

THE COURTS

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 11 AND 18]

Proposed Amendments to Rules 1151, 1152, 1154 and 1800 and New Rules 153, 157, 183, 1153 and 1183

The Juvenile Court Procedural Rules Committee is eliciting public comment on proposed modifications to Rules 1151, 1152, 1154 and 1800 and new Rules 153, 157, 183, 1153, and 1183 before it considers any recommendations to the Supreme Court of Pennsylvania. These proposed modifications establish the role and duties of attorneys in juvenile court proceedings.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

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*By the Juvenile Court
Procedural Rules Committee*

HONORABLE TODD A. HOOVER,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B(2). COUNSEL

(Editor's Note: Rules 153, 157 and 183 are new and printed in regular type to enhance readability.)

Rule 153. Role of Counsel.

A. *Role of Counsel.* Attorneys who represent juveniles in proceedings commenced pursuant to these Rules and the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* shall:

- 1) zealously and competently represent the juvenile at every stage of the proceedings;
- 2) advise and communicate with the juvenile in a developmentally appropriate manner;
- 3) if applicable, review and complete the admission colloquy mandated by Rule 407 with the juvenile; and

4) litigate the juvenile's case when an admission is inappropriate and protect the record for appeal.

B. *Ethical obligations.* The attorney has an ethical and professional obligation to the juvenile, rather than the juvenile's guardian.

1) The attorney must communicate to the juvenile and the juvenile's guardian the meaning of privileged communications and the attorney-client relationship.

2) The juvenile may authorize the attorney's disclosure of information as is necessary to carry out the representation.

3) After consultation with the attorney, the juvenile may permit the attorney to disclose the privileged communications to the juvenile's guardian or other interested person who may be in a position to help support or encourage the juvenile.

Comment

Pursuant to paragraph (A)(1) and (B), the attorney has an ethical and professional obligation to the juvenile, rather than the juvenile's guardian. The attorney is to comply with the wishes of the juvenile over the wishes of the juvenile's guardian. *See* Pa.Rs.P.C. 1.6(a) and 1.14(a).

Counsel for the juvenile should comply with basic standards of practice, which may include, but are not limited to: a) interviewing the client as soon as practicable and in advance of any court hearing; b) preparing for the case by seeking and reviewing written allegations, police reports, and interviews; the petition; probation reports; pleadings; relevant laws and procedures; warrants; and any other evidence in law enforcement files or the possession of the attorney for the Commonwealth; c) identifying, interviewing, and preparing witnesses, including requesting witness's contact information; d) obtaining social studies, education records, and any other reports and records from the juvenile probation officer; e) investigating the facts, the scene of the incident, and circumstances surrounding the allegations of delinquency; f) call any necessary experts or investigators as witnesses; g) file timely motions; h) when necessary, request continuances at the juvenile's request; i) review applicable laws, including the Constitution, statutes, Rules of Procedure, Rules of Evidence, case law, local rules, and other persuasive authority; j) when appropriate, negotiate plea agreements; k) litigate important fact and legal issues when appropriate; l) present witnesses, alibis, mitigating circumstances, and other appropriate defenses, including applicable law, to the court; m) gather other information or evidence to support the juvenile's case; n) negotiate the best dispositional outcome for the juvenile; o) file necessary post-dispositional motions; p) attend all hearings; q) when appropriate, file and prepare an appeal; and r) when applicable, file expungement motions.

Pursuant to paragraph (A)(2), the attorney is to communicate in a developmentally appropriate manner with the juvenile so the juvenile can understand the process and make informed decisions.

If a juvenile speaks a different language than the attorney, counsel is to request an interpreter to alleviate any communication barriers in preparing for a case and during all proceedings.

Prior to an admission, a colloquy is to be prepared and presented to the court. *See* Rule 407.

Counsel is to attend all proceedings and remain in the case unless permitted to withdraw pursuant to Rule 150. This includes attendance at all dispositional review and probation revocation hearings. *See* Rule 150(B) on duration of counsel.

For further ethical obligations, see Pa.R.P.C.

Rule 157. Role of the Attorney for the Commonwealth.

A. *Duties of the Attorney for the Commonwealth.* Attorneys representing the Commonwealth in proceedings commenced pursuant to these Rules and the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* shall:

- 1) zealously and competently represent the interests of the Commonwealth at every stage of the proceedings;
- 2) communicate with the victim in a developmentally appropriate manner in which the victim can comprehend;
- 3) ensure the victim understands his or her rights; and
- 4) litigate the Commonwealth's case when an admission is not entered by the juvenile and protect the record for appeal.

B. *Ethical obligations.* The attorney for the Commonwealth has special ethical obligations pursuant to Pa.R.P.C. 3.8.

Comment

The attorney for the Commonwealth should comply with basic standards of practice, which may include, but are not limited to: a) interviewing the witnesses and the victim as soon as practicable and ideally in advance of any court hearing; b) preparing for the case by seeking and reviewing written allegations, police reports, and interviews; the petition; probation reports; pleadings; relevant laws and procedures; warrants; any other evidence in law enforcement files; and any discoverable information from the defense, such as alibi information or affirmative defenses; c) identifying, interviewing, and preparing witnesses, including requesting defense witness's contact information; d) obtaining social studies and any other probationary reports and records from the juvenile probation officer; e) investigating the facts, the scene of the incident, and circumstances surrounding the allegations of delinquency; f) call any necessary experts or investigators as witnesses; g) file timely motions; h) when necessary, request continuances; i) review applicable laws, including the Constitution, statutes, Rules of Procedure, Rules of Evidence, case law, local rules, and other persuasive authority; j) when appropriate, negotiate appropriate plea agreements; k) present all facts, through evidence and witnesses, and legal issues and prove beyond a reasonable doubt that the juvenile committed the delinquent act(s); l) negotiate the best dispositional outcome for the victim and the juvenile using the balanced approach to restorative justice model, including aggravating circumstances when necessary; m) when applicable, ensuring the victim has an opportunity to speak or file a victim impact statement; n) file necessary post-dispositional motions; o) attend all hearings; and p) when appropriate, file and prepare an appeal.

Pursuant to paragraph (A)(2), the attorney for the Commonwealth is to communicate in a developmentally appropriate manner with the victim so the victim can understand the process and make informed decisions.

If the victim speaks a different language than the attorney for the Commonwealth, the attorney for the

Commonwealth is to request an interpreter to alleviate any communication barriers in preparing for the case and during all proceedings.

See Pa.R.P.C. 3.8 for special responsibilities as an attorney for the Commonwealth. *See also* Standards for Pennsylvania Prosecutors in Juvenile Court and the Victim's Bill of Rights, 18 P. S. § 11.201 *et seq.*

PART (D)(1). MASTERS

Rule 183. Role of Master.

A. *Role of Master.* The master shall ensure:

- 1) the juvenile understands and has been apprised:
 - a) of the right to have a hearing before a judge;
 - b) that the findings and recommendations of the master must be approved by the judge before they are final;
 - c) of their rights at each stage of the proceeding, including if the juvenile is admitting to the delinquent acts pursuant to Rule 407, all the rights the juvenile is waiving as set forth in the admission colloquy under Rule 407(C) are understood; and
- 2) the Rules of Juvenile Court Procedure and the requirements of the Juvenile Act are followed at every proceeding.

B. *Ethical Obligations.* The master has ethical and professional obligations pursuant to the Rules of Professional Conduct and the Code of Judicial Conduct.

Comment

See the Pa.R.P.C. for specific obligations. *See also* Canon 7 of the Code of Judicial Conduct for applicability of Code to attorneys presiding as an officer of the judicial system.

