

**LAW GUARDIANS (ATTORNEY FOR THE CHILD)  
AND WHAT THEY DO**

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In a divorce or child custody action, the court will often appoint an Attorney for the Child (formerly called a Law Guardian) to represent the child (or children). When first appointed the Attorney for the Child must meet with the child to determine the child's wishes and position. The Attorney for the Child will also usually meet and interview with both parents.

The Attorney for the Child must advocate and argue for the child's wishes, even if those wishes are contrary to the best interest of the child. This means that if the child wishes to stay with one parent and the Attorney for the Child believes that this is against the best interest of the child, the Attorney for the Child still must inform the court of the child's wishes.

There are two exceptions to the above rule: (i) if the Attorney for the Child is convinced that the child lacks the capacity for a knowing, voluntary and considered judgment; or (ii) if following the child's wishes is likely to result in substantial risk of imminent serious harm to the child. In these cases, the Attorney for the Child may advocate based on the best interest of the child. However, in such situations, the Attorney for the Child must inform the court of the child's wishes and that the Attorney is advocating for a different result.

Therefore, where the child is too young to make a reasoned judgment, the Attorney for the Child will have to determine what is in the best interests of the child. There is no exact age where a child is considered too young. However, it would be safe to say that a child younger than five years of age is most likely too young to make such a decision. In contrast, a child older than thirteen years of age, unless there are some other issues, is most likely old enough to make a reasoned decision.

It should be noted that if you or the child does not like the Attorney for the Child that it can be difficult or even impossible to have the court appoint a different Attorney.

The Attorney for the Child is usually compensated by the parties. The Court can order: (i) that only one party pay the Attorney; (ii) that both parties pay the Attorney, but, not in equal shares; or (iii) that both parties share equally in the costs of the Attorney for the Child.

The Attorney for the Child will present an oral report and findings to the court. The report is not subject to cross-examination. If there is a hearing, the Attorney for the Child is permitted to question the witnesses, including the mother and father.

Many judges give great weight to the Attorney for the Child's report. Accordingly, a child of appropriate age will often get to dictate the outcome of a custody or visitation battle.

The Badanes Law Office has assisted numerous individuals in matrimonial and family law issues. Call the Badanes Law Office today at: 631-239-1702, email us at: [dbattorney@optonline.net](mailto:dbattorney@optonline.net) or visit our web site: [www.dbnylaw.com](http://www.dbnylaw.com).