the court has waived or postponed the fee or the matter is exempt under C.G.S. section 45a-111;

(2) the state of Connecticut is the petitioner; or

(3) the entry fee for a competing petition in the same matter has already been paid.

(b) Except as provided under subsection (a), a petition does not commence a matter until the required fee is paid.

(C.G.S. sections 45a-105 through 45a-112.)

Section 6.2 Waiver of probate fees and expenses

(a) A petitioner may request a waiver of probate fees and expenses, including the cost of service of process, at the time of filing the underlying petition. The request shall be on a form published by the probate court administrator and shall include any supporting information required by the court or the form.

(b) The court may waive payment of probate fees and expenses if the court finds that a petitioner will be deprived of the right to bring a petition by reason of indigence or that a petitioner is otherwise unable to pay.

(c) If the court waives payment of probate fees and expenses, the petitioner shall:

(1) notify the court of a substantial change in financial circumstances during the pendency of the matter; and

(2) file an updated request for waiver if required by the court.

(C.G.S. sections 45a-111 (c) and 52-259b.)

Section 6.3 Withdrawal of petition

If a petitioner withdraws a petition after notice of hearing has been sent, the petitioner is not entitled to a refund of the entry fee and expenses. The petitioner shall pay any expenses incurred under C.G.S. section 45a-109 before the withdrawal is filed.

Section 6.4 Payment of probate fees and expenses required before final decree

Except as otherwise provided by statute, the court may withhold issuance of a decree on a final account in a decedent's estate or an account in any other matter until all probate fees and expenses have been paid.

Section 6.5 Copy of decree with court seal

The court shall provide, without charge, one copy of each decree bearing the seal of the court to each party and attorney of record.

HISTORY: Rule 6 adopted effective July 1, 2013.

Rule 8

Notice

Section 8.1 Notice of hearing and decree

Unless otherwise provided by law or these rules, the court shall:

(1) schedule a hearing or conference, as applicable, on each motion or petition, including the court's own motion;

(2) give notice of each hearing or conference in the manner provided in sections 8.2 through 8.9; and

(3) send a copy of each decree in the manner provided in section 8.10.

(C.G.S. sections 45a-124, 45a-127 and 51-53; Probate Court Rules, rules 60 and 69.)

Section 8.2 To whom notice is given

(a) The court shall give notice under section 8.1 to each:

(1) party;

(2) attorney of record;

(3) fiduciary for a party under section 4.2; and

(4) other person required by law.

(b) If a proceeding may affect a charitable interest or beneficiary, the court shall give notice to the Attorney General under section 8.1.

(c) Unless otherwise prohibited by law, the court may give notice under section 8.1 to any person who:

(1) requests notice in writing under C.G.S. section 45a-127; or

(2) the court determines has a sufficient interest in the proceedings.

(d) On request of a party or on the court's own motion, the court may remove a person from the list of persons to whom the court will give notice of future proceedings if the court determines that the person is not entitled to notice under subsection (a). The court may act without notice and hearing. If the court removes a person from the list, the court shall notify the person, in writing, of the removal and inform the person that a written request for special notice may be made under C.G.S. section 45a-127.

(C.G.S. section 3-125.)

Section 8.3 Change of address while matter is pending

(a) A party shall inform the court and the fiduciary, if any, of a change in address of the party during the pendency of the matter.

(b) A fiduciary shall use reasonable efforts to keep informed of any change in address of a party to whom the fiduciary owes a fiduciary duty and shall notify the court of the change.

(c) If there is no fiduciary, a petitioner shall use reasonable efforts to keep informed of any change in address of a party during the pendency of the matter and shall notify the court of the change.

Section 8.4 Contents of notice of hearing

A notice of hearing or conference shall include:

(1) a description of the motion or petition to be heard or the subject matter of the conference;

(2) the time and place of the hearing or conference; and

(3) a list of the names and addresses of parties, attorneys and others to whom notice is being sent.

Section 8.5 How notice of hearing given

(a) Unless otherwise required by law, the court shall give notice of hearing or conference by:

(1) regular mail; or

(2) other method that the court determines necessary to notify a party of the hearing.

(b) Notice by mail is complete on mailing.

(c) Unless otherwise required by law or directed by the court, the court shall give notice of hearing or conference at least seven days before the hearing or conference.

(d) The court shall certify on the record the date and manner by which notice was given.

(e) If, before commencing a hearing or conference, the court reschedules the hearing or conference to another date and time, the court shall give notice of the rescheduled hearing or conference in accordance with this section. After commencing a hearing or conference at which parties are in attendance, the court may announce the date and time when the hearing or conference will continue without giving additional written notice.

(C.G.S. sections 45a-125 and 45a-126 (b).)

Section 8.6 Streamline notice procedure

(a) Except as provided in subsection (i), the court may, in lieu of scheduling a hearing, use the streamline notice procedure for the matters set forth in subsections (g) and (h). Use of the streamline notice procedure under this section satisfies a requirement for notice and hearing under statute or these rules.

(b) When using the streamline notice procedure, the court shall give notice of the right to request a hearing to each person that the court determines is entitled to notice under section 8.2.

(c) A notice of the right to request a hearing shall include a statement that:

(1) the court will, on written request of a party, schedule a hearing on the motion or petition;

(2) the court must receive the written request for a hearing on or before the date specified in the notice; and

(3) the court may approve the motion or petition without a hearing if a written request for a hearing is not received on or before the date specified in the notice.

(d) The court shall give notice of the right to request a hearing at least ten days before the deadline to request a hearing.

(e) If the court receives a timely written request for a hearing, the court shall schedule a hearing and give notice of the hearing.

(f) If the court does not receive a timely written request for a hearing, the court may approve the motion or petition. The court may not deny the motion or petition without scheduling a hearing and giving notice of the hearing.

(g) Except as provided in subsection (i), the court shall use the streamline notice procedure under this section in the following matters:

(1) decedents' estates; and

(2) trusts.

(h) Except as provided in subsection (i), the court may use the streamline notice procedure under this section in the following matters:

(1) an account of a guardian of the estate of a minor;

(2) an account of a conservator of the estate;

(3) a motion to modify visitation orders;

(4) a motion to transfer a probate file between probate courts under C.G.S. section 45a-599 or 45a-677 (h);

(5) a motion to transfer a contested children's matter to the Superior Court under C.G.S. section 45a-623 or 45a-715 (g); and

(6) a petition to transfer a conservatorship matter to another state or accept a transfer from another state under C.G.S. section 45a-667p or 45a-667q.

(i) The court shall schedule a hearing rather than using the streamline notice procedure for a proceeding specified in subsection (g) or (h) if the court determines that:

(1) the matter is contested or requires testimony or legal argument;

(2) public notice is required to protect the interests of a party;

(3) the circumstances related to the particular petition require the conduct of a hearing with attendance by a party; or

(4) the matter involves the doctrine of cy pres or equitable deviation or the construction

of a document that affects a charitable beneficiary or interest.

(C.G.S. sections 45a-124 through 45a-126, 45a-598, 45a-612 and 45a-667p and 45a-667q; Probate Court Rules, sections 18.1 and 40.16.)

Section 8.7 Waiver of notice of hearing

(a) A party may waive the party's right to notice of hearing by filing a written waiver of notice.

(b) A fiduciary identified in section 4.2 may waive notice of hearing on behalf of the individual for whom the fiduciary acts by filing a written waiver of notice.

Section 8.8 Address unknown; notice of hearing returned undelivered

(a) Except as otherwise provided by law, if the name or address of a party is unknown, the court may give public notice of a hearing, appoint a guardian ad litem for the person, dispense with notice or take other appropriate action.

(b) If, before a hearing, notice to a person is returned to the court undelivered, the court may order additional mail notice. If additional mail notice would be futile, the court may give public notice, appoint a guardian ad litem for the person, dispense with notice or take other appropriate action.

(c) If, after the hearing but before a decree is issued, the court is notified of a new address for a person who might not have received notice of the hearing, the court may delay issuance of the decree for a reasonable period to allow the person to request another hearing or waive notice of hearing. The court shall give notice of the delay, including the period and reason for the delay, to each person that the court determines is entitled to notice under section 8.2.

(d) If, after a decree is issued, the court is notified of a new address for a person who might not have received notice of the hearing, the court shall send a copy of the decree to the person and a statement that the person may wish to consult an attorney.

(e) If a person appears at a hearing for which the person did not receive proper notice, the court may proceed with the hearing unless:

(1) the court determines, on objection raised at the hearing, that the person would be prejudiced by the lack of notice; or

(2) the matter is a conservatorship proceeding and the respondent was not personally served as required under C.G.S. section 45a-649 (a) (2).

(C.G.S. sections 45a-128, 45a-187, 45a-609 (b) and 45a-716 (c); Probate Court Rules, section 40.9.)

Section 8.9 Notice of hearing for member of military service

(a) A party to a proceeding identified under section 7.2 (c) who is in the active military service of the United States may file a special appearance indicating the address to which notice can be sent.

(b) If the party does not file a special appearance under subsection (a), the court shall appoint an attorney for the party and send notice of the appointment to each party and attorney of record.

(c) The court shall not issue a final decision in a matter identified in section 7.2 (c) unless the requirements of subsection (a) or (b) have been satisfied.

(Servicemembers Civil Relief Act, 50 U.S.C. app. section 521.)

Section 8.10 Notice of decree

(a) The court shall send, by regular mail, a copy of each decree bearing the seal of the court to each person entitled to notice under section 8.2.

(b) Unless a different time is required by law or directed by the court, the court shall mail the copy of the decree not later than ten days after the date of the decree.

(c) The court shall certify on the decree or on a separate attached page the date the decree was mailed and the persons to whom the decree was sent.

(Probate Court Rules, sections 3.1 (b) and 6.5.)

HISTORY: Rule 8 adopted effective July 1, 2013. Section 8.2 amended effective July 1, 2015.

13.

Rule 12
Court-appointed Attorney

Section 12.1 When attorney appointed

(a) The court shall appoint an attorney to represent a party when appointment is required by law.

(b) The court shall appoint an attorney to represent a party when appointment is authorized by law and the court determines that the appointment is necessary to protect the interests of the party.

(c) The court shall send a copy of the appointment to each party and attorney of record.

Section 12.2 Appointment from panel of attorneys maintained by probate court administrator

The court shall appoint an attorney for an unrepresented party from the panel of attorneys maintained by the probate court administrator when appointment is required in the following matters:

(1) commitment for treatment of psychiatric disability under C.G.S. section 17a-76 or 17a-498;

(2) involuntary placement of a person with intellectual disability under C.G.S. section 17a-274;

(3) appointment of a special limited conservator under C.G.S. section 17a-543a;

(4) commitment for treatment of drug and alcohol dependency under C.G.S. section 17a-685;

(5) order of quarantine or isolation under C.G.S. sections 19a-131b and 19a-221;

(6) commitment for treatment of tuberculosis under C.G.S. section 19a-265 (h);

(7) involuntary appointment of conservator under C.G.S. section 45a-649a;

(8) sterilization under C.G.S. section 45a-694; and

(9) any other statute that requires appointment of an attorney from the panel.

(Probate Court Regulations, section 13.)

Section 12.3 Appointment from panel of attorneys maintained by court

(a) Each court shall maintain a panel of attorneys.

(b) If the appointment of an attorney for an unrepresented party is required by law and the appointment is not governed by section 12.2, the court shall appoint an attorney from the panel maintained under subsection (a).

(c) Notwithstanding subsection (b), the court may appoint an attorney from the panel maintained by the probate court administrator for any matter under this section.

(Probate Court Regulations, sections 13B and 13C.)

Section 12.4 Court-appointed attorney: Rules of Professional Conduct

An attorney appointed to represent a party under rule 12 shall advocate for the client in accordance with the Rules of Professional Conduct.

Section 12.5 Duration of appointment

Unless otherwise required by law, the appointment of an attorney by the court shall continue for the duration of the matter in the Probate Court or until further order of the court.

(C.G.S. section 45a-649a; Connecticut Practice Book section, 35a-19 (c).)

Section 12.6 Withdrawal from court appointment

On written request of a court-appointed attorney, the court may permit the attorney

to withdraw from representation of a party. The court may act on the request without notice and hearing. If the court grants the request, the court shall appoint another attorney and notify each party and attorney of record of the appointment.