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART B(2). COUNSEL

Rule 1151. Assignment of [*Guardian Ad Litem* and] Counsel.

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

- 1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the physical, mental or emotional health, or morals;
- 2) has been placed for care or adoption in violation of law;
- 3) has been abandoned by parents, guardian, or other custodian;
- 4) is without a parent, guardian or legal custodian; or
- 5) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety, or welfare of the child.

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

1)] if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent [**who:**

a) **while subject to compulsory school attendance is habitually and without justification truant from school;**

b) **has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of the child’s guardian and who is ungovernable and found to be in need of care, treatment, or supervision;**

c) **is under the age of ten years and has committed a delinquent act;**

d) **has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or**

e) **has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or**

2) upon order of the court.

C. Counsel and] B. Guardian ad litem for child. [**If a child has legal counsel and a guardian ad litem, counsel shall represent the legal interests of the child and the guardian ad litem shall represent the best interests of the child.**] **If counsel has moved for appointment of a guardian ad litem because he or she reasonably believes the requirements of Rule 1154(B)(3) have been met, the court shall appoint a guardian ad litem for the child.**

[**D.**] **C. Time of appointment.**

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

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

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

Comment

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

[**The guardian ad litem**] **Counsel** for the child may move [**the court for appointment as legal counsel and assignment of a separate**] for appointment of a guardian ad litem [,] when [, for example, the information that the guardian ad litem possesses gives rise to the conflict and can be used to the detriment of the child] the requirements of Rule 1154 have been met. The attorney is to find: 1) the child has diminished capacity; 2) the child is at risk of substantial physical, financial, or other harm; and 3) the attorney cannot adequately act in the child’s own interest. To the extent 42 Pa.C.S. § 6311(b)(9) is

inconsistent with this rule, it is suspended. See Rule 1800. See also Pa.R.P.C. 1.7 and 1.8. [**Under paragraph (C), legal counsel represents the legal interests of the child and the guardian ad litem represents the best interests of the child.**]

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

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

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

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1151 published with the Court’s Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to this rule published with the Court’s Order at 37 Pa.B. 1123 (March 10, 2007).

Final Report explaining the amendments to Rule 1151 published with the Court’s Order at 38 Pa.B. 2360 (May 24, 2008).

Final Report explaining the amendments to Rule 1151 published with the Court’s Order at 41 Pa.B. 2430 (May 14, 2011).

Final Report explaining the amendments to Rule 187 published with the Court’s order at Pa.B. ().

Rule 1152. Waiver of Counsel.

A. Children.

[**1) Guardian ad litem.**] A child may not waive the right to [**a guardian ad litem**] counsel.

[**2) Legal Counsel.** A child may waive legal counsel if:

a) **the waiver is knowingly, intelligently, and voluntarily made; and**

b) **the court conducts a colloquy with the child on the record.**]

* * * * *

Comment

Under paragraph (A), a child may not waive the right to [**a guardian ad litem.** The right of waiver to legal counsel belongs to the child, not the guardian] counsel, which includes a guardian may not this right for the child. See Rule 1800[, which suspends

42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child] .

[It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

- 1) Whether the party understands the right to be represented by counsel;
- 2) Whether the party understands the nature of the dependency allegations and the elements of each of those allegations;
- 3) Whether the party is aware of the dispositions and placements that may be imposed by the court, including foster care placement and adoption;
- 4) Whether the party understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
- 5) Whether the party understands that counsel may be better suited to defend the dependency allegations; and
- 6) Whether the party understands that the party has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the party, the ability to correct these errors may be lost permanently.]

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(Editor’s Note: The following rule is new and printed in regular type to enhance readability.)

Rule 1153. Role of Counsel.

A. *Role of Counsel for the child and parents.* Attorneys who represent parties in proceedings commenced pursuant to these Rules and the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* shall:

- 1) zealously and competently represent their client at every stage of the proceedings;
- 2) advise and communicate with their client in a developmentally appropriate manner; and
- 3) litigate the client’s case when appropriate and protect the record for appeal.

B. *Ethical obligations.* Attorneys have an ethical and professional obligation to their clients.

- 1) The attorney must communicate to their client the meaning of privileged communications and the attorney/client relationship.
- 2) The client may authorize the attorney’s disclosure of information as is necessary to carry out the representation.
- 3) After consultation with the attorney, the client, when a child, may permit the attorney to disclose privileged communications to the child’s guardian or other interested person who may be in a position to help support or encourage the child.

Comment

Counsel for any party should comply with basic standards of practice, which may include, but are not limited to: a) interviewing the client as soon as practicable and in advance of any court hearing; b) preparing for the case by seeking and reviewing all court documents; relevant

evidence; county agency reports, files, and interviews; the petition; other agency reports for the family; pleadings; and any other evidence necessary for the proceeding; c) identifying, interviewing, and preparing witnesses, including requesting witness’s contact information; d) investigating the facts and circumstances surrounding the allegations of dependency; e) when appropriate, seek any necessary experts or investigators as witnesses; f) file timely motions; g) gather other evidence to support your client’s case; h) review applicable laws, including the Constitution, statutes, Rules of Procedure, Rules of Evidence, case law, local rules, and other persuasive authority; i) litigate important fact and legal issues when appropriate; j) present witnesses and make recommendations or arguments to the court; k) attend all hearings; and l) when appropriate, file and prepare an appeal.

The purpose of paragraph (A)(2) is to ensure the client can understand the process and make informed decisions. A developmentally appropriate manner will depend on the client and the client’s ability to comprehend.

If a party speaks a different language than the attorney, counsel is to request an interpreter to alleviate any communication barriers in preparing for a case and during all proceedings.

In the limited circumstances when an attorney is appointed for a guardian who is not the parent, these rules are to apply.

Counsel is to attend all proceedings and remain in the case unless permitted to withdraw pursuant to Rule 1150. This includes attendance at all permanency hearings. See Rule 1150(B) on duration of counsel.

For further ethical obligations, see Pa.R.P.C.

Rule 1154. Duties of [Guardian Ad Litem] Counsel and County Agency.

[A guardian *ad litem* shall:]

A. Duties of Counsel for the Child. Counsel for the child shall:

- 1) [Meet] meet with the child as soon as possible following assignment pursuant to Rule 1151 and on a regular basis thereafter [in a manner appropriate to the child’s age and maturity];
- 2) [On a timely basis, be given access to] review relevant court and county agency records, reports of examination of the guardians or the child, and medical, psychological, and school records;
- 3) [Participate in all proceedings, including hearings before masters, and administrative hearings and reviews to the degree necessary to adequately represent the child;]
- 4) [Conduct such] conduct further investigation necessary to ascertain the facts;
- [5) Interview] 4) interview potential witnesses[, including the child’s guardians, caretakers, and foster parents, examine and cross-examine witnesses, and present witnesses and evidence necessary to protect the best interests of the child];
- 5) attend and present a case, necessary to pursue the child’s desired outcome or, consistent with substituted judgment pursuant to paragraph (B), in all proceedings; and

6) [At the earliest possible date, be advised by the county agency having legal custody of the child of:] present evidence as to the child's educational, health care, and disability needs.

[a] any plan to relocate the child or modify custody or visitation arrangements, including the reasons, prior to the relocation or change in custody or visitation; and

b) any proceeding, investigation, or hearing under the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.* or the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, directly affecting the child;

7) Make any specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, including the child's educational, health care, and disability needs;

8) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition, and emotional condition; and

9) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court.]

