

#### **JUVENILE RULE 4. Appointed counsel**

(A) Every party shall have the right to be represented by counsel, and as provided in R.C.2151.352, the right to appointed counsel, if indigent. Appointments may be made to the Franklin County Public Defender, Court Appointed Special Advocates, Legal Clinics and attorneys in private practice. The Court shall maintain a list of private attorneys willing to accept appointments for Juvenile Court cases. The following lists shall comprise the Court appointment list for private attorneys:

List 1. Attorneys who will serve in a dual capacity as Attorney and Guardian ad Litem, or if a conflict exists between those roles solely as Guardian ad Litem for children in delinquency, unruly, abuse, neglect and dependency cases, and for adults, or solely as Attorney for children in abuse, neglect and dependency cases.

List 2. Attorneys who will represent children in delinquency and unruly cases, and adults in criminal matters and contempt actions other than those specified in List 4.

List 3. Attorneys who will serve as counsel for parties in abuse, neglect and dependency cases.

List 4. Attorneys who will represent parties in parentage, custody, visitation, and child support cases, and contempt actions related thereto.

List 5. Attorneys who will represent children charged with delinquency offenses when: A) the offense is a category one or category two offense, as defined in R.C.2152.02; B) relinquishment of jurisdiction for purposes of prosecution as an adult is requested; or C) the child is charged as a serious youthful offender.

List 6. Attorneys who will serve in a dual capacity as Attorney and Guardian ad Litem, or if a conflict exists between those roles solely as Attorney or Guardian ad Litem, for children who file a complaint pursuant to O.R.C. 2151.85.

#### **(B) Application and List Requirements**

(1) In order to be approved and maintain placement on any of the court's list of attorneys or Guardians ad Litem, an attorney must meet the following standards:

- (a) Licensed Ohio attorney in good standing;
- (b) Inform the court of any prior disciplinary complaints against the attorney which resulted in sanctions;
- (c) Maintain a working telephone with a local telephone number or toll free long distance number, with a secretary and/or working answering machine/service to be able to respond to calls from the court or client;
- (d) Either maintain professional liability (malpractice) insurance in an amount equal to the minimum coverages required by the Code of Professional Responsibility, or comply with DR1-104 at the time of the appointment.
- (e) Attorneys are under an ongoing duty to notify the court of changes in their status, address, or telephone number.

(2) Attorneys desiring to be placed on the appointment list shall apply in writing, on a form promulgated by the Court, to the Assistant Court Director for Legal Services, specifying the list(s) from which (s)he is willing to accept appointments.

(a) Lists 1 and 6

CLE Requirements: In order to maintain placement on List 1 or List 6 an attorney must attend a three-hour training program concentrating solely on the duties of Guardians ad Litem. Other equivalent training may be approved by the Assistant Court Director.

(b) Lists 2, 3 and 4

Orientation and Case Observation: Applicants to be placed on lists 2, 3 or 4 must attend an orientation session presented by the C.B.A. Juvenile Law Committee and observe two (2) cases for each list from which (s)he requests appointments with an experienced court appointed or other approved attorney. The orientation and observation requirements, or a portion thereof, may be waived upon application and approval of the Assistant Court Director.

(c) List 5

In addition to the orientation requirement contained in paragraph (B)(2)(b) above, applicants wishing to receive List 5 appointments must have served as lead counsel or co-counsel on three cases involving offenses which currently constitute category 1 or 2 offenses, as defined in R.C.2152.02, and which culminated in a trial, whether in juvenile or adult court, including probable cause hearings in Juvenile Court proceedings to relinquish jurisdiction for prosecution as an adult. Counsel must submit an affidavit listing the case names and numbers of the three cases which meet this requirement to the Assistant Court Director.

### **(C) Appointments**

(1) Private attorneys who are qualified to receive appointments may, during an enrollment period determined by the court, volunteer to be present for preliminary hearing dockets to receive available appointments. Attorneys volunteering to be present will receive confirmation of the date(s) the attorney is assigned to be present for preliminary hearings. Absent an emergency, attorneys who fail to appear for an assigned preliminary hearing docket will not be eligible to volunteer to be present for preliminary hearings during the subsequent enrollment period. Appearing for a preliminary hearing docket does not guarantee that an attorney will receive an appointment.