(Probate Court Rules, section 5.7.)

HISTORY: Rule 12 adopted effective July 1, 2013.

Rule 13
Court-appointed Guardian Ad Litem

Section 13.1 Mandatory appointment of guardian ad litem

(a) The court shall appoint a guardian ad litem for:

(1) a parent who is a minor or is incompetent in a proceeding under C.G.S. sections 45a-603 through 45a-622 or sections 45a-715 through 45a-719;

(2) a minor child in a proceeding under C.G.S. section 46b-172a;

(3) a parent who is a minor or is incompetent in a proceeding under C.G.S. section 46b-172a;

(4) a relative in a proceeding under C.G.S. section 45a-751b or 45a-753 (c) whose identity is sought and whose address is unknown or who appears to be incompetent but has not been adjudicated incompetent by a court; and

(5) a party in a proceeding under any other statute or rule that requires appointment of a guardian ad litem.

(b) The court shall send a copy of the appointment to each party and attorney of record.

(C.G.S. sections 17a-77, 45a-163 (a) and 45a-164 (d); Probate Court Rules, section 32.3.)

Section 13.2 Discretionary appointment of guardian ad litem

(a) Except as prohibited by C.G.S. section 45a-132, the court may appoint a guardian ad litem for a party:

(1) who is a minor;

(2) who is incompetent or who appears to be incompetent but has not been adjudicated incompetent by a court;

(3) who is undetermined or unborn; or

(4) whose name or address is unknown.

(b) The court may consider the appointment of a guardian ad litem for a party on request of a party or person interested in the welfare of a party or on the court's own motion. The court may act without notice and hearing.

(c) The court may appoint a guardian ad litem under this section only if the court, after considering the legal and financial interests at issue, determines that the appointment is necessary.

(d) In a proceeding involving a conserved person under C.G.S. section 17a-543, 17a-543a or 45a-644 through 45a-663, the procedures under C.G.S. section 45a-132 (a) apply.

(e) The court shall send a copy of the appointment to each party and attorney of record.

(C.G.S. sections 45a-603 through 45a-622 and 45a-715 through 45a-719; Probate Court Rules, sections 30.8, 30.9 and 40.2.)

Section 13.3 Scope of appointment

(a) The court may limit the scope of appointment of a guardian ad litem to a specific purpose or to answer a specific question.

(b) In a proceeding involving a conserved person under C.G.S. section 17a-543, 17a-543a or 45a-644 through 45a-663, the court shall limit the scope of appointment of a guardian ad litem in accordance with C.G.S. section 45a-132 (a).

Section 13.4 Termination of appointment

(a) On request of a party or on the court's own motion, the court may terminate the appointment of a guardian ad litem at any time if the court determines that a guardian ad litem is no longer needed. The court may act without notice and hearing.

(b) In a proceeding involving a conserved person under C.G.S. section 17a-543, 17a-543a or 45a-644 through 45a-663, the court shall terminate the appointment of a guardian ad litem if required under C.G.S. section 45a-132 (a).

Section 13.5 Who may serve as guardian ad litem

(a) The court shall appoint as guardian ad litem an adult whose interests do not conflict with the interests of the person for whom the guardian ad litem will act.

(b) When appointing a guardian ad litem for a person, the court shall:

(1) consider whether the interests of the person require the protection of a guardian ad litem with legal or other professional training;

(2) give preference to a parent, guardian or other family member if the person is a minor, unless the court finds a conflict of interest under subsection (a) or that legal or other professional training is required under subsection (b) (1); and

(3) match the abilities of the guardian ad litem with the needs of the person.

(C.G.S. section 45a-132 (d).)

Section 13.6 Duties of guardian ad litem

(a) A guardian ad litem shall:

(1) advocate for the best interests of the person for whom the guardian is acting; and

(2) if the person is a minor, make reasonable efforts to keep each parent or guardian of the minor who is not a party to the matter advised of the actions of the guardian ad litem and the court.

(b) A guardian ad litem may recommend to the court a waiver, election, modification or compromise of the rights or interests of the person for whom the guardian ad litem is acting and may, with approval of the court, effectuate the waiver, election, modification or compromise on behalf of the person.

(c) A guardian ad litem does not have title to, or custody of, property of the person for whom the guardian ad litem is acting.

Section 13.7 Instruction and advice from court

(a) On request of a guardian ad litem or on the court's own motion, the court may give instruction and advice concerning the duties and scope of appointment of the guardian ad litem.

(b) A guardian ad litem and the court shall not engage in ex parte communication. Advice and instruction from the court shall be provided at a hearing or conference or in writing with a copy to each party and attorney of record.

(Probate Court Rules, rule 68.)

Section 13.8 Guardian ad litem may appeal from court order

A guardian ad litem may appeal from a decree affecting the interests of the person for whom the guardian ad litem is acting. Subject to approval of the court, the guardian ad litem may incur necessary expenses in connection with the appeal.

(C.G.S. sections 45a-186 and 45a-187.)

HISTORY: Rule 13 adopted effective July 1, 2013. Sections 13.1 and 13.2 amended effective July 1, 2015.

Rule 16

Public Access to Hearings and Records

Section 16.1 Public access to hearings and records

Unless otherwise provided by law or directed by the court in accordance with this rule, members of the public may observe hearings, status conferences and hearing management conferences and may view and obtain copies from court records.

(Probate Court Rules, rules 17, 60 and 63.)

Section 16.2 Statutorily confidential matters in general

(a) Except as otherwise ordered by the court, a person who is not a party is not entitled to observe a hearing, status conference or hearing management conference or view or obtain copies from the record in a matter that is confidential under statute. If part but not all of the hearing, conference or record is confidential, a person who is not a party is not entitled to observe the confidential part of the hearing or conference or have access to the confidential part of the record.

(b) Except as provided in section 16.3 or rule 17, a party or attorney for a party is entitled to participate in the hearing and to view and obtain copies from the record, including an audio recording or transcript. The court may prohibit a party or attorney from disclosing a confidential record to any other person.

(c) C.G.S. sections 45a-743 through 45a-753 govern access to adoption records.

(d) The court may permit a person who is not a party to attend a hearing on a confidential matter if permitted by law or if all parties consent.

(C.G.S. sections 12-15, 12-398 (c), 17a-274 (b), 17a-500, 17a-688 (a), 19a-265 (o), 45a-100 (n), 45a-650 (c), 45a-670, 45a-692 and 45a-754 (a); Probate Court Rules, rule 65 and sections 44.1, 45.1 and 46.1.)

Section 16.3 Redaction of name or address of party in statutorily confidential matter

(a) On motion of a party in a matter that is confidential under statute, the court may redact the name or address of a party, and information that would reveal the name or address of a party, if the court determines that redaction is necessary to protect the safety of a party. The court may use a pseudonym in lieu of the redacted name. The court may act on the motion without notice and hearing.

(b) A party seeking redaction under subsection (a) shall file an affidavit of facts in support of the request before filing a document containing the name or address.

(c) On motion of a party or on the court's own motion, the court may vacate a redaction order if:

(1) the grounds for redaction no longer exist; or

(2) the order to redact the information was improvidently issued.

The court may act on the motion without notice and hearing.

Section 16.4 Confidentiality of judge's notes

Except as otherwise required by law or directed by the court, notes taken by the judge in connection with a matter are confidential and may not be viewed by any person other than a clerk of the court.

Section 16.5 Confidentiality of social security numbers

See rule 17.

Section 16.6 Motion to close hearing or seal record in nonconfidential matter

(a) A party seeking to close a hearing to the public shall file a motion at least three business days before the hearing on the matter.

(b) A party seeking to seal all or a part of a record shall file a motion before filing a document that is the subject of the motion. The motion to seal may request use of a pseudonym in lieu of the name of a party or redaction of other information.

(c) A motion to close a hearing or seal a record under subsection (a) or (b) shall set forth the grounds for the proposed action.

(d) The court may initiate a proceeding to close a hearing or seal a record on its own motion.

Section 16.7 Hearing on motion to close hearing or seal record in nonconfidential matter

(a) The court shall give notice of the hearing on a motion to close a hearing to the public or seal a record to each party and attorney of record. The court shall post notice of the time, date and place of the hearing at a location in or adjacent to the court that is accessible to the public. The court may, in addition, give notice by another method if necessary to notify the public of the hearing.

(b) Any person whom the court determines to have an interest in the proceeding may present evidence and argument concerning the public and private interests at issue.

(Probate Court Rules, rule 8.)

Section 16.8 Order to close hearing or seal record in nonconfidential matter

(a) After conducting a hearing under section 16.7, the court may order that all or a part of a hearing be closed to the public or all or a part of a record be sealed if the court finds that:

(1) closure or sealing is necessary to preserve an interest that overrides the public interest in open court proceedings and access to the record;

(2) there are no reasonable alternatives to closure or sealing, including sequestration of witnesses or redaction or use of pseudonyms; and

(3) the order is no broader than necessary to protect the overriding interest.

(b) An agreement by the parties to close a hearing or seal a record is not a sufficient basis to order closure or sealing.

(c) If the court issues an order to close a hearing or seal a record, the court shall specify:

(1) the interest being protected that overrides the public interest in open court proceedings and access to the record;

(2) the alternatives to closure or sealing that the court considered and the reasons why the alternatives were unavailable or inadequate;

(3) the basis for the determination that the order is no broader than necessary to protect the interest that overrides the public interest; and

(4) the scope and duration of the order.

Section 16.9 Public access to motion, hearing and order to close hearing or seal record in nonconfidential matter

(a) Except as provided in subsection (b), members of the public may view and obtain copies of a motion to close a hearing to the public or seal a record and the order granting or denying the motion. Members of the public may observe the hearing on the motion.

(b) If a motion to close a hearing or seal a record is granted, the court may, in extraordinary circumstances, seal part of the motion and part of the order granting the motion.

Section 16.10 Vacating order to close hearing or seal record

On motion of a party or on the court's own motion, after notice and hearing, the court may vacate an order to close a hearing to the public or seal a record if:

(1) the grounds for closing the hearing or sealing the record no longer exist;

(2) the order was improvidently issued; or

(3) the interest protected by the order no longer outweighs the public interest in open court proceedings and access to the record.

Section 16.11 Power to maintain order during hearings

If a person is disruptive during a hearing, the court may take reasonable steps to maintain order and ensure a fair and expeditious hearing for the parties, including the imposition of limitations on access to the hearing.

(Probate Court Rules, rule 71.)

HISTORY: Rule 16 adopted effective July 1, 2013.

Rule 18

Transfer of Matter between Probate Courts

Section 18.1 Hearing on application to transfer guardianship matter

(a) On motion of a person authorized by C.G.S. section 45a-599 or 45a-677, the court may transfer a guardianship matter to another probate court if it finds that an adult with intellectual disability or a minor has become a resident of the other probate district and that the transfer is in the best interests of the adult with intellectual disability or the minor. The court may act on the motion without notice and hearing or may use the streamline notice procedure.

(b) If the court has established a trust under C.G.S. section 45a-151 or 45a-655 and the guardianship for the beneficiary of the trust is transferred under section 18.1 (a), the court may, on motion of a person authorized by C.G.S. section 45a-599 or 45a-677 to request a transfer of the guardianship, transfer the trust to the probate district to which the guardianship has been transferred. The court may act on the motion without notice and hearing.

(Probate Court Rules, section 8.6.)

Section 18.2 Transfer of conservatorship matter

(a) On motion of a person authorized by C.G.S. section 45a-661, the court shall transfer a conservatorship matter to another probate court if it finds that:

(1) a person under conservatorship has become a resident of the other probate district; and

(2) the requested transfer is the preference of the person under conservatorship.

(b) If a transfer is required under C.G.S. section 45a-661, the court may issue a decision on a pending petition or motion before ordering the transfer.

(c) If the court has established a trust under C.G.S. section 45a-151 or 45a-655 and the conservatorship for the beneficiary of the trust is transferred under section 18.2 (a), the court may, on motion of a person authorized by C.G.S. section 45a-661 to request a transfer of the conservatorship, transfer the trust to the probate district to which the conservatorship has been transferred. The court may act on the motion without notice and hearing.

