

JUVENILE RULE 27: GUARDIAN AD LITEM WHEN ALLOCATING PARENTAL RIGHTS AND RESPONSIBILITIES

(A) Applicability

This rule shall apply in all domestic relations and juvenile cases where the court appoints a guardian ad litem to protect and act in the best interest of a child in matters regarding the allocation of parental rights and responsibilities, not arising out of abuse, neglect or dependency filings.

(B) Definitions

For purposes of this rule:

(1) “Guardian ad litem” means an individual appointed to assist a court in its determination of a child’s best interest.

(2) “Child” means:

(a) A person under eighteen years of age, or

(b) A person who is older than eighteen years of age who is deemed a child until the person attains twenty-one years of age under section 2151.011(B)(5) or section 2152.02(C) of the Revised Code.

(c) A child under R.C. 3109.04 or a disabled child under R.C.3119.86 who falls under the jurisdiction of a domestic relations court or of a juvenile court with a paternity docket.

(C) Eligibility and Training Requirements

The Court, through its Administrative Domestic Magistrate, will maintain a list of attorneys who have completed the required training and are eligible to serve as guardian ad litem. The Franklin County CASA Program may also serve as guardian ad litem.

In order to serve as a guardian ad litem, an applicant shall have, at a minimum, the following training:

(1) Successful completion of a pre-service training course to qualify for appointment and thereafter, successful completion of continuing education training in each succeeding calendar year to qualify for continued appointment.

(2) The pre-service training course must be the six hour guardian ad litem pre-service course provided by the Supreme Court of Ohio, the Ohio CASA/GAL Association’s pre-service training program, or with prior approval of a majority of the judges of this court, be a course at least six hours in length that covers the topic areas in division (3), below.

(3) To meet the requirements of this rule, the pre-service course shall include training on all the following topics:

(a) Human needs and child development including, but not limited to, stages of child development;

(b) Communication and diversity including, but not limited to, communication skills with children and adults, interviewing skills, methods of critical questioning, use of open-ended questions, understanding the perspective of the child, sensitivity, building trust, multicultural awareness, and confidentiality;

(c) Preventing child abuse and neglect including, but not limited to, assessing risk and safety;

(d) Family and child issues including, but not limited to, family dynamics, substance abuse and its effects, basic psychopathology for adults and children, domestic violence and its effects;

(e) Legal framework including, but not limited to, records checks, accessing, assessing and appropriate protocol, a guardian ad litem's role in court, local resources and service practice, report content, mediation and other types of dispute resolution.

(4) Additionally, a guardian ad litem shall annually complete a three hour continuing education course provided by the Supreme Court of Ohio or by the Ohio CASA/GAL Association, or with prior approval of a majority of the judges of this court, be a training that complies with division (C)(5) of this rule.

(5) To meet the requirements of this rule, the three hour continuing education course shall:

(a) Be specifically designed for continuing education of guardians ad litem and not pre-service education; and

(b) Consist of advanced education related to topics identified in division (C)(3)(a) through (e) of this rule.

(6) Guardians ad litem may be removed from the court appointment list with the approval of a majority of the judges of the Domestic Relations Court. After losing eligibility for any reason, a guardian ad litem may not seek reinstatement of eligibility for six months and thereafter must submit a new application requesting reinstatement. If a guardian ad litem fails to complete a three hour continuing education course within any calendar year, that person shall not be eligible to serve as a guardian ad litem until this continuing education requirement is satisfied. If the person's gap in continuing education is three calendar years or less, the person shall qualify to serve after completing a three hour continuing education course offered under this rule. If the gap in continuing education is more than three calendar years that person must complete a six hour pre-service education course to qualify to serve.

(7) An individual who is currently serving as a guardian ad litem on March 1, 2009, shall have one year from March 1, 2009, to obtain the required six hour pre-service training in order to avoid removal from the court's list of approved guardians ad litem.

(8) Attendance at an Ohio Guardian ad Litem Training Program approved by the Supreme Court of Ohio or at an Ohio CASA/Guardian Association pre-service training program at any time prior to March 1, 2009, shall be deemed compliance with the pre-service training requirement.

(D) Application

Upon completion of the required pre-service training, an attorney seeking to serve as a guardian ad litem shall submit an application to the administrative domestic magistrate. The application shall be on the form prescribed by this rule, which is attached hereto and incorporated herein. The application shall be accompanied by a resume stating the applicant's training, experience and expertise demonstrating the applicant's ability to successfully perform the duties and responsibilities of the guardian ad litem, a copy of the applicant's criminal background check, and the applicant's background disclosure statement.

An individual who is serving as a guardian ad litem on March 1, 2009, shall no later than February 28, 2010, submit an application to remain on the guardian ad litem list to the administrative domestic magistrate. The application shall be accompanied by a certificate of completion of the required six hour pre-service training, a resume stating the applicant's training, experience and expertise demonstrating the applicant's ability to successfully perform the duties and responsibilities of the guardian ad litem, a copy of the applicant's criminal background check, and the applicant's background disclosure statement.

In sending this application and supporting documents requesting placement on the list of eligible attorneys, the attorney is indicating a commitment to the acceptance of an appointment on a pro bono basis at least once a year.

Eligible attorneys shall notify the court of changes in their status, address or telephone number.

(E) Appointment

In order to superintend the best interest of minor children/incompetents in any action over which this court has jurisdiction, the court may appoint a guardian ad litem upon its own motion or the motion of either party. When necessary, the court may also appoint an attorney to represent the child, or may appoint an attorney in the dual capacity of attorney and guardian ad litem for the child, so long as those roles do not conflict. Said appointment shall be made by the required entry attached hereto and incorporated herein.