(2) To maximize efficiency of the appointed counsel clerk and equalize appointments among attorneys on the various appointment lists, all appointments to attorneys on lists 1 through 5 which are not assigned at preliminary hearing will be assigned on a rotating basis. Attorneys who will be unavailable for designated periods of time may notify the appointment clerk of the dates of their unavailability. Once such notification is received, the attorney will not be appointed to any cases during the specified period of unavailability.

Once the appointment entry is signed, the appointed counsel clerk will notify the appointed attorney of the appointment by telephone, speaking with the attorney personally, or by leaving a message with the attorney's staff or on the attorney's answering machine/voice mail. A copy of the appointment entry will be placed in the mailbox of the attorney appointed. For cases with hearings scheduled within ten days, counsel will be contacted to ensure the attorney is available for the hearing and will accept the appointment.

(3) Once appointed, counsel must either continue the hearing if the case is scheduled on a date or time the attorney is unavailable, or withdraw from the case if he/she is unable to fulfill the appointment. The appointed attorney shall provide the appointed counsel clerk with a copy of the entry granting counsel leave to withdraw.

#### **(D) Duties of Appointed Counsel and Juvenile Guardians Ad Litem**

Attorneys accepting appointments to serve as Guardian ad Litem, court appointed counsel, or in the dual capacity of both Attorney and Guardian ad Litem, shall initiate and maintain reasonable contact with their client, which should be no less than once per month. The Attorney/Guardian ad Litem shall advise his / her client / ward of the client's / ward's rights and the possible consequences of the pending action. Attorneys shall personally represent the client for which (s)he was appointed, and shall not, absent an emergency, allow substitute counsel to represent the client. Repeated failure to personally represent the client will result in removal from the Guardian ad Litem/appointed counsel list(s).

The Court shall maintain an individual file for each appointed counsel for the purpose of providing appointments, notices and other matters as may be necessary. It will be the responsibility of appointed counsel to inspect said file not less than weekly.

(1) Upon appointment the Attorney, Guardian ad Litem, or Attorney appointed in the dual capacity of both Attorney and Guardian ad Litem, should perform certain basic duties, as warranted by the facts of the case.

(a) When appointed as the child's attorney, Guardian ad Litem, or in the dual capacity of both attorney and Guardian ad Litem, and when the child is of sufficient age to have communicative ability, interview the child(ren), and when necessary observe each parent with the child(ren). Be aware of the interaction between the parent and child, and the appropriateness of discipline, conversations, and activities. Interview both parents if permitted by their counsel. If only one parent is known, attempt to ascertain the identity and whereabouts of the other parent;

(b) Review pleadings and consult with each attorney as to position and issues. Review the court file, and request discovery;

(c) Investigate all significant persons and interview independently;

(d) Determine the physical and mental health of the child. Obtain the name of any professional who has treated the child, and the child's pertinent records, including medical and hospital records.

(e) Meet with the child's school teacher and counselor. Obtain information regarding the

child's behavior in school and interaction with parents. Review the child's school records.

(f) Perform home visits (this may be combined with the interview process). Observe the living conditions of each parent and the child's sleeping arrangements;

(g) Evaluate the necessity, if any, of psychological evaluations or counseling, and file a motion requesting the same;

(h) Communicate with the Court Family Assessment caseworker or probation officer. Obtain the case history. If the worker has the family file, schedule a time to review it;

(i) Communicate with the Franklin County Children Services worker, and other direct service providers. Obtain the case history. Confirm whether the child has been removed from home and the child's adjustment to his/her current placement. Confirm the names, addresses, and telephone numbers of parents and care providers. Determine what services are being provided the parents;

(j) Call the FCCS Regional Records Room and schedule a time to view their file. Identify the pages you need copied and request FCCS send the copies to your office;

(k) Ask the care providers for their perceptions of the child's adjustment. Assess the child's developmental level. If the child relates a new allegation of abuse or neglect, immediately call FCCS intake, the caseworker, and the Family Assessment caseworker;

(l) Be cognizant that the duty of an attorney to his/her client and the duty of a Guardian ad Litem to his/her ward are not always identical and, in fact, may conflict. The role of the Guardian ad Litem is to investigate the ward's situation and then to ask the court to do what the Guardian ad Litem feels is in the ward's best interest. The role of the attorney is to zealously represent his/her client within the bounds of the law. The first and highest duty of an attorney appointed in a dual capacity is to zealously represent his client within the bounds of the law and to champion his client's cause.