HISTORY: Rule 18 adopted effective July 1, 2013. Sections 18.1 and 18.2 amended effective July 1, 2015.

Rule 19

Pending Matter in another Court

Section 19.1 Duty to notify court of pending matter in another court

Upon becoming aware that matters are pending in more than one court concerning the same person or estate, a party shall immediately notify each court in which a matter is pending.

(C.G.S. sections 45a-667g through 45a-667o and 46b-115 through 46b-115t.)

HISTORY: Rule 19 adopted effective July 1, 2013.

Rules 20-29 are reserved for future use.

RULES FOR SPECIFIC CASE TYPES

Rule 40

Children's Matters: General Provisions

Section 40.1 When streamline notice procedure may be used in children's matter

See rule 8.

Section 40.2 Appointment of attorney and guardian ad litem for minor

(a) The court may appoint an attorney for a minor under C.G.S. section 45a-620.

(b) If the court determines that the minor is unable to express his or her wishes to the attorney, the court may appoint the attorney to serve as both attorney and guardian ad litem.

(c) If the court determines that the minor's wishes, if followed, could lead to substantial physical, financial or other harm to the minor, the court may appoint an individual as attorney for the minor and another individual as guardian ad litem for the minor.

(C.G.S. sections 45a-132, 45a-717 (b) and 46b-172a (c); Probate Court Rules, rule 13.)

Section 40.3 Immediate temporary custody of a minor

(a) A petitioner seeking to remove a parent or other guardian under C.G.S. section 45a-613 or 45a-614 or to terminate parental rights under C.G.S. section 45a-715 (a) may petition for immediate temporary custody of the minor. A parent may file a petition under this section.

(b) In subsections (c), (d) and (e), the phrase "in the custody of the parent or other guardian," when used in C.G.S. section 45a-607 (b), refers to the current physical care of the minor at the time a petition for immediate temporary custody is filed, not the legal rights of the parent or guardian regarding the custody or guardianship of the minor.

(c) Except as provided in C.G.S. section 45a-607 (b) (2), the court may not grant a petition for immediate temporary custody of the minor on an ex parte basis if the minor is in the custody of the parent or other guardian.

(d) If the minor is not in the custody of a parent or other guardian, the court may grant a petition for immediate temporary custody of the minor on an ex parte basis as provided in C.G.S. sections 45a-607 (b) (1) through 45a-607 (b) (3).

(e) If the minor is in the custody of a parent or guardian who is the petitioner, the court may grant a petition for immediate temporary custody of the minor on an ex parte basis as provided in C.G.S. sections 45a-607 (b) (1) through 45a-607 (b) (3).

(C.G.S. sections 45a-604 and 45a-607; Probate Court Rules, rule 69.)

Section 40.4 Order for immediate temporary custody without notice and hearing

(a) The court may act on a petition for immediate temporary custody under C.G.S. section 45a-607 (b) without notice and hearing.

(b) If the court determines that it is necessary to meet with the petitioner before deciding a petition for immediate temporary custody on an ex parte basis, the court shall make an audio recording of the meeting. The recording shall be available to the parties. If the court grants immediate temporary custody and the temporary custody hearing required by C.G.S. section 45a-607 (b) (3) is contested, the judge who met with the petitioner shall be disqualified from conducting the temporary custody hearing.

(Probate Court Rules, rules 65 and 69.)

Section 40.5 Appointment of temporary custodian on consent

(a) If a parent or guardian of a minor consents to the grant of temporary custody in connection with a petition that names a proposed temporary custodian, the court shall not appoint another individual as custodian unless:

(1) the parent or guardian consents to the appointment of the other individual;

(2) the original petition alleges grounds for temporary custody other than consent of the parent or guardian, and the court makes the findings required under C.G.S. section 45a-607 (d);

(3) a person authorized under C.G.S. section 45a-614, including the court on its own motion, files a petition for immediate temporary custody, and the court makes the findings required under C.G.S. section 45a-607 (b); or

(4) a person authorized under C.G.S. section 45a-614, including the court on its own motion, files a new or amended petition alleging grounds for temporary custody, and the court, after notice and hearing in accordance with C.G.S. section 45a-607 (c), makes the findings required under C.G.S. section 45a-607 (d).

(b) If the court grants immediate temporary custody under subsection (a) (3), the court shall give notice and conduct a temporary custody hearing in accordance with C.G.S. section 45a-607 (b) (3).

(C.G.S. sections 45a-604 and 45a-607; Probate Court Rules, rule 70.)

Section 40.6 Removal and appointment of guardian on consent

If a parent or guardian consents to removal as guardian in connection with a petition that names a proposed guardian, the court shall not appoint another individual as guardian unless:

(1) the parent or guardian consents to the appointment of the other individual as guardian;

(2) the original petition alleges grounds for removal other than consent of the parent or guardian, and the court makes the findings required under C.G.S. section 45a-610; or

(3) a person authorized under C.G.S. section 45a-614, including the court on its own motion, files a new or amended petition alleging grounds for removal, and the court, after notice and hearing in accordance with C.G.S. section 45a-609, makes the findings required under C.G.S. section 45a-610.

(C.G.S. sections 45a-604 and 45a-617; Probate Court Rules, rule 70.)

Section 40.6a Notice of hearing on competing removal petition

If the court has previously given notice of hearing on a petition to remove a parent or other guardian, the court shall give notice of hearing on any subsequent competing removal petition by regular mail to each party and attorney of record and each other person listed in C.G.S. section 45a-609 (b). Delivery of the notice of the competing removal petition by personal service on the respondent is not required.

(C.G.S. sections 45a-613 and 45a-614; Probate Court Rules, section 6.1 (a) (3) and rule 8.)

Section 40.7 Reinstatement as guardian

Except as provided under C.G.S. section 45a-611, a parent or guardian who was removed as guardian of a minor may file a petition seeking reinstatement as guardian. The petitioner shall have the burden of proving that the factors that resulted in removal have been resolved satisfactorily. If the court finds that the parent or former guardian has met the burden of proof, the court shall determine whether reinstatement of the parent or former guardian is in the minor's best interests. The evidentiary standard for the findings in this section and C.G.S. section 45a-611 is preponderance of the evidence.

(C.G.S. section 45a-604.)

Section 40.8 Temporary guardianship

A parent or guardian may petition to appoint a temporary guardian for a minor without another parent or guardian joining as copetitioner. The court shall give notice to each party, including a nonpetitioning parent or guardian, and each attorney of record.

(C.G.S. sections 45a-604 and 45a-622.)

Section 40.9 Public notice in termination proceeding when name or location of parent unknown

(a) A petitioner seeking to terminate the parental rights of a parent shall make diligent effort to determine the name and current address of the parent. If the petitioner cannot determine the name or address, the petition shall include a statement signed under penalty of false statement indicating:

(1) that the petitioner cannot determine the name or address of the parent;

(2) the last known address, if any, of the parent;

(3) the search efforts that the petitioner has made; and

(4) other relevant information that might assist in determining the name or address of the parent.

(b) If the name or address of a parent is unknown, the court shall publish notice of the hearing on the petition to terminate parental rights in a newspaper having general circulation where the parent was last known to reside or, if no such address is known, in the probate district in which the petition was filed. The notice shall include the full name of any known parent, the first name and first initial of the last name of the minor, and the minor's date and place of birth.

(C.G.S. sections 45a-707, 45a-715(c) and 45a-716 (c).)

Section 40.10 Pre-adoption hearing

The court may conduct a pre-adoption hearing to address any issues associated with the proposed adoption. The notice of hearing shall indicate that the adoption will not be finalized at the pre-adoption hearing.

(C.G.S. section 45a-727 (c).)

Section 40.11 Appointment of out-of-state child-placing-agency as statutory parent to give child in adoption

An out-of-state child-placing-agency may petition to be appointed as statutory parent of a minor whom the agency has placed for adoption in this state under the Interstate Compact on the Placement of Children. The court may appoint the agency as statutory parent if the court finds that:

(1) the minor is free for adoption;

(2) no statutory parent has been appointed for the minor in this state; and

(3) the agency is licensed or approved by the Department of Children and Families.

(C.G.S. sections 17a-112 (m), 17a-175, 45a-707, 45a-718, 45a-725 and 45a-727.)

Section 40.12 Adoption by same sex married couple

(a) Even if both spouses of a same sex married couple are considered parents of a minor under the law of this state, a spouse may petition under C.G.S. section 45a-724 (a) (2) for a stepparent adoption of the minor by the other spouse.

(b) In a proceeding under subsection (a), the court may waive notice to the commissioner of children and families and shall waive, unless cause is shown, all requirements for an investigation and report by the Department of Children and Families or by a child-placing agency.

(C.G.S. sections 45a-707 and 45a-733.)

Section 40.13 Notice in adult adoption proceeding

In a proceeding to approve an adult adoption, the court shall give notice to each party

and attorney of record. The court may give notice to other persons interested in the welfare of the parties, including relatives and friends of the proposed adoptive parent and adopted person.

(C.G.S. section 45a-734, Probate Court Rules, rule 8.)

Section 40.14 In-court review for possible modification of order

On motion of a party or on the court's own motion, the court may, at any time before ruling on a petition to remove a parent as guardian or terminate parental rights, conduct an in-court review to consider possible modification of an order of the court. The notice of hearing for the in-court review shall specify the order that is the subject of review.

Section 40.15 Criminal background check

(a) Unless an immediate appointment is necessary to ensure the safety of a minor, the court shall obtain a criminal background check of a proposed temporary custodian, guardian of the person, temporary guardian or coguardian of the person before issuing a decree appointing the fiduciary.

(b) If the requirement of a criminal background check is waived at the time of appointment under subsection (a), the court shall obtain a criminal background check as soon as reasonably possible after issuing the decree making the appointment.

(C.G.S. section 45a-617.)

Section 40.16 Transfer of contested removal or termination petition to Superior Court

(a) A party may file a motion in the Probate Court to transfer a contested petition to remove a parent or other guardian or terminate parental rights to the Superior Court for Juvenile Matters. Unless the Probate Court grants an extension of time to file, the party shall file the motion at least three days before the first hearing on the petition for removal or termination.

(b) The party moving for transfer under subsection (a) shall send a copy of the motion to each party and attorney of record and shall certify to the court that the copy has been sent.

(c) If the motion to transfer is filed by a party other than the party who petitioned for removal or termination, the court shall, without notice and hearing, grant the transfer not later than five days after receipt of the motion.

(d) If the motion to transfer is filed by the party who petitioned for removal or termination, the court shall hear and decide the motion before conducting the hearing on removal or termination.

(e) On the court's own motion and without notice and hearing, the court may transfer a petition for removal or termination to the Superior Court.

(C.G.S. sections 45a-623 and 45a-715 (g).)

Section 40.17 Appointment of commissioner of children and families as temporary custodian or guardian

If the court appoints the commissioner of children and families as temporary custodian or guardian of the person of a minor, the court shall make written findings to indicate whether the commissioner made reasonable efforts to maintain the minor in the home and whether continuation in the home is contrary to the best interests of the minor.

(C.G.S. sections 45a-607 (b) (3) and 45a-610.)

HISTORY: Rule 40 adopted effective July 1, 2013. Sections 40.3, 40.7, 40.9, 40.13 and 40.16 amended and section 40.6a adopted effective July 1, 2015.

Rule 41

Children's Matters: Regional Children's Probate Courts

Section 41.1 Transfer of children's matter to Regional Children's Probate Court

(a) On the court's own motion, a Probate Court may, without notice and hearing, transfer a children's matter to a Regional Children's Probate Court.

(b) On motion of a party, a Probate Court may, after notice and hearing, transfer a children's matter to a Regional Children's Probate Court. The party shall send a copy of the motion to each party and attorney of record and shall certify to the court that the copy has been sent.

(c) Before deciding a motion to transfer, the court shall consult with the administrative judge of the children's court concerning the resources available at the children's court to handle the matter.

(d) A judge who transfers a matter under this section or a judge who participates in the children's court may hear the matter in the children's court.

(C.G.S. sections 45a-8a, 45a-623 and 45a-715 (g).)