B. Duties of Counsel When Child has Diminished Capacity.

1) The child's counsel shall determine whether the child has diminished capacity in directing representation.

a) It shall be presumed that a child is capable of directing representation at the age of ten.

b) The presumption of diminished capacity is rebutted if, in the sole discretion of the attorney, the child is deemed capable of directing representation.

c) In making this determination, the attorney should consult with the child and may consult with other individuals or entities who can provide the child's attorney with the information and assistance necessary to determine the child's ability to direct the representation.

2) When a child has diminished capacity in directing representation, counsel shall make a good faith effort to determine the child's needs and wishes. The attorney shall:

a) maintain a traditional attorney-client relationship, as far as reasonably possible, with the client and fulfill the duties as outlined in the Rules of Professional Conduct;

b) substitute judgment when, during a temporary period or on a particular issue, it is not reasonably possible to maintain the attorney-client relationship, and present a case pursuant to paragraph (A)(5);

D) A substituted judgment determination includes determining what the child would decide if he or

she were capable of making an adequately considered decision and representing a child with that determination.

ii) The attorney should take direction from the child as the child develops the capacity and any subsequent change in that determination.

3) An attorney shall take reasonable steps in protecting the child against harm, and in appropriate cases, may move for appointment of a guardian *ad litem* when the attorney reasonable believes that:

a) the child has diminished capacity;

b) the child is at risk of substantial physical, financial, or other harm unless action is taken; and

c) the attorney cannot adequately act in the child's own interest.

C. Duties of Guardian Ad Litem. In the rare instance when the court appoints a guardian *ad litem*, the guardian *ad litem* shall:

1) meet with the child as soon as possible following assignment and on a regular basis thereafter;

2) review relevant court and county agency records, reports of examination of the guardians or the child, and medical, psychological, and school records;

3) conduct further investigation necessary to ascertain the facts;

4) interview potential witnesses;

5) attend and present a case necessary to protect the child's best interests;

6) present evidence as to the child's educational, health care, and disability needs; and

7) advocate to protect the child from any harm.

D. Duties of Counsel for Parents. Counsel for a parent shall:

1) meet with the parent as soon as possible following assignment and on a regular basis thereafter;

2) review relevant court and county agency records, reports of examination of the other parent or guardians of the child, and medical, psychological, and school records and provide records and reports to the parent when appropriate;

3) conduct further investigation necessary to ascertain the facts;

4) interview potential witnesses;

5) attend and present a case necessary to pursue the parent's desired outcome; and

6) advocate to the court on behalf of the parent's wishes.

E. Duties of Attorney for the County Agency. Counsel for the county agency shall:

1) meet with the county agency caseworkers to advance the position of the county agency on relevant issues consistent with the Juvenile Act;

2) review relevant court and county agency records, reports of examination of the guardians or the child, and medical, psychological, and school records;

3) conduct further investigation necessary to ascertain the facts;

4) interview potential witnesses;

5) facilitate discovery as provided in paragraph (D)(3); and

6) attend and present a case necessary to pursue the child's best interests and the purposes of the Juvenile Act.

F. Duties of County Agency. The county agency shall:

1) file dependency petitions;

2) if removal of the child is proposed or has occurred, assure the court:

a) that the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available;

b) that continuation in the home is contrary to the welfare, safety, or health of the child;

c) that services are being provided to the guardian unless the court has made a finding that no reasonable efforts to prevent placement or promote reunification are necessary; or

d) that it has made all reasonable efforts to achieve permanency in a timely manner and if reasonable efforts are not made, provide evidence that lack of services was reasonable;

3) in a timely manner, give attorneys and unrepresented parties access to relevant court and county agency records, reports of examination of the guardians or the child, and medical, psychological, and school records pursuant to Rule 1340 when not prohibited by law;

4) at the earliest possible date, advise attorneys and unrepresented parties of:

a) any plan to relocate the child or modify custody or visitation arrangements, including the reasons, prior to the filing of a motion pursuant to Rule 1606 or a change in visitation; and

b) any proceeding, investigation, or hearing under the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.* or the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, directly affecting the child; and

5) make any specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, including the child's educational, health care, and disability needs.

Comment

[If there is a conflict of interest between the duties of the guardian *ad litem* pursuant to paragraphs (7) and (9), the guardian *ad litem* for the child may move the court for appointment as legal counsel and assignment of a separate guardian *ad litem* when, for example, the information that the guardian *ad litem* possesses gives rise to the conflict and can be used to the detriment of the child. If there is not a conflict of interest, the guardian *ad litem* represents the legal interests and best interests of the child at every stage of the proceedings. 42 Pa.C.S. § 6311(b). To the extent 42 Pa.C.S.

§ 6311(b)(9) is inconsistent with this rule, it is suspended. See Rules 1151 and 1800. See also Pa.R.P.C. 1.7 and 1.8.

“Legal interests” denotes that an attorney is to express the child's wishes to the court regardless of whether the attorney agrees with the child's recommendation. “Best interests” denotes that a guardian *ad litem* is to express what the guardian *ad litem* believes is best for the child's care, protection, safety, and wholesome physical and mental development regardless of whether the child agrees.]

This rule was revised in 201- to lay out clearly the duties of counsel and the county agency. The Juvenile Act requires appointment of a guardian *ad litem* for dependent children. Because the role of acting as child's counsel and child's protector confuses the attorney-client relationship and is inherently contradictory, 42 Pa.C.S. § 6311(b) is suspended. See also Rule 1151, 1800 and Pa.R.P.C. 1.7 and 1.8.

Pursuant to paragraphs (A)(1), (C)(1), & (D)(1), counsel is to meet with the client as soon as possible after being assigned to the case, and on a regular basis to develop a rapport with the client to be able to understand the client's desires and wishes. Counsel is to communicate in a developmentally appropriate manner with the client so the client can speak easily with counsel and relay his or her wishes.

To prepare fully for the case, counsel and the county agency are to review all necessary documents pertinent to the case, including court and county agency records; reports of examinations of the guardian(s) or child; and medical, psychological, and school records. See paragraphs (A)(2), (C)(2), (D)(2) & (E)(2). If counsel does not have the necessary documents, counsel may request discovery pursuant to Rule 1340. The county agency is to give access to discoverable materials in a timely manner and the attorney for the county agency is to facilitate this process. See paragraphs (E)(5) & (F)(3). For counsel representing parents, it may be appropriate to provide the parent with a copy of the report. See paragraph (D)(2).

Pursuant to paragraphs (A)(3) & (4), (C)(3) & (4), (D)(3) & (4), and (E)(3) & (4), if counsel does not have all the necessary information, counsel is to conduct further investigations and interviews as necessary to ascertain all the facts in the case. This may include visiting the child, parent(s), or guardian(s) at his or her residence or potential residence and inspecting the home conditions, and/or conversing with the client, other parties, guardian(s), caretakers, and foster parents.

Counsel for the child and parent(s) are to attend and present a case consistent with the client's desired outcome under paragraphs (A)(5) & (D)(5). If substituted judgment is necessary for a child, see paragraph (B). A guardian *ad litem*, if appointed, and counsel for the county agency are to attend and present a case consistent with the best interests of the child, advocating to protect the child from harm. See paragraphs (C)(5) & (7) and (E)(6). Pursuant to paragraph (F)(5), the county agency is to make specific recommendations relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs

and safety. These duties of counsel and the county agency may include calling pertinent witness, entering necessary evidence, and cross-examining other parties' witness. Whenever relevant, counsel and the county agency are to present evidence as to the child's educational, health care, and disability needs. See paragraphs (A)(6), (C)(6), & (F)(5).