(1) When appointed in the dual capacity of Attorney and Guardian ad Litem for the child, notify the Court and counsel if the child's wishes are in opposition to the Guardian's recommendation and request leave to withdraw as Guardian ad Litem. Once granted, the appointed attorney is relieved of his/her role as Guardian ad Litem and remains solely as attorney for the child. A new Guardian ad Litem will be appointed.

(2) When appointed solely as Guardian ad Litem for the child, notify the Court and counsel if the child's wishes are in opposition to the Guardian's recommendation and request the court appoint an attorney to represent the child.

(m) Maintain a log documenting all work performed, all contact with the child, parties, witnesses, etc., and all telephone calls.

(2) Powers: The powers of the Attorney/Guardian ad Litem shall be wide ranging, including but not limited to, the right to file motions and to review all confidential records involving their client(s) by request, through deposition, and by subpoena. The Attorney / Guardian ad Litem shall have reasonable access to the child at school or in placement.

(3) Reports and Court Appearances: In cases involving termination of parental rights, or when required by a judge or magistrate, the Guardian ad Litem shall prepare and file written reports detailing observations and recommendations prior to or at the time of the dispositional hearing, unless otherwise ordered by the judge or magistrate, and shall be present at all hearings pertaining to the child(ren). The GALs log detailing the work performed should accompany the written report of the GAL. The Attorney/Guardian ad Litem may subpoena and examine independent witnesses. The lay GAL may be represented by counsel who may subpoena and examine independent witnesses presented by other parties.

(4) Duration of Appointment: Court appointed counsel and Guardians ad Litem shall advise their clients of the client's right to objection and appeal. The appointment of counsel continues through objections and shall terminate upon the filing of an entry disposing of all pending matters, or counsel filing a notice of appeal, whichever is later.

(5) Fees and Costs: All filing fees and court costs are waived as to court appointed Attorneys and Guardians ad Litem.

(6) Application: Local Juvenile Rule 4 shall not apply to actions to determine the allocation of parental rights and responsibilities, where counsel/Guardian ad Litem has been appointed pursuant to Local Juvenile Rule 27.

**(E) Requirements to Remain on Guardian ad Litem or Court Appointed Counsel List(s):**

Attorneys wishing to remain on the Guardian ad Litem or court appointed counsel list shall complete the following requirements:

1. Attend six (6) hours of qualifying seminars per Supreme Court reporting period. Excess hours, not to exceed six (6) hours, may be carried over and applied to the following reporting period.

2. Attend six (6) meetings of the C. B. A. Juvenile Law Committee and/or the Central Ohio Association of Juvenile Lawyers per Supreme Court reporting period. If an attorney accepts appointments from list 4, attendance at six (6) C. B. A. Family Law Committee meetings may be substituted for C.B.A. Juvenile Law Committee/C.O.A.J.L. meetings. Membership in the Columbus Bar Association, the C.B.A. Juvenile Law Committee, the C.B.A. Family Law Committee, and C.O.A.J.L. is encouraged but not required. Six hours of continuing legal education related to his/her Juvenile Court appointments may be substituted for attendance at six meetings of the C.B.A. Juvenile Law Committee or Family Law Committee, or C.O.A.J.L. Said six hours of CLE shall be in addition to the six seminar hours required in section 1 above.

3. No later than January 31 of the applicable reporting year established for the attorney pursuant to Rule X of the Supreme Court Rules for the Government of the Bar, complete an eligibility report certifying compliance with the requirements of Local Rule 4, on a form provided by the Court. If an attorney does not complete and return the annual report certifying compliance timely, (s)he will be removed from eligibility.