Section 41.2 Duties of probate court officer

In a proceeding in a Regional Children's Probate Court, the court may assign a probate court officer to perform any of the following duties:

(1) conduct conferences with the parties and their attorneys, representatives of the Department of Children and Families and social service providers;

(2) facilitate development of the family's plan for the care of the minor;

(3) facilitate development of a visitation plan;

(4) coordinate with the Department of Children and Families to facilitate a thorough review of the matter;

(5) assess whether the family's plan for the care of the minor is in the minor's best interests;

(6) assist the family in engaging community services;

(7) testify at hearings; and

(8) conduct follow-up regarding orders of the court.

(C.G.S. section 45a-8d.)

Section 41.3 Files and reports of probate court officer

(a) A probate court officer shall maintain all notes, correspondence, reports and other materials gathered or created in the scope of the officer's duties in a file separate from the court file. Except as provided in subsection (c), the court shall not review materials in the officer's file unless admitted into evidence.

(b) Except as provided in C.G.S. section 45a-754, all materials in the officer's file in a proceeding for removal of parent as guardian, termination of parental rights, appointment of statutory parent, adoption, temporary guardianship or emancipation of a minor are confidential and not open to public inspection and shall not be disclosed to any person.

(c) Before any scheduled hearing on a matter, the officer shall file with the court a copy of each report prepared by the officer in the matter under C.G.S. 45a-8d.

(Probate Court Rules, rule 16.)

HISTORY: Rule 41 effective July 1, 2013.

Rule 42

Children's Matters: Overlapping Jurisdiction in Superior and Probate Courts

Section 42.1 Prior pending matter in Superior Court

If a matter concerning a minor is pending in the Superior Court for Juvenile Matters before a petition is filed in a Probate Court concerning the same minor, the Probate Court shall dismiss the petition.

Section 42.2 Petition in Superior Court when prior matter pending in Probate Court

(a) If a matter concerning a minor is pending in a Probate Court before the filing of a petition in the Superior Court for Juvenile Matters concerning the same minor, the commissioner of children and families and any party having knowledge of the pending matters shall immediately notify the Superior Court and the Probate Court that the matter is pending in both courts.

(b) On notification that the Superior Court has a pending matter concerning a child for whom there was a prior pending matter in a Probate Court, the judges of the Superior Court and Probate Court shall communicate to determine which court should proceed and which court should dismiss the matter. The courts may allow the parties to participate in the communication.

(c) The Superior Court and the Probate Court shall make an audio recording or arrange for a court reporter to make a stenographic record of a communication made under subsection (b). The parties shall be promptly informed of the communication and granted access to the audio recording or transcript.

(d) The courts may communicate on scheduling, calendars, court records and other administrative issues without making a record and without informing the parties of the communication.

(Probate Court Rules, rule 19.)

Section 42.3 Petition in Superior Court when Probate Court grants custody or guardianship to commissioner of children and families

If a Probate Court appoints the commissioner of children and families as temporary custodian or guardian of the person of a minor, the commissioner shall immediately file a petition under C.G.S. section 46b-129 in the Superior Court for Juvenile Matters and notify the Probate Court of the filing. The Superior Court shall assume jurisdiction. The Probate Court shall defer further action and dismiss the matter on issuance of a Superior Court order regarding custody of the minor.

Section 42.4 Emergency action by the commissioner of children and families when prior matter pending in Probate Court

(a) If the commissioner of children and families determines that exigent circumstances necessitate a 96-hour hold or a motion for an order of temporary custody in the Superior Court for Juvenile Matters for a

minor for whom a matter is pending in a Probate Court, the commissioner shall immediately notify the Probate Court of the commissioner's action and report to the Probate Court the outcome of the temporary custody hearing in the Superior Court under C.G.S. section 46b-129.

(b) If the Superior Courtgrants the motion for an order of temporary custody under subsection (a), the Probate Court shall dismiss the matter.

(C.G.S. section 17a-101g; Probate Court Rules, rule 19.)

Section 42.5 Safety and service agreement

(a) If the Probate Court becomes aware that a family member has entered into a safety and service agreement with the commissioner of children and families for a minor for whom the court has a pending matter, the court shall contact a social worker or supervisor in the Department of Children and Families to determine whether the commissioner intends to file a petition regarding the minor in the Superior Court for Juvenile Matters.

(b) If the commissioner indicates that the commissioner does not plan to file a petition regarding the minor in the Superior Court, the Probate Court shall proceed to hear and decide the matter.

(c) If the commissioner indicates that the commissioner plans to file a petition in the Superior Court, the commissioner shall file the petition not later than eight days after informing the Probate Court of the intended action and notify the Probate Court of the filing. The Probate Court may hear and decide a pending petition for temporary custody before receipt of notification that the petition has been filed in the Superior Court. On receipt of notification that the petition has been filed in the Superior Court, the Probate Court shall defer further action and dismiss the matter on issuance of a Superior Court order regarding custody of the minor.

(d) If the commissioner fails to file a petition within eight days of informing the Probate Court of the intention to file, the Probate Court shall proceed to hear and decide the matter.

(Probate Court Rules, rule 19.)

HISTORY: Rule 42 adopted effective July 1, 2013.

RULES FOR HEARINGS

Rule 60
Conferences before the Court

Section 60.1 Status conference

(a) On request of a party or on the court's own motion, the court may order a status conference to facilitate the progress of a matter that is not contested.

(b) At the conclusion of a status conference, the court may issue an order to:

(1) establish a deadline for completion of a task;

(2) provide guidance to a fiduciary;

(3) memorialize an agreement of the parties; or

(4) address any other topic that facilitates the progress of the matter.

(c) Except as permitted under section 69.1, the court shall not decide any issue of fact or law.

Section 60.2 Hearing management conference

(a) On request of a party or on the court's own motion, the court may, at any time, order a hearing management conference to address any of the following:

(1) identification of factual and legal issues;

(2) whether the court will authorize discovery under section 61.1;

(3) access to medical records;

(4) deadlines for depositions and other discovery, disclosures and motions;

(5) referral for mediation or other alternative dispute resolution;

(6) referral to a probate magistrate or attorney probate referee under rule 14;

(7) distribution of filings to parties and attorneys of record;

(8) disclosure of witnesses, including experts;

(9) issuance of subpoenas to compel testimony;

(10) briefs;

(11) stipulation of facts;

(12) exchange and marking of exhibits;

(13) admissibility of sworn statements or depositions;

(14) appointment of a stenographer to make a record of the hearing under C.G.S. sections 51-72 and 51-73;

(15) anticipated duration of testimony and argument;

(16) hearing schedule; and

(17) any other topic related to management of the hearing.

(b) At the conclusion of a hearing management conference, the court may issue an order concerning any of the topics under subsection (a).

(c) On request of a party or on the court's own motion, the court may modify an order issued under this section.

(C.G.S. sections 45a-98b, 45a-123, 45a-129, 52-143, 52-144 and 52-148a through 52-159; Probate Court Rules, rules 14 and 61; Probate Court Regulations, section 22.)

HISTORY: Rule 60 adopted effective July 1, 2013.

Rule 61

Discovery

Section 61.1 When permission of court is required

(a) Except as provided in subsection (b), a party shall obtain permission from the court before seeking discovery of information from another party by the following methods:

(1) interrogatories under section 61.4;

(2) request for production, inspection and examination under section 61.5; and

(3) request for admission under section 61.6.

(b) Without obtaining permission of the court, a party may take the testimony of any person by deposition and may request the person to produce documents and tangible things at the deposition in accordance with section 61.3.

(C.G.S. sections 52-148a through 52-159; Probate Court Rules, section 60.2.)

Section 61.2 When interrogatories, request for production and request for admission permitted

(a) A party may request permission to conduct discovery using a method under 61.1(a) by submitting a summary describing the information sought. Unless otherwise directed by the court, the requesting party shall not file individual discovery documents. The court may hear a request for discovery at a hearing management conference.

(b) The court may grant a request for discovery under subsection (a), in whole or in part, if it finds that the requested discovery appears reasonably calculated to lead to admissible evidence and would not be unduly burdensome or expensive.

(Probate Court Rules, section 60.2.)

Section 61.3 Taking deposition

(a) A party may take the testimony of any person by deposition in accordance with C.G.S. sections 52-148a through 52-159.

(b) A party may compel another party to testify at a deposition by giving notice of the deposition in accordance with C.G.S. section 52-148b. The notice may include a request for the other party to produce documents and tangible things at the deposition.

(c) An attorney for a party may compel any person to testify at a deposition by issuing a subpoena under C.G.S. section 52-148e. The subpoena may include a request for the person to produce documents and tangible things at the deposition.

(d) On motion of a self-represented party, the court may compel any person to testify at a deposition by issuing a subpoena. The cost of serving the subpoena shall be paid by the party requesting it.

(e) A party or attorney for the party shall send notice of a deposition to each party and attorney of record.

(f) A person whose deposition is sought under subsection (b), (c) or (d) may move to quash or modify the notice or subpoena.

(g) C.G.S. section 52-148e and section 13-30 of the Connecticut Practice Book shall govern the conduct of a deposition under this

rule and the procedure for resolution of a dispute related to the deposition.

(h) A party or attorney for the party may use a deposition in a proceeding in the manner provided under section 13-31 of the Connecticut Practice Book.

(Probate Court Rules, sections 60.2 and 71.2.)

Section 61.4 Interrogatories

(a) With permission of the court under section 61.2 and within the scope of the court's order, a party may issue written interrogatories to another party.

(b) Unless otherwise permitted by the court, a party may not issue more than 25 interrogatories, including each discrete subpart. The court may hear a request to issue additional interrogatories at a case management conference.

(c) Answers to interrogatories may be used in a proceeding to the extent permitted by the rules of evidence.

(Probate Court Rules, section 60.2.)

Section 61.5 Request for production, inspection and examination

With permission of the court under section 61.2 and within the scope of the court's order, a party may make a written request to another party to:

(1) inspect, copy, photograph or otherwise reproduce documents, including, but not limited to, writings, drawings, graphs, charts, electronic communications and photographs;

(2) inspect and copy or test a tangible thing in the possession, custody or control of the party to whom the request is made; and

(3) permit entry on property for the purpose of inspecting, measuring, surveying, photographing or testing the property.

(Probate Court Rules, section 60.2.)

Section 61.6 Request for admission

(a) With permission of the court under section 61.2 and within the scope of the court's order, a party may issue to another party a written request for the admission of the truth of a matter. The request shall relate to a statement of fact, opinion or the application of law to fact. If the request relates to a document, the requesting party shall provide a copy of the document unless it is otherwise available to the other party.

(b) Except as provided in subsections (c) and (d), an admission under this section conclusively establishes the matter admitted.

(c) On motion of a party who made an admission, the court may permit the admitting party to withdraw or amend the admission if:

(1) the withdrawal or amendment will facilitate the presentation of the merits of the matter; and

(2) the party who requested the admission fails to establish that the withdrawal or amendment will cause prejudice.

(d) An admission of a party under this section does not waive the right of the party to object to the admission on the grounds of competency or relevancy.

(e) An admission of a party under this section may be used only in the pending proceeding.

(Probate Court Rules, section 60.2.)

Section 61.7 Answer to discovery request

(a) Unless otherwise directed by the court, a person responding to a discovery request shall not file the response with the court.

(b) The party to whom a request for discovery under section 61.1 (a) is made shall respond in writing and under oath. The party shall respond not later than 30 days after issuance of the request unless:

(1) on motion by the party, the court directs a shorter or longer time; or

(2) the party files an objection in accordance with section 61.9.

(c) If a party files an objection under section 61.9, the party shall respond to the part of the request to which an objection is not made.

Section 61.8 Continuing duty to disclose

Until a matter is concluded, a party to whom a discovery request is made under this rule shall have a continuing duty to disclose:

(1) new or additional information within the scope of the request; and

(2) that information previously disclosed is not true or is no longer true.

Section 61.9 Objection to discovery request

(a) A party who objects to a request for discovery under section 61.1 (a) shall file a written objection setting forth the grounds for the objection and the proposed remedy and describing the efforts made to resolve the differences between the parties concerning the discovery request.

(b) The party shall file the objection not later than 30 days after issuance of the discovery request.

(c) The party shall send a copy of the objection to each party and attorney of record and certify to the court that the copy has been sent.