Pursuant to paragraph [(7),] (A)(6), (C)(6), and (F)(5) the child's attorney, county agency, and in rare cases, the guardian *ad litem* [is] are to make specific recommendations to the court regarding the appropriateness of the child's placement, giving consideration to the proximity and appropriateness of the child's school. See 42 Pa.C.S. § 6311(b)(7) and 42 U.S.C. § 675(1)(G). Inquiries into the child's education should include the right to: 1) educational stability, including the right to remain in the same school regardless of a change in placement when in the child's best interest and the right to immediate enrollment when a school change is in the child's best interest, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services, 24 P.S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. § 1400 *et seq.*; 4) the educational services necessary to support the child's transition to independent living, 42 Pa.C.S. § 6351 if a child is sixteen or older; and 5) a transition plan that addresses the child's educational needs, 42 U.S.C. § 675(5)(H), if the child will age out of care in the next ninety days.

See *In re S.J.*, 906 A.2d 547, 551 (Pa. Super. Ct. 2006) (citing *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750 (1990)), for issues addressing a child's mental and moral welfare.

Pursuant to paragraph [(7),] (A)(6), (C)(6), and (F)(5) the child's attorney, county agency, and in rare cases, the guardian *ad litem* [is] are to make specific recommendations to the court regarding the appropriateness of the child's placement, giving consideration to meeting the child's needs concerning health care and disability. Inquiries into the child's health should include the right of: 1) the child to receive timely and medically appropriate screenings and health care services, 55 Pa. Code §§ 3700.51 and 3800.32, 42 U.S.C. § 1396d(r); and 2) a child with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794 and implementing regulations at 45 C.F.R. § 84.1 *et seq.*

[The] In the rare case when there is a guardian *ad litem* in the case, the guardian *ad litem* may be appointed as the educational decision maker. If the guardian *ad litem* is not the educational decision maker, the guardian *ad litem* is to coordinate efforts and consult with the educational decision maker. See Rule 1147 for duties of the educational decision maker.

In all cases, a child is to have counsel. Counsel is to fulfill his or her professional duties as an attorney and to maintain a normal attorney-client relationship, as far as reasonably possible with a child as the client.

However, there may be instances in which the child has diminished capacity. Pursuant to paragraph (B)(1), a child is presumed to be capable of

directing representation at the age of ten. The attorney is to consult with other individuals and/or entities who can provide counsel with information concerning the child's ability to direct representation. Only the attorney can determine whether the child is capable of directing representation or the child has diminished capacity.

Pursuant to paragraph (B)(2), if a child has diminished capacity, legal counsel is to make a good faith effort in determining the child's needs and wishes. When it is not reasonable to maintain the attorney-client relationship, the attorney may substitute judgment for the child during a brief period or on a particular issue. As the child begins to develop the capacity to direct representation, the attorney should take direction from the child.

However pursuant to paragraph (B)(3), when the attorney reasonably believes that the child is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the child's own interest, the attorney can take reasonable steps in protecting the child. In some cases, the attorney may need to move for appointment of a guardian *ad litem* to protect the best interests of the child.

Appointment of a guardian *ad litem* should be in the rare instance when the attorney feels that he or she cannot take reasonable steps in protecting the child's interests. When there is counsel and a guardian *ad litem*, counsel is to represent the legal interests of the child and the guardian *ad litem* is to protect the child from harm. It is the duty of the county agency to protect the best interests of the child.

"Legal interests" denotes that counsel is to express the child's wishes to the court regardless of whether the attorney agrees with the child's recommendation. "Best interests" denotes that county agency and/or in rare cases, a guardian *ad litem* is to express what the county agency or guardian *ad litem* believes is best for the child's care, protection, safety, and wholesome physical and mental development regardless of whether the child agrees.

Attorneys for children and parents are to engage in out-of-court advocacy, including attending and participating in family service plan meetings, necessary to advocate effectively for their clients.

Pursuant to paragraph (D), there may be times when the court appoints counsel for other guardians. Counsel for other guardians should follow the same requirements as the requirements for a parent's attorney.

Paragraph (E)(6) requires the attorney for the county agency to attend and present a case necessary to pursue the child's best interests and the purposes of the Juvenile Act. The attorney is to enter evidence into the record and offer witnesses who are subject to cross-examination. It is the sole duty of the county agency through its attorney to present a case to the court consistent with the actions of the county agency and in support of the dependency petition.

Pursuant to paragraph (F)(1), the county agency is to file the petition. See also Rule 1330. The county agency is also to ensure that if removal of the child from the home is proposed or has oc-

curred that: a) the child’s placement is the least restrictive placement that meets the needs of the child supported by reasons why there are no less restrictive alternatives available; b) continuation in the home is contrary to the welfare, safety, or health of the child; c) services are being provided to the guardian unless the court has made a finding that no reasonable efforts to prevent placement or promote reunification are necessary; or d) it has made all reasonable efforts to achieve permanency in a timely manner and if reasonable efforts are not made, provide evidence that lack of services was reasonable. See paragraph (F)(2) and Rules 1512(D)(2) and 1514.

The county agency is to advise the attorneys and unrepresented parties of: a) any plan to relocate the child or modify custody or visitation arrangements, including the reasons, prior to the filing of a motion pursuant to Rule 1606 or a change in visitation; and b) any proceeding, investigation, or hearing under the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.* or the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, directly affecting the child. See paragraph (F)(4).

Nothing in this rule is intended to absolve the attorneys from the Rules of Professional Conduct when speaking with represented parties.

Official Note: Rule 1154 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended , effective .

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 1154 published with the Court’s Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 1154 published with the Court’s order at Pa.B. ().

PART D. PROCEEDINGS IN CASES BEFORE MASTER

(Editor’s Note: The following rule is new and printed in regular type to enhance readability.)

Rule 1183. Role of Master.

A. *Role of Master.* The master shall ensure:

1) that the juvenile understands and has been apprised:

- a) of the right to have a hearing before a judge;
- b) that the findings and recommendations of the master must be approved by the judge before they are final;
- c) of their rights at each stage of the proceeding; and

2) the Rules of Juvenile Court Procedure and the requirements of the Juvenile Act are followed at every proceeding.

B. *Ethical Obligations.* The master has ethical and professional obligations pursuant to the Rules of Professional Conduct and the Code of Judicial Conduct.

Comment

See the Pa.R.P.C. for specific obligations. See also Canon 7 of the Code of Judicial Conduct for applicability of Code to attorneys presiding as an officer of the judicial system.

CHAPTER 18. SUSPENSIONS

Rule 1800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to dependency proceedings only:

* * * * *

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provides that there is not a conflict of interest for the guardian *ad litem* in communicating the child’s wishes and the recommendation relating to the appropriateness and safety of the child’s placement and services necessary to address the child’s needs and safety, is suspended only insofar as the Act is inconsistent with Rules 1151 and 1154, which [**allows for appointment of separate legal counsel and a guardian *ad litem* when the guardian *ad litem* determines there is a conflict of interest between the child’s legal interest and best interest**] provides counsel is to communicate the child’s wishes and the county agency is to make the recommendation relating to appropriateness and safety of the child’s placement and services necessary to address the child’s needs and safety.

4) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child, is suspended only insofar as the Act is inconsistent with Rule 1152, which does not allow a guardian **or a child** to waive the child’s right to counsel [**and a child may not waive the right to a guardian *ad litem***].

* * * * *

EXPLANATORY REPORT

The Juvenile Court Procedural Rules Committee (Committee) is seeking to clarify the role and duties of attorneys in juvenile court proceedings. When reviewing this topic, the Committee decided to pattern its proposal after the American Bar Association’s Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (ABA Model Act).