## **(F) Removal and Reinstatement**

Attorneys may be removed from the court appointment list(s) with the approval of a majority of the judges of the Domestic Relations Court. Attorneys failing to comply with the requirements set forth above, will be removed from the court appointment list. After losing eligibility for any reason, an attorney seeking reinstatement of eligibility may be required to complete the orientation, seminar, and meeting requirements.

## **(G) Compensation and Expenses**

The court shall determine the amount of compensation an appointed attorney will receive based upon the rates of compensation as determined from time to time by the Franklin County Board of Commissioners. In addition thereto, necessary and reasonable expenses may be allowed for such items as expert witness fees, polygraph costs, long distance phone calls, photocopying, and certain travel expenses. Attorneys seeking reimbursement for expenses must provide receipts for all expenses in excess of one dollar. Court approval is not required for expenses up to \$100.00. However, attorneys may not fractionalize expenses to circumvent the \$100.00 cap. Prior approval by the Assigned Judge is required before incurring expenses exceeding \$100.00. The Assigned Judge may not allow for any fixed office overhead expenses, Court transcripts or depositions, except as provided by law. When determining whether to grant expenses the Assigned Judge shall consider the value added to the proper representation at trial, and whether there is another available alternative which would fulfill the same function at a lesser cost.

All applications for fees and/or expenses, including applications for fees and/or expenses submitted by Guardians ad Litem, are to be submitted on forms approved and provided by the Court. Appointed counsel shall use software provided by the Ohio Public Defender when submitting fee applications. Appointed counsel shall submit the original fee application and financial disclosure affidavit.

Applications for fees and/or expenses shall be submitted within thirty days of the date of termination listed on the fee application. Date of termination shall be no later than the file stamp date of the journal entry dismissing the complaint or motion, dispositional journal entry, or journal entry approving the case plan, whichever is later. If the fee application is received by the Court late, then payment to the attorney will be reduced by the reimbursement rate currently being used by the Ohio Public Defender. All applications for fees shall be submitted within ninety days of the date of termination. Applications submitted beyond ninety days of the date of termination will not be paid. It will also be the responsibility of counsel to have an affidavit of indigency filed with each application for payment of fees. The appointed attorney shall clearly indicate on the fee application those services that were performed by someone other than the appointed attorney. Defective fee affidavits will be returned to the court appointed counsel for correction, who shall correct the deficiency and submit the corrected fee application to the court appointed counsel clerk within ten days. Defective fee applications which are corrected within ten days will be reimbursed at the same rate as if they were correct on the date first submitted. If approved by the Ohio Public Defender, fee applications submitted past the thirty and ninety day timeframes will be processed without any reduction in the fee. The approval letter from the Ohio Public Defender shall be attached to the fee application.

Fee applications submitted for payment should be paper clipped, not stapled, and submitted in the following order:

- Fee Application
- Itemized Fee Statement Continuation Sheet (if applicable)
- Financial Disclosure Affidavit of Indigency
- A copy of the Order / Magistrate's Order Appointing Counsel or Guardian Ad Litem
- Letter from the Ohio Public Defender (if applicable)
- Two copies of the fee application and financial disclosure statement

Periodic bills may be submitted prior to the case termination date only when appointed counsel has incurred a reimbursable expense, has reached the case fee cap, or the case has not been disposed of within a twelve month period from the date of appointment.

#### **(H) Extraordinary Fees**

Requests for extraordinary fees must be made by written motion and should be submitted with supporting information, including all regular billing documents, to the Court Director. An award for extraordinary fees will be made only with the approval of a majority of all the Judges of the Domestic Relations Court. Extraordinary fees will be granted only in complex cases involving multiple counts dealing with multiple separate incidents which require an extraordinary amount of trial preparation time, cases that involve unique legal issues, cases that require multiple types of hearings (e.g., motion to relinquish jurisdiction denied and SYO subsequently filed), or cases requiring extended days of trial.

**(I) Mentors:** Experienced juvenile attorneys will be available to provide orientation and mentor new applicants. All communications between an attorney mentor and his client in the presence of an attorney applicant participating in the orientation, shall be deemed confidential and the attorney/client privilege shall apply.

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