(d) The court may issue an order under subsection (e) if it finds that the requested discovery:

(1) seeks information that is privileged or otherwise protected by law from discovery;

(2) does not appear to be reasonably calculated to lead to admissible evidence;

(3) would be unduly burdensome or expensive; or

(4) will cause annoyance, embarrassment or oppression.

(e) If the court finds one or more of the grounds under subsection (d), the court may order such relief as justice requires, including that the requested discovery be:

(1) limited or denied;

(2) conducted on specified terms and conditions; or

(3) conducted by an alternative method.

(f) If the court overrules the objection to the discovery request, the party shall respond to the request not later than 20 days after the court's ruling is mailed. On request of a party, the court may extend the response period.

Section 61.10 Order for compliance

(a) If a person fails to comply with a request for discovery, the requesting party may file a motion seeking an order for compliance. The motion shall set forth the discovery request that is the subject of the motion and the reason why the response, if any, fails to comply.

(b) If the court finds that the person has failed to comply with the request for discovery and that the discovery is permitted under sections 61.3 through 61.6, the court may:

(1) award the discovering party the expenses of the motion under C.G.S. section 45a-109 and a reasonable attorney's fee;

(2) order that the subject matter of the discovery request is established for the purposes of the proceeding;

(3) prohibit a party who failed to comply from introducing designated matters in evidence; and

(4) make any other order that justice requires.

(c) Unless a timely written objection has been filed under section 61.9, the court may not excuse a failure to comply with a discovery request on the ground that the court would have granted relief under section 61.9 (e).

(C.G.S. section 52-148e.)

Section 61.11 Summons to testify

(a) An attorney for a party may issue a subpoena under C.G.S. section 52-143 to summon a person to testify before the court.

(b) On motion of a self-represented party, the court may issue a subpoena under C.G.S. sections 45a-129 and 52-143 to summon a person to testify before the court. The cost of serving the subpoena shall be paid by the party requesting it.

(C.G.S. section 52-144.)

Section 61.12 Order to obtain medical records

See C.G.S. section 45a-98b.

(C.G.S. section 4-104.)

HISTORY: Rule 61 adopted effective July 1, 2013. Sections 61.7 and 61.9 amended effective July 1, 2015.

Rule 62
Evidence

Section 62.1 Rules of evidence

The rules of evidence apply in all hearings in which facts are in dispute. The court may apply the rules of evidence liberally if strict adherence will cause injustice, provided the application is consistent with law and the due process rights of the parties are protected.

(See Connecticut Code of Evidence.)

HISTORY: Rule 62 adopted effective July 1, 2013.

Rule 63

Witnesses

Section 63.1 Administration of oath

The judge or clerk shall administer an oath or affirmation to each person who will testify at a hearing in which facts are in dispute.

(C.G.S. section 1-25.)

Section 63.2 When sequestration of witness permitted

On motion of a party or on the court's own motion, the court may order a witness, other than a party, to be sequestered so that the witness is not able to hear the testimony of other witnesses.

HISTORY: Rule 63 adopted effective July 1, 2013.

Rule 64
Exhibits

Section 64.1 Exhibits to be marked

The court shall mark each exhibit not marked in advance of a hearing. The marking shall identify the exhibit and the party offering it. The court shall keep a list of exhibits marked for identification or admitted into evidence. The list shall be part of the record.

Section 64.2 Retention of exhibits

Except as provided in section 64.3, the court shall retain each exhibit that is offered or admitted into evidence until the decision is issued and the conclusion of any appeal.

Section 64.3 Exhibits in matter appealed to Superior Court

(a) If an appeal will be heard de novo, the Probate Court, on request, shall return each exhibit to the attorney or self-represented party who offered it.

(b) If an appeal will be heard on the record, the Probate Court shall transmit each exhibit to the Superior Court in accordance with C.G.S. section 45a-186a.

(C.G.S. section 45a-186 (a).)

Section 64.4 Disposition of exhibits

Except as required under sections 64.2 and 64.3 or otherwise directed by the court, the court shall, on request, return each exhibit to the attorney or self-represented party who offered it. If no request is received within four months after the decision is issued and the conclusion of any appeal, the court may destroy an exhibit without notice.

HISTORY: Rule 64 adopted effective July 1, 2013.

Rule 65

Audio and Stenographic Recording of Hearings

Section 65.1 Making and maintaining audio recordings

(a) The court shall make an audio recording of a hearing if:

(1) required by statute or these rules; or

(2) a party or attorney for a party files a written request under C.G.S. section 45a-136.

(b) The court may make an audio recording of a hearing even if not required under subsection (a).

(c) Except in a confidential matter or matter in which the court closes any part of the hearing to the public under rule 16, the court shall provide a copy of an audio recording of a hearing to any person on request and payment of the statutory fee.

(d) The court shall provide a copy of an audio recording in a confidential hearing to a party on request and payment of the statutory fee.

(e) The court shall maintain an audio recording of a hearing made under subsection (a) for one year or a longer period if required by Probate Court Regulation or directed by the court. The court may maintain an audio recording made under subsection (b) for such period as it directs.

(C.G.S. sections 45a-109, 45a-645a, 17a-498 (c) and 17a-685 (c); Probate Court Rules, sections 33.3 (b), 40.4 (b), 44.2, 45.2 and 71.4; Probate Court Regulations, section 27.)

Section 65.2 Transcript of recorded hearing

(a) Except as provided in subsections (b) and (c), the court need not cause an audio recording of a hearing to be transcribed.

(b) If a party appeals a decision after a hearing on the record under C.G.S. section

45a-186 (a), the court shall cause a transcript to be made of any part of the hearing that has not been transcribed in accordance with
C.G.S. section 45a-186a.

(c) If a person who is not a party requests an audio recording of a hearing that was, in part, closed to the public under rule 16, the court shall provide the nonparty with a tran- script from which the part of the hearing that was closed to the public has been redacted. The cost of the transcript shall be paid by the person requesting it.

Section 65.3 Official stenographic record on agreement of parties

(a) If each party agrees in writing, the court may arrange for a stenographer to make a stenographic record of a hearing.

(b) A transcript of a hearing made under this section is part of the official record of the proceeding. An appeal taken from a decision in the matter shall be on the record and shall not be a trial de novo.

(c) The parties shall provide a transcript of the hearing to the court without cost.

(C.G.S. sections 45a-186 (a), 45a-186a, 51-72 and 51-73.)

Section 65.4 Stenographic record without agreement of parties

(a) Absent an agreement of the parties under section 65.3, a party may engage a stenographer, at the expense of the party, to make a stenographic record of a hearing.

(b) A transcript of a hearing made under this section is not part of the official record of the proceeding. The existence of the tran- script shall have no effect on the nature of an appeal taken from a decision in the matter.

(c) The party who engages the stenographer shall provide a transcript of the hearing to:

(1) the court without cost; and

(2) any other party on request and payment of the cost by the requesting party.

(C.G.S. section 45a-186 (a).)

Section 65.5 Prohibition on recording hearing by other means

Except as authorized under section 65.3 or 65.4 or rule 72, no person may make an audio or video recording of a hearing or transmit or broadcast a hearing by any means.

HISTORY: Rule 65 adopted effective July 1, 2013.

Rule 66

Participation in Hearing by Electronic Means

Section

Section 66.1 When participation by electronic means permitted

(a) On request of a party or witness, the court may allow a party or witness to participate in a hearing, conference or deposition by telephonic or other electronic means.

(b) In determining whether to allow participation by electronic means, the court shall consider:

(1) the nature of the rights at issue;

(2) whether surprise or prejudice would result from electronic participation or from the inability to participate by electronic means;

(3) whether a party is unable to secure the presence of the witness in person;

(4) the cost of attending the hearing in person;

(5) whether participation by electronic means will allow full and effective examination and cross-examination;

(6) the importance of the testimony;

(7) whether the subject matter of the testimony is disputed;

(8) the convenience of the parties and witnesses, including representatives of state agencies; and

(9) other relevant factors.

HISTORY: Rule 66 adopted effective July 1, 2013.

Rule 67

Interpreters

Section 67.1 Party or witness with hearing impairment

When necessary to permit a party or witness with hearing impairment to participate in a hearing or conference, the court shall provide an interpreter in accordance with C.G.S. section 46a-33a.

(C.G.S. section 46a-33b.)

Section 67.2 Interpreter permitted for language translation

(a) The court may allow a person to serve as interpreter for a party or witness who is unable to speak or understand English.

(b) In determining whether to allow the proposed interpreter to assist the party or witness, the court shall consider:

(1) whether the interpreter is impartial;

(2) the competence of the interpreter to provide accurate and reliable interpretation service;

(3) the proposed compensation, if any, of the interpreter; and

(4) other relevant factors.

Section 67.3 Interpreter to act under oath

(a) The court shall administer to an interpreter the oath "for an interpreter in court" provided in C.G.S. section 1-25.

(b) Notwithstanding subsection (a), administration of an oath is not required if the interpreter is a member of court staff or a commercial interpreting service.

HISTORY: Rule 67 adopted effective July 1, 2013. Section 67.3 adopted effective July 1, 2015.

Rule 68
Ex Parte Communication

Section 68.1 Ex parte communication prohibited

(a) Except as otherwise permitted by law, no person, party or attorney for a party shall initiate any written or oral communication with a judge outside a noticed hearing regarding a matter that is pending or impending in the court. This section does not apply to a written:

(1) petition, motion or objection to a petition or motion;

(2) brief or memorandum of law; or

(3) filing or report required by law or the court.

(b) A party or attorney for a party shall direct communications regarding scheduling and other administrative matters to the clerk.

(Code of Probate Judicial Conduct, section 3B (7); Probate Court Rules, section 13.7.)

HISTORY: Rule 68 adopted effective July 1, 2013.

Rule 69

Orders without Notice and Hearing

Section 69.1 When order without notice and hearing permitted

(a) The court may issue an order without notice and hearing if:

(1) the governing statute specifically authorizes the issuance of orders without notice and hearing;

(2) no governing statute requires notice and hearing, and the applicable rule authorizes issuance of orders without notice and hearing; or

(3) each party has filed a written waiver of notice.

(b) The court may require notice and hearing before issuing an order even if subsection (a) permits the court to issue the order without notice and hearing.

HISTORY: Rule 69 adopted effective July 1, 2013.

Rule 71

Enforcement

Section 71.1 Failure of fiduciary to perform duties

A fiduciary who fails to perform his or her duties or comply with an order of the court shall be subject to removal, disallowance of fees, surcharge, contempt of court and other sanctions permitted by law. In addition, a fiduciary who is an attorney who fails to perform duties as a fiduciary or comply with an order of the court shall be subject to sanction under C.G.S. section 51-84.

(C.G.S. section 45a-242.)

Section 71.2 Capias to compel attendance

On motion of a party or on the court's own motion, the court may issue a capias to authorize a proper officer to arrest and bring before the court an individual who has failed to comply with a subpoena.

(C.G.S. sections 45a-129, 52-143, 52-144 and 52-148e; Probate Court Rules, section 61.11.)

Section 71.3 Types of contempt

An individual misbehaving or disobeying an order of a judge during a hearing or conference may be found to be in summary criminal contempt under section 71.5 or civil contempt under section 71.7 or may be referred for prosecution for nonsummary criminal contempt under section 71.6.

(C.G.S. sections 51-33 and 51-33a, Middlebrook v. *State,* 43 Conn. 257 (1876); Probate Court Rules, section 16.11.)

Section 71.4 Audio recording of contempt hearing

The court shall make an audio recording of a contempt hearing.

(Probate Court Rules, rule 65.)

Section 71.5 Summary criminal contempt

(a) Summary criminal contempt is misbehavior in the presence of the court that is directed against the dignity and authority of the court and obstructs the orderly administration of justice.

(b) The court shall adjudicate summary criminal contempt at the time of the act, provided that the court may recess before conducting the contempt hearing. The court shall inform the defendant of the contempt charges and afford the defendant the opportunity to present evidence and argument as to why the defendant should not be found guilty of contempt.

(c) If the court finds by clear and convincing evidence that the defendant is guilty of summary criminal contempt, the court shall immediately impose a sentence of not more than $100 for each act of contempt.

(C.G.S. section 51-33.)