The issue presented to the Committee was a concern from children in dependency proceedings who believe their voices and concerns are being overlooked and their relationship with their attorney is built on deceit and betrayal.

The root of this issue concerns whether an attorney can maintain an attorney-client relationship with an older child and use information gained in confidence against the child for the sake of what the attorney believes is in the best interests of that child. Albeit children are involved in dependency proceedings, in no other area of law is: 1) the attorney-client relationship broken by determinations made by the attorney with information gained in the confidential relationship as attorney-client; and 2) the attorney allowed to give the court evidence and offer hearsay testimony as an “expert” without properly entering evidence into the record, being sworn in as an expert witness, or subject to cross-examination by other parties.

The county agency is charged with the duty of protecting children in this Commonwealth. It seeks to repair families by offering services to improve relationships and parenting skills, and eventually reunite the child with the parent. It also seeks removal of children from their

homes, petitions the court for dependency, and requests termination of parental rights if necessary in their assessments.

This duty to protect children has moved away from the county agency and has been placed on guardians *ad litem*. These attorneys have not been trained formally in child welfare issues, social development of children, restoring and maintaining relationships, or reducing and repairing trauma. However, their actions may further traumatize children.

The Committee has heard from several child advocates concerning their dilemma as “best interests” attorneys, otherwise known as guardians *ad litem*. When these attorneys meet children, they introduce themselves, explain the attorney-client relationship, and say, “you can trust me and I will keep your secrets.” Then, in the child’s eyes, a betrayal occurs because an attorney, who may have different ideals and thoughts about how life should be, replaces the child’s wishes with what the attorney believes the child needs and wants. The attorney has determined it is critical to reveal confidential information for the “best interests” of that child. The child feels he or she has no voice in the outcome of a proceeding that will affect the rest of his or her life.

The Report to the ABA Model Act best describes the Committee’s rationale for its clarification of the role of attorneys in the Rules of Juvenile Court Procedure:

Although many states require that a lawyer be appointed for a child in an abuse and neglect proceeding, some require that the child’s lawyer be “client directed” and others require the lawyer to act as a guardian *ad litem* whereby the attorney is charged with the duty of protecting and serving the “best interests” of the child. Often there is not “careful delineation of the distinctions between the ethical responsibilities of a lawyer to the client and the professional obligations of the lay guardian *ad litem* as a best interests witness for the court.”¹ The states’ use of different statutory language and mandated roles for child representation has led to much confusion within the field.

The proposed Model Act conforms to the clearly stated preference in the ABA Abuse and Neglect Standards for a client-directed lawyer for each child. Similarly, the proposed Model Act is consistent with the ABA Model Rules. The Model Act states that the child’s lawyer should form an attorney-client relationship which is “fundamentally indistinguishable from the attorney-client relationship in any other situation and which includes duties of client direction, confidentiality, diligence, competence, loyalty, communication, and the duty to advise.”²

Consonant with the ABA Model Rules, the drafters of the Model Act started from the premise that all child clients have the capacity to form an attorney-client relationship. An attorney must enter into representation of a child treating the child client as he or she would any other client to every extent possible. The attorney should give the child frank advice on what

he or she thinks is the best legal remedy to achieve the child’s expressed wishes. This decision should not be based on the attorney’s mores or personal opinions; rather it should focus on the attorney’s knowledge of the situation, the law, options available and the child’s wishes. The proposed Model Act also provides specific guidance for lawyers charged with representing those child clients with diminished capacity. Some children (including infants, pre-verbal children, and children who are mentally or developmentally challenged) do not have the capacity to form a lawyer-client relationship. These child clients should be considered the exception, not the rule, and the structure of representation for children as a whole should be based upon a theory of competence and capacity.

Providing children in abuse and neglect cases with a client-directed ‘traditional’ lawyer is consistent with the thinking of national children’s law experts. A conference on the representation of children was held at Fordham Law School in 1995 entitled *Ethical Issues in the Legal Representation of Children*. The conference examined the principles set out in the then-proposed (later adopted) ABA Abuse and Neglect Standards and conferees clearly recommended that lawyers for children should act as lawyers, not as guardians *ad litem*.³ The co-sponsors and participants at the Fordham conference included national children’s law organizations and many ABA entities.⁴

Ten years later in 2006, children’s law experts gathered again at a conference at the University of Nevada, Las Vegas (UNLV), to review the state of legal representation of children. Like the Fordham Conference, the UNLV participants produced a set of recommendations.⁵ The UNLV Recommendations encourage lawyers to seek to empower children by helping them develop decision-making capacity. Regarding the role of the lawyer, the UNLV Recommendations strongly support client-directed representation for children capable of making considered decisions.⁶ Again, the list of co-sponsors and participants included nationally respected children’s law organizations and many ABA entities.⁷

Consistent with the ABA Abuse and Neglect Standards, ABA policy, and the recommendations of national children’s law experts, Section 3 of this Model Act mandates that an attorney, acting in a traditional role, should be appointed for every child who is the

³ Recommendations of the Conference on Ethical Issues in the Legal Representation of Children, 64 FORDHAM L. REV. 1301 (1996) (Fordham Recommendations) (attorney must follow child’s expressed preferences and attempt to discern wishes in context in developmentally appropriate way if child is incapable of expressing viewpoint).

⁴ Co-sponsors included the Administration for Children, Youth and Families, U.S. Department of Health and Human Services; ABA Center on Children and the Law, Young Lawyers Division; ABA Center for Professional Responsibility, ABA Section of Criminal Justice, Juvenile Justice Committee; ABA Section of Family Law; ABA Section of Individual Rights and Responsibilities; ABA Section of Litigation Task Force on Children; ABA Steering Committee on the Unmet Legal Needs of Children; Juvenile Law Center; National Association of Counsel for Children; National Center for Youth Law; National Counsel of Juvenile and Family Court Judges; Stein Center for Ethics and Public Interest Law, Fordham University School of Law.

⁵ See Recommendations of the UNLV Conference on Representing Children in Families: Children’s Advocacy and Justice Ten Years after Fordham, 6 NEV. L. J. 592-687 (2006) (UNLV Recommendations).

⁶ As stated in the Recommendations, “[c]hildren’s attorneys should take their direction from the client and should not substitute for the child’s wishes the attorney’s own judgment of what is best for children or for that child.” *Id.* at 609.

⁷ Co-sponsors of UNLV included the ABA Center on Children and the Law, Young Lawyers Division; ABA Center for Professional Responsibility; ABA Child Custody and Adoption Pro Bono Project; ABA Section of Family Law; ABA Section of Litigation; Home at Last, Children’s Law Center of Los Angeles; Juvenile Law Center; National Association of Counsel for Children; National Center for Youth Law; National Council of Juvenile and Family Court Judges; National Juvenile Defender Center; Stein Center for Law and Ethics, Fordham University School of Law; Support Center for Child Advocates; and Youth Law Center.

¹ Uniform Representation of Children in Abuse and Neglect, and Custody Proceedings Act (hereinafter “NCCUSL Act”), National Conference of Commissioners of Uniform State Law, Prefatory Note (2007); the text of the final act can be found at http://www.law.upenn.edu/bll/archives/ulc/rarceda2007_final.htm. See Atwood, *supra* note 1, at 188-91; Howard A. Davidson, *Child Protection Policy and Practice at Century’s End*, 33 FAM. L. Q. 765, 768-69 (1999). For information about different state practices see Representing Children Worldwide 2005 (www.law.yale.edu/rcw) or A Child’s Right to Counsel. First Star’s National Report Card on Legal Representation for Children 2007.

