

RULE 5:8A. Appointment Of Counsel For Child

In all cases where custody or parenting time/visitation is an issue, the court may, on the application of either party or the child or children in a custody or parenting time/visitation dispute, or on its own motion, appoint counsel on behalf of the child or children. Counsel shall be an attorney licensed to practice in the courts of the State of New Jersey and shall serve as the child's lawyer. The appointment of counsel should occur when the trial court concludes that a child's best interest is not being sufficiently protected by the attorneys for the parties. Counsel may, on an interim basis or at the conclusion of the litigation, apply for an award of fees and costs with an appropriate affidavit of services, and the trial court shall award fees and costs, assessing same against either or both of the parties.

Note: Adopted November 6, 1989 to be effective January 2, 1990; amended July 5, 2000 to be effective September 5, 2000.

Official Comment for Rules 5:8A and 5:8B

The purpose of Rules 5:8A and 5:8B is to eliminate the confusion between the role of a court-appointed counsel for a child and that of a court-appointed guardian ad litem (GAL). The Supreme Court's Family Division Practice Committee in its 1987-1988 Annual Report distinguishes the roles.

A court-appointed counsel's services are to the child. Counsel acts as an independent legal advocate for the best interests of the child and takes an active part in the hearing, ranging from subpoenaing and cross-examining witnesses to appealing the decision, if warranted. If the purpose of the appointment is for legal advocacy, then counsel would be appointed.

A court-appointed guardian ad litem's services are to the court on behalf of the child. The GAL acts as an independent fact finder, investigator and evaluator as to what furthers the best interests of the child. The GAL submits a written report to the court and is available to testify. If the purpose of the appointment is for independent investigation and fact finding, then a GAL would be appointed. The GAL can be an attorney, a social worker, a mental health professional or other appropriate person. If the primary function of the GAL is to act in the capacity of an expert, then the court should ordinarily appoint a GAL from the appropriate area of expertise. Attorneys acting on behalf of children in abuse or neglect cases and in termination of parental rights cases should act as counsel for the child pursuant to Rule 5:8A rather than in the capacity of a GAL pursuant to Rule 5:8B. *See, Matter of M.R.*, 135 N.J. 155, 174, 638 A.2d 1274, 1283 (1994)).

These rules are not intended to expand the circumstances when such appointments are to be made; neither are these appointments to be made routinely.

Note: Adopted November 6, 1989, to be effective January 2, 1990, amended July 13, 1994 to be effective September 1, 1994