Section 71.6 Nonsummary criminal contempt

(a) Nonsummary criminal contempt is misbehavior that is directed against the dignity and authority of the court when:

(1) the misbehavior does not obstruct the orderly administration of justice;

(2) the court has become personally embroiled;

(3) the misconduct did not occur in the presence of the court; or

(4) the court does not immediately impose summary criminal contempt.

(b) The court shall refer a matter involving nonsummary criminal contempt to the state's attorney for prosecution in the Superior Court

in the manner provided in Connecticut Practice Book section 1-18.

(C.G.S. section 51-33a.)

Section 71.7 Civil contempt

(a) Civil contempt is a remedy for violation of a court order.

(b) A party seeking an order of civil contempt shall file a motion identifying the order that has been violated, stating the reasons why the court should order sanctions, and describing the efforts made to secure compliance with the order. The court may initiate a civil contempt proceeding on its own motion.

(c) The party seeking an order of civil contempt shall send a copy of the motion to each party and attorney of record and certify to the court that the copy has been sent.

(d) If the court finds by clear and convincing evidence that the person who is the subject of the motion violated a clear and unambiguous court order of which the person had actual knowledge, the court may impose sanctions to ensure compliance with the order and compensate another party for loss. The sanctions shall be coercive and nonpunitive and may include fines.

(e) If violation of an order renders the order unenforceable, the court may refer the matter for nonsummary criminal contempt under section 71.6.

HISTORY: Rule 71 adopted effective July 1, 2013.

REFERENCES

CONNECTICUT GENERAL STATUTES

TABLE OF CHANGES

References to Connecticut General Statutes Contained in Probate Court Rules of Procedure

This table lists all references to statutes contained in the Probate Court Rules and annotations.

C.G.S. section	*Probate Court Rules section*
1-25	63.1
3-125	8.2
4-104	61.12
4a-16	30.13
12-15	16.2
	31.8
12-391	11.1
	31.3
	31.5
	31.6
12-392	31.1
	31.5
12-395	31.6
12-398	16.2
	31.4
	31.8
17a-75	44.1
	44.2
	44.4
17a-75 through 17a-83	44.1
	44.2
17a-76	12.2
17a-77	13.1
	44.1
	44.2
	44.4
	44.6
17a-78	44.1
	44.2
	44.3
	44.6
17a-80	44.1
	44.4
17a-81	44.1
17a-82	44.1
17a-83	44.1
17a-101g	42.4
17a-112	40.11
17a-175	40.11
17a-274	12.2
	16.2
	72.2
17a-495	44.1
	44.3
	44.4
	44.5
	44.6
	44.7
17a-495 – 17a-528	44.1
	44.2
17a-498	12.2
	44.1
	44.2
	44.4

C.G.S. section	*Probate Court Rules section*
17a-498 (Cont)	
	44.5
	65.1
17a-500	16.2
	44.1
	45.1
	72.2
17a-502	44.1
	44.2
	44.3
	44.5
	44.7
17a-503	44.1
	44.7
17a-506	44.1
	44.2
	44.3
	44.8
17a-510	44.4
17a-540	45.1
	45.3
	45.4
	45.5
17a-543	13.2
	13.3
	13.4
	45.1
	45.2
	45.3
	45.4
	45.5
17a-543a	12.2
	13.3
	13.4
	45.1
	45.2
17a-680	46.1
17a-685	12.2
	46.1
	65.1
17a-688	16.2
	46.1
	72.2
17b-95	39.1
	39.2
19a-131b	12.2
19a-221	12.2
19a-265	12.2
	16.2
	72.2
19a-301	36.1
36a-250	35.1
45a-8a	41.1
45a-8d	41.2
	41.3

C.G.S. section	*Probate Court Rules section*
52-148a through 52-159	60.2
	61.1
	61.3
52-148b	61.3
52-148e	61.3
52-148e (Cont)	
	61.10
	71.2
52-251	32.8
52-259b	6.2
54-257	47.4

Center for Children's Advocacy

Obtaining Special Immigrant Juvenile Status Findings
in Connecticut Probate Courts

Chapter Six

Probate Court Forms and Motions Practice

RECORDED:

APPEARANCE OF ATTORNEY
PC-183 REV. 7/13

STATE OF CONNECTICUT

COURT OF PROBATE

[*Type or print in ink.*]

TO: COURT OF PROBATE, Any Town	**DISTRICT NO.** 0001
ESTATE OF/IN THE MATTER OF Juan P.	DATE October 23, 2015

Please enter the APPEARANCE of the undersigned in the above-entitled matter for:

- ☐ the following fiduciary:
- ☐ the following heirs:
- ☐ the following legatees or devisees:
- ☐ the Department of Administrative Services, Financial Services Center
- ☐ the following creditors:
- ☑ other: Attorney for the minor child Juan P.

☐ Appearance is in lieu of the appearance on file for the above-named party.

☐ Appearance is in addition to the appearance on file for the above-named party.

Signature of Attorney _____

Amelia Jones, Esq.

[*Type or print name.*]

NAME AND ADDRESS [*If law firm, list name and Conn. Bar Juris No. of attorney handling matter.*]	TEL. NO.
Amelia Jones, Esq., Attorney for the Minor Child Any Town, Connecticut 00001 (203) 555-5554 Juris# 400	(203) 555-5554 FAX NO. (203) 555-5553 E-MAIL ADDRESS: AJcounsel@e-mail.com

CERTIFICATION

I certify that a copy of this appearance was sent to each attorney and self-represented party of record as follows:

Name and Address
Miguel P. Zona #19 Ciudad de Guatemala, Guatemala 01017

[*If necessary, attach an additional sheet or sheets.*]

Signed _____

[*Type or print name.*] Amelia Jones

Date October 23, 2015

Print Form

APPLICATION/REMOVAL OF GUARDIAN
PC-500 REV. 7/12 Page 1 of 3

STATE OF CONNECTICUT
COURT OF PROBATE
[Type or print in black ink. File in duplicate.]

RECORDED(CONFIDENTIAL VOLUME):

Complete Confidential Information Sheet for PC-500 on last page. Use Second Sheet, PC-180, for additional data.]

TO: COURT OF PROBATE, Any Town

DISTRICT NO. 0001

IN THE MATTER OF [*Name, address where residing, zip code, and telephone number.*]
Jason P.
81 Any Street, Apt. 1 Any Town, Connecticut 06902
(203) 555-5555
Hereinafter referred to as the minor child.

MINOR CHILD'S BIRTH DATE
8/16/2003

TRIBE AND RESERVATION of minor child, if an Indian child as defined by P.L. 95-608, 25 U.S.C. 1901, et seq. [*Name and address*]
None

PETITIONER [*Name, address, zip code, telephone number, and legal status of petitioner (e. g. adult relative, counsel for minor, court on its own motion). C.G.S. § 45a-614. If adult relative, also give date of birth. If counsel for minor, also list juris number.*]
Amelia Jones, Esq., Attorney for the Minor Child
123 Lawyer's Circle, Any Town, Connecticut 00001 (203) 555-5554
Juris# 400

PERSON(S) TO BE REMOVED AS GUARDIAN [*Name(s), address(es), zip code(s), telephone number(s), and Indian tribe and reservation, if a member as defined by P.L. 95-608, 25 U.S.C. 1901, et seq. If parent, also give date of birth.*]
Miguel P. DOB: 10/11/1975
Zona #19 Ciudad de Guatemala, Guatemala 01017

RELATIONSHIP TO MINOR CHILD
Father

Hereinafter referred to as the respondent(s)

OTHER PERSON(S) WITH GUARDIANSHIP RIGHTS [*Name(s), address(es), zip code(s), telephone number(s) and Indian tribe and reservation, if a member as defined by P.L. 95-608, 25 U.S.C. 1901, et seq.*]
Gladys J. DOB: 8/20/1973
81 Any Street, Apt. 1 Any Town, Connecticut 06902
(203) 555-5555

RELATIONSHIP TO MINOR CHILD
Mother

☐ THE PETITIONER ALLEGES that the whereabouts of the respondent(s) are unknown. The last-known address(es) of the respondent(s) is/are:

☐ THE PETITIONER STATES that the following efforts have been made to obtain a current address for the respondent(s):
[*To be completed only if the above box is checked.*]

STATE OF CONNECTICUT

RECORDED(CONFIDENTIAL VOLUME):

COURT OF PROBATE

[*Type or print in black ink. File in duplicate.*]

THE PETITIONER REPRESENTS that the minor child presently resides in the town written above, was born on the date written above, that the persons who have guardianship rights are stated above, and that the respondent(s) named above should be removed as guardian(s) of the person of the minor child for the following reason(s) as provided by law. C.G.S. §§ 45a-613 and 45a-610.

☐ The respondent(s) consent(s) to removal as guardian(s) of the minor child. [*No further allegation against a consenting guardian is necessary.*]

☑ The minor child has been abandoned by the parent or guardian in the sense that the parent or guardian has failed to maintain a reasonable degree of interest, concern, or responsibility for the child's welfare.

☑ The minor child has been denied the care, guidance, or control necessary for physical, educational, moral, or emotional well-being as a result of acts of parental commission or omission, as defined by law.

☐ The minor child has had physical injury or injuries inflicted upon him or her, other than by accidental means, as defined by law.

☑ The minor child has been neglected or uncared for, as defined in C.G.S. § 46b-120.

THE PETITIONER FURTHER REPRESENTS that to the best of his or her knowledge and belief:

The following respondent(s) is/are under a legal disability:

_____ ☑ No respondent(s) is under a legal disability.

The following respondent(s) is/are in the military service of the United States or Allied Nation (Title 50 Appendix, U.S.C. 520).

_____ ☑ No respondent(s) is in the military service.

There is ☐ *a* ☑ *no* proceeding pending or contemplated in Connecticut or any other state affecting the custody of the minor child. C.G.S. §§ 52-231a and 46b-115 et seq. [***Complete and attach form JD-FM-164, Affidavit Concerning Children.***]

There ☐ *has been* ☑ *has not been* a proceeding in the past in Connecticut or any other state affecting the custody of the minor child. C.G.S. § 52-231a and 46b-115 et seq.

The minor child ☐ *is* ☑ *is not* the subject of a pre-existing child support order.

There ☐ *is* ☑ *is not* a current safety or service agreement between the Department of Children and Families and the parent/guardian of the minor child.

There ☐ *is* ☑ *is not* a current protective order or restraining order involving any party. **If so, please attach.**

The minor child ☑ *has* ☐ *has not* resided in Connecticut continuously for the last six months. C.G.S. § 46b-115 et seq.

WHEREFORE THE PETITIONER REQUESTS that this court remove the respondent(s) as guardian(s) of the person of said minor child and PETITIONS the court to:

☐ Appoint a guardian(s) of the person of said minor child.

☑ Affirm Gladys J. _____ is the sole guardian.

Name

The representations contained herein are made under the penalties of false statement.

Date:

.....

Petitioner:Amelia Jones, Esq.

STATE OF CONNECTICUT

COURT OF PROBATE

[Type or print in black ink. File in duplicate.]

PROPOSED GUARDIAN(S)

IF APPOINTED, I WILL ACCEPT THE POSITION OF TRUST.

Signature .....

Name *[Type or print. Include maiden name, if applicable.]* Gladys J.

Address and zip code: 81 Any Street, Apt. 1 Any Town, Connecticut 06902

Telephone Number: 203-555-5555 Date of Birth: 8/20/1973

IF APPOINTED, I WILL ACCEPT THE POSITION OF TRUST.

Signature .....

Name *[Type or print. Include maiden name, if applicable.]* _____

Address and zip code:

Telephone Number: _____ Date of Birth: _____

CONSENT TO REMOVAL OF GUARDIANSHIP

I do consent to the removal of my guardianship rights with respect to said minor child. *[Any consent for an incompetent or minor parent must be approved by a guardian ad litem. C.G.S. § 45a-621. To waive personal service, form PC-633, Waiver of Personal Service Parental Rights Matters, must be filed.]*

DATE DULY ACKNOWLEDGED BEFORE ME

....
Parent's/Guardian's Signature Judge, Ass't Clerk, Notary Public, Comm. Sup. Ct.