² ABA Model Act, Commentary to Section 7(c) which refers to ABA Model Rules 1.2, 1.6, 1.3, 1.1, 1.7, 1.4 and 2.1.

subject of an abuse or neglect proceeding.⁸ Attorneys can identify legal issues regarding their child clients, use their legal skills to ensure the protection of their clients' rights and needs, and advocate for their clients. The Model Act requires lawyers to complete a thorough and independent investigation and participate fully in all stages of the litigation. Lawyers for children, as lawyers for any client, have a role as a counselor to their clients and should assist their clients in exploring the practical effects of taking various positions, the likelihood that a court will accept particular arguments, and the impact of such decisions on the child, other family members, and future legal proceedings.⁹

Lawyers for children allow children to be participants in the proceedings that affect their lives and safety. Children who are represented by a lawyer often feel the process is fairer because they had a chance to participate and to be heard. Consequently, children are more likely to accept the court's decision because of their own involvement in the process.

Requiring lawyers to represent children in abuse and neglect cases is also consistent with federal law. The Child Abuse Prevention and Treatment Act (CAPTA) requires the appointment of a "guardian *ad litem*" for a child as a condition of receiving federal funds for child abuse prevention and treatment programs. Providing a child with a lawyer is consistent with the requirements of CAPTA. No state with a lawyer model has been held out of compliance with CAPTA and Health and Human Services (HHS) has issued guidance suggesting that appointing counsel for a child promotes the child's "best interests" consistent with CAPTA.¹⁰

The Model Act also provides lawyers guidance when representing children with diminished capacity, which includes young children. Like all children in these proceedings, young children are entitled to proceedings that fully examine and address their needs, including *inter alia* their physical, behavioral, and developmental health and well-being, their education and early-learning needs, their need for family permanency and stability, and their need to be safe from harm. The Model Act also allows states to set an age of capacity if they so choose.

The Model Act allows and welcomes "best interest advocates" in child welfare cases. A best interest advocate is defined as "an individual, not functioning or intended to function as the child's lawyer, appointed by the court to assist in determining the best interests of the child."¹¹ The advisor may be a court-appointed special advocate (CASA), a guardian *ad litem* or other person who has received training specific to the best interest of the child. The Act endorses and in no way restricts the widespread use of CASAs to fulfill the role of court appointed advisor.¹²

A state's law regarding abuse and neglect proceedings should be designed to provide children involved in an abuse and neglect case with a well-trained, high quality lawyer who is well-compensated and whose caseload allows for effective representation. Lawyers for children are essential for ensuring that the child's legal rights are protected. "Unless children are allowed by lawyers to set the objectives of their cases, they would not only be effectively deprived of a number of constitutional rights, they would be denied procedures that are fundamental to the rule of law."¹³

Children in dependency court proceedings are often taken from their parents, their siblings and extended families, their schools, and everything that is familiar to them. Children and youth deserve a voice when important and life-altering decisions are being made about them. They deserve to have their opinions heard, valued and considered. They have interests that are often distinct or are opposed to those of the state and their parents in dependency proceedings and, as the ABA has recognized many times, they deserve ethical legal representation.

Report for the American Bar Association's Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings.

This proposal seeks to clarify the role of the attorneys and the county agency in dependency proceedings. While the Committee was working on this proposal, it also believed the role of attorneys in delinquency matters also should be clarified.

Rule 153

Attorneys representing juveniles must follow the Rules of Professional Conduct. The ethical and professional obligation in the attorney-client relationship belongs to the juvenile, rather than the parents or guardian. Privileged information cannot be revealed to a parent or guardian without the juvenile's consent.

Additionally, the attorney should comply with basic standards of practice. See Comment to the rule. The Juvenile Defenders Association of Pennsylvania has developed guidelines for attorneys to follow when practicing in juvenile court. These guidelines may be viewed and downloaded at: <http://www.pajuvdefenders.org/publications/performance-guidelines-for-quality-and-effective-juvenile-delinquency-representation>. The Committee supports these guidelines.

Rule 157

This rule addresses the role of the attorney for the Commonwealth. In addition to the Rules of Professional Conduct for all attorneys, the attorney for the Commonwealth has special ethical obligations as a prosecutor. See Pa.R.P.C. 3.8.

Additionally, the attorney for the Commonwealth should comply with basic standards of practice. See Comment to the rule. The Pennsylvania District Attorney Association has adopted new practice standards for juvenile prosecutors to follow when defending the Common-

⁸ Federal law has long authorized the discretionary appointment of counsel for Indian children subject to the Indian Child Welfare Act. See 25 U.S.C. § 1912(b) (2000).

⁹ Model Act, Commentary for Section (7)(c)(1).

¹⁰ U.S. Department of HHS Children's Bureau, Adoption 2002: The President's Initiative on Adoption and Permanence for Children, Commentary to Guideline 15A

¹¹ Model Act, Section 1.

¹² The Court Appointed Special Advocate is a lay volunteer who advocates as a non-lawyer on behalf of a child in child abuse and neglect proceedings. Volunteers are screened and trained at the local level, but all CASA programs that are affiliated with the National Court Appointed Special Advocate Association must comply with the standards issued by that organization. See www.casaforchildren.org. In addition, many states have established their own standards to ensure that the volunteers representing children are competent and possess relevant training and experience. See generally Michael S. Piraino, Lay Representation of Abused and Neglected Children: Variations

on Court Appointed Special Advocate Programs and Their Relationship to Quality Advocacy, 1 *Journal of Center for Children and the Courts* 63 (1999). The Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice is authorized to enter into cooperative agreements with the National CASA Association to expand CASA programs nationally. See 42 U.S.C.A. § 13013 (2005 & Supp. 2006). One of the key strengths of the CASA program is that a CASA volunteer generally represents only one child at a time. Moreover, an attorney for the child working in tandem with a CASA volunteer can provide a powerful "team" approach in juvenile court. In addition, CASA volunteers may have access to the CASA program's own legal representative for legal advice.

¹³ Martin Guggenheim, A Paradigm for Determining the Role of Counsel for Children, 64 *Fordham L.Rev.* 1399, 1423-24 (1996).

wealth in juvenile court. These guidelines may be viewed and downloaded at: <http://www.pabar.org/weblinks/resources/PDDA%20Standards%20for%20PA%20Prosecutors%20in%20Juvenile%20Court.pdf>. The Committee supports these guidelines.

Rules 183 and 1183

These rules require the master to ensure the juvenile understands and has been apprised: 1) of the right to have a hearing before a judge; 2) that the findings and recommendations of the master must be approved by the judge before they are final; and 3) of the rights at each stage of the proceeding, including if the juvenile is admitting to the offenses pursuant to Rule 407, all the rights the juvenile is waiving as set forth in the admissions colloquy are understood. Additionally, the master is to ensure the Rules of Juvenile Court Procedure and the requirements of the Juvenile Act are followed.

Because the master is an attorney, the master must follow the Rules of Professional Conduct. Additionally, the master presides as an officer of the judicial system and must follow the Code of Judicial Conduct. *See* Canon 7 of the Code of Judicial Conduct.

Rule 1151

As explained in the Introduction *supra*, the Committee is clarifying the role of attorneys in dependency proceedings. To accomplish this goal, the Committee is proposing procedures similar to the ABA Model Act. Each child will receive counsel. The distinction between when a child receives a guardian *ad litem* or legal counsel is being eliminated. In the rare case, counsel may request appointment of a guardian *ad litem*. This request should be rare; otherwise, there could be two attorneys in every case, which would create a fiscal challenge for most judicial districts.

Counsel for children may assume a role as “best interests” attorney only when counsel has determined that the child has diminished capacity. *See* Rule 1154(B). In most instances, only younger children would meet the requirement of having diminished capacity, therefore, the attorney can substitute judgment. This allows older children to direct their representation and allow counsel to be an attorney with a traditional attorney-client relationship.

The Comment to the rule clarifies that a motion for appointment of a guardian *ad litem* should be made only when the attorney believes the following three requirements have been met: 1) The child has diminished capacity; 2) the child is at risk of substantial physical, financial, or other harm; and 3) the attorney cannot adequately act in the child’s own interest.

When counsel determines a child has diminished capacity and has not met the other two requirements, counsel will remain in the case, substitute judgment, and not request appointment of a guardian *ad litem*.

Rule 1152

Consistent with the changes in this proposal, the Committee is deleting “guardian *ad litem*” and replacing it with “counsel.” The current rules do not allow a child to waive a guardian *ad litem*; however, do allow waiver of legal counsel in limited circumstances. Because the Committee is eliminating this distinction between guardian *ad litem* and counsel with this proposal, it must also address waiver of counsel and is seeking comment on this issue.

Rule 1153

Attorneys representing children and parents are to follow the Rules of Professional Conduct. When representing children, counsel must maintain a traditional attorney-client relationship unless the attorney has determined the child has diminished capacity. *See* discussion *supra*.

The Comment to this rule also addresses basic standards of practice that attorneys must follow.

Rule 1154

Because of the clarification of the role of attorneys, this rule clarifies the duties of each party in the proceedings.

Paragraph (A) provides for the duties of counsel for the child. When the child has diminished capacity, paragraph (B) applies. Paragraph (C) provides for the duties of a guardian *ad litem*, when appointed in the rare case.

Paragraph (D) provides for the duties of counsel for the parents. When the court does appoint counsel for a guardian or custodian, these provisions also apply. *See* Comment to Rule 1153.

Paragraph (E) & (F) lay out the duties of counsel for the county agency and the county agency. The county agency is to ensure the child’s safety and needs are being met while pursuing the child’s best interests.

The Comment to the rule provides further clarification of the duties of the parties and their attorneys.

Rule 1800

The suspensions also were adjusted with its corresponding proposed rule modifications *supra*.

[Pa.B. Doc. No. 12-1633. Filed for public inspection August 24, 2012, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 1 AND 11]

Proposed Amendments to Rules 187 and 1187

The Juvenile Court Procedural Rules Committee is eliciting public comment on proposed modifications to Rules 187 and 1187 before it considers any recommendations to the Supreme Court of Pennsylvania. These proposed modifications address cases that may be heard by masters and whether “master” should be changed to “hearing officer” throughout the Rules.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq.
 Supreme Court of Pennsylvania
 Juvenile Court Procedural Rules Committee
 Pennsylvania Judicial Center
 601 Commonwealth Ave, Suite 6200
 P. O. Box 62635
 Harrisburg, PA 17106-2635.

All comments shall be received no later than Monday, September 24, 2012.

*By the Juvenile Court
 Procedural Rules Committee*

HONORABLE TODD A. HOOVER,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART D. MASTERS

Rule 187. Authority of [**Master**] Hearing Officer.

A. *Cases to be heard by [**Master**] hearing officer.* A [**master**] hearing officer shall have the authority to preside over only the following:

- 1) detention hearings, detention review hearings, or shelter-care hearings;
- 2) discovery, pre-adjudicatory, or preliminary proceedings for misdemeanors;
- 3) any hearing in which the petition alleges only misdemeanors, **excluding sexual offense cases**; and
- 4) uncontested dispositional review hearings and uncontested probation revocation hearings.

B. *No authority.* A [**master**] hearing officer shall not have the authority to:

- 1) conduct transfer hearings pursuant to Rule 394;
- 2) **conduct hearings concerning any sexual offense**;
- 3) issue warrants; and
- [**3**] 4) hear requests for writs of *habeas corpus*.

C. *Right to hearing before judge.* Prior to the commencement of any proceeding, the [**master**] hearing officer shall inform the juvenile, the juvenile's guardian(s), if present, the juvenile's attorney, and the attorney for the Commonwealth that the juvenile and the Commonwealth have a right to have the matter heard by a judge. If the juvenile or the Commonwealth objects to having the matter heard by the [**master**] hearing officer, the case shall proceed before the judge.

Comment

A [**master's**] hearing officer's authority is limited under paragraph (A) to specifically those types of cases provided. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6305(b) only to the extent that [**masters**] hearing officers may not hear all classes of cases.

Pursuant to paragraph (A)(3), a sexual offense is any offense prescribed in 18 Pa.C.S. Chapter 31.

Under paragraph (B)(2), nothing is intended to limit the [**master's**] hearing officer's ability, in a proper case before the [**master**] hearing officer, to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (C), see 42 Pa.C.S. § 6305(b).

See Rule 127 for recording of proceedings before a [**master**] hearing officer.

Official Note: Rule 187 adopted April 1, 2005, effective April 1, 2006. **Amended** , **effective** .

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 187 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 187 published with the Court's order at Pa.B. () .

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART D. PROCEEDINGS IN CASES BEFORE MASTER

Rule 1187. Authority of Master.

A. *No authority.* A [**master**] hearing officer shall not have the authority to:

- 1) preside over:
 - a) termination of parental rights hearings;
 - b) adoptions;
 - c) any hearing in which any party seeks to establish a permanency goal of adoption or change the permanency goal to adoption;
- 2) enter orders for emergency or protective custody pursuant to Rules 1200 and 1210;
- 3) issue warrants; and
- 4) issue contempt orders.

B. *Right to hearing before judge.*

1) Prior to the commencement of any proceeding, the [**master**] hearing officer shall inform all parties of the right to have the matter heard by a judge. If a party objects to having the matter heard by the [**master**] hearing officer, the case shall proceed before the judge.

2) If a party objects to having the matter heard by the [**master**] hearing officer pursuant to paragraph (B)(1), the [**master**] hearing officer or the court's designee for scheduling cases shall immediately schedule a hearing before the judge. The time requirements of these rules shall apply.

Comment

A [**master's**] hearing officer's authority is limited under this rule. To implement this rule, Rule 1800 suspends 42 Pa.C.S. § 6305(b) only to the extent that [**masters**] hearing officers may not hear all classes of cases.

Under paragraph (A)(1)(c), once the permanency goal has been approved for adoption by a judge, all subsequent reviews or hearings may be heard by the [**master**] **hearing officer** unless a party objects pursuant to paragraph (B).

Under paragraph (A)(3), nothing is intended to limit the [**master's**] **hearing officer's** ability, in a proper case before the [**master,**] **hearing officer** to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (B), see 42 Pa.C.S. § 6305(b).

Under paragraph (B)(2), it should be determined whenever possible before the date of the hearing whether there will be an objection to having the matter heard before a [**master**] **hearing officer**.

If it is anticipated that there will be an objection, the case is to be scheduled in front of the judge, rather than the [**master**] **hearing officer** to prevent continuances and delays in the case.

See Rule 1127 for recording of proceedings before a [**master**] **hearing officer**.

Official Note: Rule 1187 adopted August 21, 2006, effective February 1, 2007. **Amended** , **effective** .

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1187 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

Final Report explaining the amendments to Rule 1187 published with the Court's order at Pa.B. ().

REQUEST FOR PUBLIC COMMENT

The Juvenile Court Procedural Rules Committee (Committee) is seeking public comment on the authority of masters in juvenile court proceedings and whether "master" should be renamed "hearing officer."