Type Name:

....
Parent's/Guardian's Signature Judge, Ass't Clerk, Notary Public, Comm. Sup. Ct.

Type Name:

....
Parent's/Guardian's Signature Judge, Ass't Clerk, Notary Public, Comm. Sup. Ct.

Type Name:

CONSENT OF MINOR CHILD

I, the undersigned minor, being at least twelve years of age, hereby consent to the appointment of the proposed guardian as my guardian. C.G.S. § 45a-617.

DATE DULY ACKNOWLEDGED BEFORE ME

....
Minor's Signature Judge, Ass't Clerk, Notary Public, Comm. Sup. Ct.

Type Name:Juan P.

CONFIDENTIAL INFORMATION SHEET FOR PC-500, Application/ Removal of Guardian NEW 7/12

STATE OF CONNECTICUT

COURT OF PROBATE

[Type or Print in Black Ink.]

DO NOT RECORD

For Court Use Only

Court of Probate, Any Town District

In the Matter of Juan P., a minor child.

The social security numbers of the following persons are required in connection with this proceeding.

1) Petitioner who is an adult relative of the minor child:

Name: _____

Social Security Number: _____

2) Person(s) to be removed as guardian(s):

a. Name: Miguel P.

Social Security Number: None

b. Name: _____

Social Security Number: _____

3) Proposed guardian(s):

a. Name: Gladys J.

Social Security Number: None

b. Name: _____

Social Security Number: _____

AFFIDAVIT/TEMPORARY CUSTODY, REMOVAL, TERMINATION, OR ADOPTION
PC-610 REV. 10/12

STATE OF CONNECTICUT

COURT OF PROBATE

RECORDED (CONFIDENTIAL VOLUME):

[To be submitted as of hearing date. C.G.S. §52-231a.]
[Type or print in black ink.]

TO: COURT OF PROBATE, Any Town

DISTRICT NO. 0001

IN THE MATTER OF
Juan P.
Hereinafter referred to as the minor child.

DATE OF BIRTH OF MINOR CHILD
8/16/2003

The subscriber hereby swears, affirms, or avers that:

☒ To the best of my knowledge and belief, there is no proceeding pending or contemplated in another court in Connecticut or any other state affecting the custody of said minor child.

☐ There is a proceeding in another court affecting the custody of said minor child, and a statement in detail of the nature of such proceeding is attached hereto *[Use JD-FM-164, Affidavit Concerning Children]*, but the proceedings in this court on the pending matter concerning said minor child will not conflict with or interfere with such other proceedings.

Name *[Type or print]* Amelia Jones, Esq.

Signature ..... Date: 10/23/2015

Address: 123 Lawyer's Circle, Any Town, Connecticut 00001

Tel. No. 203-555-5554

SUBSCRIBED AND SWORN TO BEFORE ME	DATE	
	10/23/2015	..... Judge, Ass't Clerk, Notary Public, Comm. Sup. Ct.

AFFIDAVIT/TEMPORARY CUSTODY, REMOVAL, TERMINATION, OR ADOPTION
PC-610

CONNECTICUT PROBATE COURTS

RECORDED (Confidential):

RECEIVED:

Instructions:

1) A person who is a party in a proceeding for removal of a parent as guardian, termination of parental rights or adoption, or was a party in a prior proceeding, may use this form to request that the court make findings in support of a petition with the United States Citizenship and Immigration Services for designation of the minor as having special immigrant juvenile status under 8 USC 1101 (a) (27) (J).
2) The petition may be filed with a petition for: a) removal of a parent or other guardian of the minor, b) termination of parental rights, or c) adoption. The petition for findings regarding special immigrant juvenile status may also be filed if a petition for removal of guardian, termination of parental rights or adoption was previously granted.
3) If a court has previously granted a petition for removal of guardian, termination of parental rights or adoption, the petition must be filed in the Probate Court that granted the petition.
4) For further information, see P.A. 14-104 sections 8 and 9 and C.G.S. section 45a-610 (removal of guardian) or 45a-717 (termination of parental rights).
5) Type or print the form in ink. Use an additional sheet, or PC-180, if more space is needed.

Probate Court Name Any Town	**District Number** 0001
In the Matter of (List name and address) Juan P. Hereinafter referred to as the minor	**Minor's Date of Birth** 8/16/2015
Petitioner (Use boxes to list name and address of each petitioner) Peter Jones, Esq. 123 Lawyer's Circle, Any Town, Connecticut 000001 (203) 555-5554	**Petitioner's Relationship to Minor** Attorney for the Minor Child
	Petitioner's Relationship to Minor

I/We represent that:

1) ☑ This petition is filed with or during the pendency of a petition for ☑ removal of parent or other guardian ☐ termination of parental rights ☐ adoption, or

☐ A petition for ☐ removal of parent or other guardian ☐ termination of parental rights ☐ adoption was previously granted on _____(date) by_____(court).

2) The minor is under 21 years of age.
3) The minor is not married.
4) Reunification of the minor with one or both of the minor's parents is not viable due to the following grounds for ☑ removal for parent as guardian under C.G.S. section 45a-610 (2) to (5) or ☐ termination of parental rights under C.G.S. section 717 (g) (2):

Juan P.'s father, Mr. P. has neglected and abandoned the minor child in the sense that he has failed to maintain a reasonable degree of interest in the child and to provide for her physical, medical, educational and emotional needs.

RECORDED (Confidential):

5) It is not in the best interests of the minor to be returned to the minor's or parent's country of nationality or last habitual residence for the following reasons:

Juan P. was forced to flee from Guatemala at the tender age of eleven as she had no one in her native country to provide for her physical and emotional needs. On or about June 2014, Juan P. left Guatemala in an attempt to be reunited with his mother, Ms. J. the only person who can provide a sense of permanency and well-being for the minor child. Juan P. does not have anyone to guide his physical, medical, educational and emotional wellbeing in Guatemala. He has been abandoned and neglected by his father.

WHEREFORE THE PETITIONER(S) REQUEST that the court issue findings to be used in connection with a petition to the United States Citizenship and Immigration Services for designation of the minor as having special immigrant juvenile status under 8 USC 1101 (a) (27) (J).

The representations made herein are made under the penalties of false statement.

Signature of Petitioner

Print or type name Amelia Jones, Esq.

Date October 23, 2015

Signature of Petitioner

Print or type name

Date

Docket No.

	:	
	:	PROBATE COURT
IN RE xxxxx	:	
xxxxxxxxx	:	DISTRICT OF XXXXX
(d.o.b. xxxxx)	:	xxxxxx
	:	

In Re: John Doe (dob unknown) of xxxxxx (dob xxxxx)
Father — Child's Name

☐ Superior Court for Juvenile Matters at: _

X Probate Court, District of: xxxxxxxxxxxxxxx

AFFIDAVIT REGARDING DILIGENT SEARCH FOR THE PARENT'S IDENTITY AND/OR LOCATION

I, AMC being duly sworn,

do hereby state that, despite a diligent search by myself

X the identity for the parent is unknown.

X the whereabouts of the parent are unknown.

The following efforts were made to identify or locate the parent:

See attached Motion for Order of Notice

Signed: _____

Sworn to before me this _____ day of _____, 20____.

_____ _____

Commissioner of Superior Court — Expiration Date

Docket No.

IN RE xxxxxx xxxxxxx (d.o.b. xxxxx)	:	PROBATE COURT DISTRICT OF xxxxx xxxxx

MOTION FOR ORDER OF NOTICE

The Petitioner moves for an Order of Notice in the above-captioned matter for the following reasons:

1. All reasonable efforts to ascertain the exact residence of the Respondent, John Doe have been made and failed.

2. John Doe never acknowledged paternity of the minor child nor has he assumed responsibility for the care and wellbeing of the minor child except for a period of three weeks when the child was fifteen years old.

3. The Petitioner has information from the minor child and his caregiver, xxxxx that a man known as xxxxo, also known as xxxxx(last name unknown) maybe the minor's father. His exact identity is unknown. He is presumed to have last resided in xxxx, but his exact address or whereabouts is unknown to them.

WHEREFORE, the Petitioner respectfully moves this court for an order of notice by publication in "La xxxx" of xxxx, Honduras, that being the newspaper considered most likely to come to his attention.

Petitioner:

_____

xxxxxx, Attorney for Child

In reply, please refer to: AMC
[Address]

The foregoing motion is hereby ORDERED: GRANTED/DENIED

_____

Judge

Docket No.

IN RE xxxxxxxxxxxxxxxxxxxxxx (d.o.b. XXXXX)	:	PROBATE COURT DISTRICT OF XXXX April XXXXX

AFFIDAVIT OF DILIGENT SEARCH

1) The exact identity of X's father, John Doe, is unknown as he has never acknowledged paternity and is not named in the minor child's birth certificate. X and his proposed guardian, Y, believe his father maybe a man named XXX who he has only met on two occasions.

2) Petitioner was contacted today by Y, the proposed guardian who indicated that after many efforts to locate said XXX through her contacts in Ciudad Guatemala she was able to speak with him on April XY. XXX is presently residing in Ciudad Guatemala, Guatemala.

3) XXX mailing address is:

   Zona 8, Ciudad Guatemala, Guatemala 01008

4) His telephone number is: 01-502-1111111111111

Signed under pains and penalties of perjury,

XXX, Esq.

Sworn to before me this xxxxx 2014.

Notary Public

Docket No.

IN RE xxxxxxx (d.o.b. xxxxxxx)	:	PROBATE COURT DISTRICT OF xxxxxxx September xxxx, xxxxx

MOTION TO DISPENSING WITH NOTICE

Pursuant to CT R. Prob. Rule 8.8(a) the petitioner moves to dispense with notice on the respondent xxxxxxxx for the following reasons:

1. All reasonable efforts to ascertain the exact residence of the Respondent, xxxxxxx have been made and failed.

2. The Petitioner has information from the minor child and his caregiver, xxxxxxxx that she was last known to reside in xxxxxx, xxxxx but her exact address or whereabouts is unknown to them.

3. The Petitioner attempted to ascertain contact information for xxxxxxx through social media (i.e. facebook) but the search yielded no positive results in determining her location. Proposed guardian, xxxxxx, has inquired with relatives in xxxxxx as to the exact location of mother. She was provided with an alleged phone number, xxxxxxx, but this number does not appear to be a working number. Proposed guardian was informed that mother is last known to reside in xxxxxx, xxxxxx.

4. The minor child will be turning 18 years of age on xxxxx, xxxxx. Since the mother's exact whereabouts are unknown the only way by which some form of notice could be provided would be by publication in a local paper of her last known place of residence. Respondent is last known to reside in xxxxxx, xxxxxx. Publication in a paper in this locality is certain to exceed a week. If publication is required it will preclude xxxxxx from protection by

this court as he will be turning 18 years old in one week. This is contrary to his best interest and will likely place him in serious risk of harm.

WHEREFORE, the Petitioner respectfully moves this court to dispense with notice on the respondent in order to preserve the child's safety and well-being and in the interest of justice.

Respectfully Submitted,

BY: _____

xxxxxx.
Petitioner
Tel. xxxxxxx
Fax. xxxxxx
Juris # xxxxx

Petitioner/Attorney for xxxxxxx

The foregoing motion is hereby ORDERED: GRANTED/DENIED

_____
Judge

Docket No.

	:	PROBATE COURT
	:	
IN RE xxxxxxxxx	:	DISTRICT OF xxxxxxxxxx
xxxx (d.o.b. xxxxxx)	:	
	:	July xxxx
	:	

MOTION FOR WAIVER OF STUDY BY DEPARTMENT OF CHILDREN AND FAMILIES

Pursuant to Conn. Gen. Stat. § 45a-619 the Petitioner hereby requests that the Court waive the investigation by the Commissioner of Children and Families for the following reasons:

1. On December xxxx the Connecticut Adoption and Family Services Agency (hereinafter "CAFS") completed a detailed and comprehensive adoption home-study regarding the suitability of xxxxxx as an adoptive parent. CAFS recommended and approved xxxxx as an adoptive parent to a female child between the ages of zero (0) and sixteen (16) years of age from the country of xxxxx. (See Connecticut Adoption and Family Services Home-Study, hereinafter "Study" attached hereto as Exhibit E.)
2. The study makes the following conclusions *inter alia* regarding xxxxxx ability to care for the minor child xxxxxx:
   a. Ms. xxxxx has the emotional and physical ability to care for the child;
   b. Ms. xxxxx has the financial resources to care for the child;
   c. Ms. xxxxhas no history of child abuse or neglect investigations or substantiations.
3. On October xxxx the Child Development Agency of the Ministry of Health in xxxxx. made the following findings and recommendations regarding the physical, mental and emotional status of the minor child by way of a comprehensive report attached hereto as Exhibit C.:

a. The child is in good health;

b. The child is emotionally connected to the proposed guardian, Ms. xxxxx;

c. It is in the child's best interest to reside with Ms. xxxxx as a family.