With the adoption of Act 111 of 2011 (P. L. 446, No. 111, Cl. 18), the Committee believes a master should not preside over any cases involving sexual offenses because of the lifetime implications of an adjudication of delinquency for the juvenile. The Comment to the rule defines sexual offense as any offense prescribed by 18 Pa.C.S. Chapter 31.

As the Committee was making this proposed change, the Committee thought it was advisable to seek input on whether masters should or should not hear other types of cases in both delinquency and dependency proceedings.

Additionally, the Committee is seeking guidance on whether the term "master" should be changed to "hearing officer." The origin of the term "master," as used in the Rules, comes from the Juvenile Act. See 42 Pa.C.S. § 6301 *et seq.* The use of the term "master" has been the subject of controversy in several judicial districts because of the origin of word "master" and its negative connotation.

Because many judicial districts have changed the name of their attorneys presiding as "masters" to "hearing officers," the Committee thought it should elicit comment

to determine if the Rules of Juvenile Court Procedure should also be changed.

[Pa.B. Doc. No. 12-1634. Filed for public inspection August 24, 2012, 9:00 a.m.]

Title 25—LOCAL COURT RULES

WAYNE COUNTY

Local Rule 301.1; ARD in Summary Cases at the Magisterial District Court Level; No. 87-Misc. Criminal

Order

And Now, this 6th day of August 2012, *It Is Hereby Ordered That* the following Wayne County Local Rule 301.1 (ARD Disposition in Summary Cases) is *Hereby Adopted*.

It Is Further Ordered That one (1) certified copy of this Order shall be filed by the Court Administrator of Wayne County with the Administrative Office of Pennsylvania Courts; that two (2) certified copies and a computer diskette or CD-ROM copy that complies with the requirement of 1 Pa. Code § 13.11(b) shall be filed with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Criminal Procedural Rules Committee, which Committee has certified to this court that this Administrative Order is not inconsistent with any general rule of the Supreme Court. Finally, it is Ordered that the Court Administrator of Wayne County publish a copy of this Order on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>

By the Court

RAYMOND L. HAMILL,
President Judge

Local Rule 301.1. ARD in Summary Cases at the Magisterial District Court Level.

The District Attorney of Wayne County has filed a certification pursuant to Pa.R.Crim.P. 301 entitled **Procedures for Accelerated Rehabilitative Disposition in Summary Cases Before the Minor Judiciary**, and:

A. Has elected that ARD in summary cases shall proceed before the Minor Judiciary pursuant to Pa.R.Crim.P. 301 and that offenders of Title 18 Pa.C.S.A. Section 6308, Purchase, Consumption, Possession or Transportation of liquor or malt or brewed beverages are eligible for the summary ARD

B. The local procedures established by the President Judge, The Honorable Raymond L. Hamill, for ARD in summary cases before the Minor Judiciary are as follows:

1. The cost of the ARD administrative expense for summary cases is \$100.00 made payable to the County of Wayne;

2. The conditions of the program are as follows:

a. Education—defendants charged with violations of 18 Pa.C.S.A Section 6308 who enter into the ARD program must complete the first two class of the Alcohol Highway Safety Program held at regular intervals at the Wayne County Drug and Alcohol Commission. The cost of these classes is \$50.00 paid at the Wayne County Drug and

Alcohol Commission. If the defendant is an out of state resident, he or she may purchase and complete an on-line Alcohol Education class.

b. Six (6) hours of community service—list of community service opportunities to be provided by the Wayne County District Attorney to the Minor Judiciaries and then supplied to those applying for the ARD program.

3. The Minor Judiciaries are required to keep records of those who participate, those who complete the program, those who do not complete the program and those who pay in full the costs associated with the program.

4. The Minor Judiciary must submit a monthly report on the disposition of all the cases eligible for ARD to the Wayne County District Attorney who shall compile reports and monitor the cases and be answerable and accountable to the President Judge.

5. The procedures for **completion and termination** of the program are outlined in detail in section D. of this Administrative Order.

C. A defendant charged with Title 18 Section 6308 will receive an informational form and application prepared by the Wayne County District Attorney outlining the Summary ARD program along with the Citation and Summons from the Magisterial District Court. The defendant may request admittance into the program by sending a completed application to Wayne County District Attorney's Office, 925 Court Street, Honesdale, Pennsylvania, 18431, Attn: Detective Peter Hower.

Following a receipt of the application the procedure is as follows:

1. An informational form and application prepared by the Wayne County District Attorney outlining the Summary ARD program for violations of 18 Pa.C.S.A. Section 6308 shall be mailed to the Defendant along with the citation by the Magisterial District Court.

2. The Defendant then must appear before the Magisterial District Judge at a date set by the Magisterial District Judge. The Wayne County District Attorney's Office will notify the Magisterial District Judge if an application was received for consideration into the program from the Defendant and if the Defendant qualifies. If the Defendant qualifies, he or she will execute a Consent Agreement at the Magisterial District Judge's office to be entered into the program and will receive the program requirements from the Magisterial District Judge. The Magisterial District Judge shall then set a return date for the offender to reappear in his or her Court and provide evidence of completion of the ARD program. Said evidence of completion of the ARD program shall include evidence of completion of a drug and alcohol awareness education program offered through Wayne County Drug and Alcohol Agency's appropriate drug and alcohol awareness class and a signed sheet evidencing six (6) hours of community service by the community service

provider. Said return date shall be set sixty (60) days from the first court appearance set by the Magisterial District Judge. If the Defendant does not qualify for the ARD program the Magisterial District Court shall proceed as in the normal course of the citation being issued and dispose of the summary offense.

3. All ARDs for violations of 18 Pa.C.S.A. Section 6308 Purchase, consumption, possession or transportation of liquor or malt or brewed beverages shall not extend past a period of three months from the date the Defendant executes the Consent Agreement.

4. Each issuing authority shall submit a monthly report on all cases submitted for ARD to the Wayne County District Attorney who shall compile such reports and monitor the cases as may be required.

5. If the Defendant is convicted of a crime or summary offense during the period of the ARD program, then the ARD shall be terminated and the matter may be handled by the Minor Judiciary for disposition on the underlying summary offense.

6. If the Defendant successfully completes the program, the Magisterial District Judge shall dismiss the prosecution and send certified copies of the dismissal to the Wayne County District Attorney. The case appears ARD open while defendant is in the program and ARD closed upon completion.

7. If the Defendant does not complete the conditions of the program within the allotted time period, the Magisterial District Judge may, after giving defendant notice and an opportunity to be heard, revoke defendant's admission, in which case prosecution shall proceed in normal fashion.

8. A Defendant shall be required to pay a program administrative fee established in these Wayne County Rules of Criminal Procedure. The Magisterial District Judge shall disburse costs as provided by law to the County. The Magisterial District Judge shall collect and disburse a program administrative fee, the amount of which may be set by administrative order. Until changed, the fee shall be \$100.00. Said fee is made payable to and collected by the referring magisterial district court to be placed in the county general fund.

9. Nothing in this Local Rule 301.1 shall supersede 18 Pa.C.S.A. Section 6310.4 which states that whenever a person is admitted in to any pre-adjudication program for violation of Section 6308 the court shall order the operating privilege be suspended and a copy of the order shall be transmitted to the Department of Transportation. Thus, this ARD program for violations of 18 Pa.C.S.A. Section 6308 includes a license suspension by Order and reporting by the Magisterial District Judge to the Department of Transportation.

[Pa.B. Doc. No. 12-1635. Filed for public inspection August 24, 2012, 9:00 a.m.]