2. Ms. Xxxxx has completed training with the State of Connecticut, Department of Children and Families (DCF) to become a licensed foster parent and was approved as such within the last two years. A request is being made to DCF for a copy of this study which will be submitted to the Court at a later time.

3. It is in the best interest of the child to expedite the application for appointment of a permanent guardian as the child will be turning eighteen (18) years old on December xxx, 2013. The requirement to have the Commissioner of DCF complete a study may unreasonably delay this application which is contrary to the child's best interest.

WHEREFORE, the Petitioner respectfully moves this court to waive the DCF study requirement in the above captioned case.

Respectfully Submitted,

BY: _____

xxxxxxx, Esq.
Center for Children's Advocacy, Inc.
University of Connecticut School of Law
65 Elizabeth Street
Hartford, CT 06105
Tel. 860-570-5327
Fax. 860-570-5256
Juris # xxxxx

Attorney for xxxxxxxxxxxxxxxxxxxxxxxx

The foregoing motion is hereby ORDERED:

GRANTED/DENIED

_____

Hon. Judge xxxxxx

Docket No.

IN RE JUAN P[1].	:	PROBATE COURT
(d.o.b. 8/16/2003)	:	DISTRICT OF ANY TOWN
	:	OCTOBER 23, 2015

STATEMENT OF FACTS

1) Juan P. ("Juan") is 13 years old, born in Guatemala on August 16, 2003 to Miguel P. ("Mr. P.") and Gladys J. ("Ms. J."). (See copy of his Birth Certificate attached as Exhibit A.) (Gladys J. Affidavit, hereinafter "Ms. J's Affidavit", ¶1-2, attached as Exhibit B.)

2) Juan is not married and is presently under the care of his mother, Ms. J., in Any Town, Connecticut, where he has continuously resided since July 2015. ("Ms. J's Affidavit", ¶15) (See also, Exhibit C.).

3) Juan's father is an alcoholic with a significant history of family violence. From a very early age Juan has been emotionally abused and subject to physical neglect by his father in that he has witnessed ongoing and severe forms of domestic violence against his mother. ("Ms. J's affidavit", ¶4-6).

4) Juan's father, Mr. P., has abandoned him in that he has failed to maintain a reasonable degree of interest and has failed to consistently provide for his physical and emotional needs. His father has failed to provide Juan with the basic elements of subsistence such as food, shelter and an education throughout his young life. ("Ms. J's Affidavit", ¶4-17).

[1] The names and facts in the sample pleadings herein are fictitious.

5) As a result of his father's neglect; his mother's move to the United States in order to provide him with his basic needs; and the inability of his maternal relatives to care for him, Juan was rendered without an appropriate caregiver and was forced to flee Guatemala in order to seek safety and the adequate care of his mother in the United States. ("Ms. J's Affidavit", ¶8, 13-14, 17).

6) Juan is currently facing removal proceedings at the United States Immigration Court for the District of Connecticut. ("Ms. J's Affidavit", ¶15) (See also Exhibit D).

7) Juan has no relatives in Guatemala that are willing or capable to properly care for him. He does not have anyone to guide his physical, medical, educational and emotional wellbeing in Guatemala. His father continues to hold legal guardianship over him but has failed to provide him the most basic elements of care and attention. In contrast, under his mother's care Juan is finally able to have the proper care and attention he needs as a child. ("Ms. J's Affidavit", ¶16-17)

Respectfully Submitted,

BY: _____

Amelia Jones, Esq.
123 Lawyer's Circle, Any Town, Connecticut 00001
(203) 555-5554
Juris# 400

Attorney for the Minor Child Juan P.

Docket No.

IN RE JUAN P.[1]	:	PROBATE COURT
(d.o.b. 8/16/2003)	:	DISTRICT OF ANY TOWN
	:	OCTOBER 26, 2015

AFFIDAVIT OF PROPOSED SOLE GUARDIAN GLADYS J.

1) My name is Gladys J. born on 8/20/1973. Juan P. ("Juan") is my child. I am the parent of two other children; Lilly H. ("Lilly") DOB: 12/12/2007 and Nancy H. ("Nancy") DOB: 10/23/2009. Lilly and Nancy are both living under my care. I have never been arrested or convicted for a criminal offense. I also have never been substantiated for abuse, abandonment or neglect by a child protective agency. I swear that the following is true to the best of my knowledge and ability.

2) Juan's father is Miguel P. ("Mr. P.") born on 10/11/1975 and presently residing at Zona#19 Ciudad Guatemala, Guatemala 01017.

3) I met Mr. P. when I was twenty three years old in Ciudad Guatemala. We dated briefly and exclusively. A few months after dating, I became pregnant with Juan. Mr. P. and I moved in together soon after the pregnancy.

4) Immediately after moving in together Mr. P. became physically abusive to me. Mr. P. physically assaulted me while pregnant. Once Juan was born things became more difficult. He forbade me to leave the house and work. He did not provide any money for Juan and me to eat. During this time the physical abuse intensified against me.

5) I became used to the beatings which happened almost every day and for no apparent reason. On one occasion Mr. P. arrived drunk to our home and started to accuse me of being unfaithful. He then proceeded to beat me with his fists and threw me against a concrete wall so hard that I was rendered unconscious. This happened in front of Juan who I could hear screaming in what seemed like a moment that seemed like an eternity. After the assault Mr. P. left the home and never returned. I later learned he moved in with another woman and started a family with her.

6) I sought assistance from the government authorities for protection and relief from the abuse but they would not help me. I went on many occasions to the Court for assistance. The Court issued many summons but since Mr. P. never showed they said, "there is nothing we can do."

[1] The names and facts in the sample pleadings herein are fictitious.

7) During the next five years Mr. P. never provided for Juan's care and support. Sometimes he would visit our town but would not seek Juan. I tried very hard to find work to support Juan but was unable to.

8) In November 2006 I decided to move to the United States because of the financial hardship Juan and I experienced. Before my move to the United States I made arrangements for Juan to stay under the care of my mother, Mrs. J. Leaving Juan in Guatemala was the most difficult thing I have ever done in my life. I did not bring him with me because I was concerned about the safety risks posed to him in the journey.

9) I came to live with an uncle in Any Town, Connecticut with the plan to return quickly and bring enough money to open a small business in Guatemala. I found work after only four days in Any Town. Unfortunately, my mother became sick with Cancer four months after my arrival in the United States. She passed away shortly after the cancer was detected.

10) Following her death, Juan was cared for by my sister Fatima J. and her husband. Unfortunately, Fatima and her family lived in a very crowded home and experienced severe financial hardship.

11) Sometime after arriving in the United States, I learned from friends who I shared in common with Mr. P. that he was incredibly abusive to his new partner and that during the times when he was observed to be drunk around Ciudad Guatemala he would tell anyone who cared to listen that he knew I left town. He also was heard saying that if I thought he was done with me I was mistaken. He also attempted to come and see Juan at my sister's house one night while he was drunk. During this unannounced visit he was told he had to return when he was sober. Mr. P. became belligerent and as a result my brother in law had to forcibly remove Mr. P. from their home. This happened again a handful of occasions in the past few years.

12) I provided for Juan's basic needs by way of sending money to my sister. I also spoke with him on the phone as he started almost on a daily basis. I missed Juan terribly but due to the lingering threats from Mr. P., the debt I incurred with the smuggler who brought me here, the cost of living and starting a new family I was unable to return to Guatemala as I planned.

13) On or about June 2015 my sister stated during a telephone conversation that she was planning to leave her husband and come to the United States. However, she stated, "I will have my hands full planning for own children... You need to send for Juan because I can no longer care for him."

14) In or about July 2015, I made arrangements for Juan to leave Guatemala under the escort of a smuggler so that he could be reunited with me in Any Town, Connecticut. I knew the journey was risky but at the same time I had no one else that could care for Juan.

15) On or about July 19, 2015 Juan entered the United States border through Texas where he

was quickly apprehended by U.S. Immigration Officials. I was immediately contacted by the Office of Refugee Resettlement and a week later he was sent to live under my care in Any Town, Connecticut while awaiting removal proceedings.

16) Since his arrival to Any Town, Connecticut in July, 2015, Juan has done exceedingly well. He is a seventh grade student receiving bi-lingual education at Nutmeg Middle School. He is finally living in a family and has quickly attached to his sisters Lilly and Nancy who in turn love to play with their only brother.

17) As a result of the abandonment by his father Mr. P. and the refusal of my family to provide a place for him to live, Juan has no one in Guatemala to guide and provide for his physical and emotional needs.

Signed under pains and penalties of perjury,

_____

Gladys J.

Sworn to before me this 26th day of October, 2015.

_____

Amelia Jones, Esq.
Commissioner of Superior Court
Juris# 400

IN THE MATTER OF : COURT OF PROBATE

Juan P.[1] : DISTRICT NO. PD
(15-XXXXXX)

: ANY TOWN

: JANUARY 28, 2016

DECREE

At a court of probate held at the place and time of hearing set by the court together with any continuances thereof, as of record appears, on the petitioner's application for removal of guardianship of the person of **Miguel P.** and the appointment of guardian of the person of the minor child, as in the application more fully appears.

PRESIDING JUDGE:

After due hearing, THE COURT FINDS that notice of hearing was given in accordance with the order(s) of notice previously entered, AND that the application was brought by a person entitled by law to do so.

Upon the forgoing application, and upon pleadings and evidence provided herein

THE COURT FINDS that Juan P., is a minor under the age of 21.

THE COURT FURTHER FINDS that the minor child, Juan P., is unmarried.

THE COURT FURTHER FINDS that jurisdiction of this matter appertains to this court and pursuant to Connecticut General Statute §45A-608n-608o and Connecticut General Statute §45a-616 has the authority to make judicial determinations about the custody and care of juveniles within the meaning of §101(a) (27) (J) (i) of the Immigration and Nationality Act 8 U.S.C. § 1101(a) (27) (J) (i) and C.F.R. § 204.11(a).

THE COURT FURTHER FINDS that Juan P. is hereby declared dependent pursuant to Connecticut General Statute §45a-616, and has been denied care and guidance for his physical, educational, moral and emotional well being as the result of parental commission or omission, as defined by Connecticut General Statute §45a-610 and within the meaning of §101(a)(27)(J)(i) of the Immigration and Nationality Act 8 U.S.C. § 1101(a)(27)(J)(i) and C.F.R. § 204.11(c)(3), (d)(2)(i) and,

THE COURT FURTHER FINDS that reunification of Juan P. with one or both of his parents is not viable due to abandonment and neglect as defined by Connecticut General Statute §45a-120. Juan P. was abandoned and neglected by his father, Miguel P.; therefore, reunification with his father is not a viable option.

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[1] The names and facts in the sample pleadings herein are fictitious.

THE COURT FURTHER FINDS that pursuant to §45a-616 and within the meaning of §8 C.F.R. §204.11(c) (6) it is not in the best interest of the child, Juan P., to be returned to his country of origin, Guatemala. Juan P. cannot safely return to Guatemala because he does not have anyone to guide his physical, medical, educational and emotional wellbeing in Guatemala, and

THE COURT FINDS based on the United States Report on Human Rights Practices that treatment of battered women and their children would present a serious threat to the safety and well being if the minor were returned there without appropriate guardianship in place.

THE COURT FURTHER FINDS there are no relatives in Guatemala willing or able to care for Juan P.

WHEREFORE, it is ORDERED AND DECREED that:

Gladys J., mother, be appointed as sole guardian of the person of, Juan P.

Dated at Any Town, Connecticut, this 28th day of January, 2016.

_____

, Judge