It shall be the responsibility of counsel in the case to copy the guardian ad litem with all pleadings, notices of hearings and depositions, entries and any other necessary documents. Any additional expense incurred by the guardian ad litem as a result of counsel's failure to notify, including the costs of transcripts, shall be charged to the party (ies) responsible for such failure.

(F) Fees / Deposit to Secure Fees

When an attorney/guardian ad litem requires fee arrangements inconsistent with those set forth in the required entry, he/she shall so notify the court prior to accepting an appointment.

The court shall require the parties to post a deposit to secure the fees of the guardian ad litem and shall apportion additional fees incurred for the services of the guardian ad litem between the respective parties. The total deposit shall be at least \$800.00 unless otherwise agreed upon by the guardian ad litem. If any party has filed an affidavit of indigency, the court may, in its discretion, not require that party to pay an initial deposit. The court shall retain jurisdiction to reallocate the guardian ad litem's fees along with all costs of the proceedings, upon motion and / or at the conclusion of the case.

No later than seven (7) days after final hearing in the matter on which the guardian ad litem has been appointed, the attorney/guardian ad litem shall submit an affidavit of fees to the court. If approved by the court, said fees shall be made a part of the final entry. Nothing herein shall delay the filing of said entries, and they shall be filed in accordance with the Rules of the Supreme Court as to Civil Procedure and Superintendence. In order to protect the fee for the services of the attorney/guardian ad litem, the court shall have the discretion to issue a lump sum judgment against the party or parties for the attorney fees due and owing at the time of the final adjudication.

(G) Responsibilities and Duties of the Guardian ad Litem

In order to provide the court with relevant information and an informed recommendation regarding the child's best interest, upon appointment, a guardian ad litem shall perform, at a minimum, the responsibilities stated in this division, unless impracticable or inadvisable to do so.

(1) A guardian ad litem shall represent the best interest of the child for whom the guardian is appointed. Representation of best interest may be inconsistent with the wishes of the child whose interest the guardian ad litem represents.

The guardian ad litem shall 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. When appointed in the dual capacity of attorney and guardian ad litem for the child or solely as guardian ad litem for the child, notify the court and counsel when a conflict arises.

(2) A guardian ad litem shall maintain independence, objectivity and fairness as well as the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom and shall have no ex parte communications with the court regarding the merits of the case.

(3) A guardian ad litem is an officer of the court and shall act with respect and courtesy to the parties at all times.

(4) A guardian ad litem shall appear and participate in any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.

(5) A guardian ad litem who is an attorney may file pleadings, motions and other documents as appropriate under the applicable rules of procedure.

(6) When a court appoints an attorney to serve as both the guardian ad litem and attorney for a child, the attorney shall advocate for the child's best interest and the child's wishes in accord with the Rules of Professional Conduct. Attorneys who are to serve as both guardian ad litem and attorney should be aware of Rule 3.7 of the Rules of Professional Conduct and act accordingly.

(7) When a guardian ad litem determines that a conflict exists between the child's best interest and the child's wishes, the guardian ad litem shall, at the earliest practical time, request in writing that the court promptly resolve the conflict by entering appropriate orders.

(8) A guardian ad litem shall avoid any actual or apparent conflict of interest arising from any relationship or activity including, but not limited to, those of employment or business or from professional or personal contacts with parties or others involved in the case. A guardian ad litem shall avoid self-dealing or associations from which the guardian ad litem might benefit, directly or indirectly, except from compensation for services as a guardian ad litem.

(9) Upon becoming aware of any actual or apparent conflict of interest, a guardian ad litem shall immediately take action to resolve the conflict, shall advise the court and the parties of the action taken and may resign from the matter with leave of court, or seek court direction as necessary. Because a conflict of interest may arise at any time, a guardian ad litem has an ongoing duty to comply with this division.

(10) Unless excepted by statute, a guardian ad litem shall meet the qualifications and satisfy all training and continuing education requirements under this rule. A guardian ad litem shall meet the qualifications for guardians ad litem and shall promptly advise the court of any grounds for disqualification or unavailability to serve.

(11) A guardian ad litem shall be responsible for providing the administrative domestic magistrate with a statement indicating compliance with all initial and continuing educational and training requirements. The compliance statement shall include information detailing the date, location, contents and credit hours received for any relevant training course.

(12) A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. In order to provide the court with relevant information and an informed recommendation as to the child's best interest, a guardian ad litem shall, at a minimum, do the following, unless impracticable or inadvisable because of the age of the child or the specific circumstances of a particular case:

(a) Meet with and interview the child and observe the child with each parent, foster parent, guardian or physical custodian and conduct at least one interview with the child where none of these individuals is present;

(b) Visit the child at his or her residence in accordance with any standards established by the court;

- (c) Ascertain the wishes of the child;
- (d) Meet with and interview the parties, foster parents and other significant individuals who may have relevant knowledge regarding the issues of the case;
- (e) Review pleadings and other relevant court documents in the case in which the guardian ad litem is appointed;
- (f) Review criminal, civil, educational and administrative records pertaining to the child and, if appropriate, to the child's family or to other parties in the case;
- (g) Interview school personnel, medical and mental health providers, child protective services workers and relevant court personnel and obtain copies of relevant records;
- (h) Recommend that the court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the guardian ad litem deems necessary or helpful to the court;
- (i) Perform any other investigation necessary to make an informed recommendation regarding the best interest of the child;
- (j) Communicate with the Family Assessment worker; and
- (k) Attend all depositions concerning the best interest of the child(ren)/incompetent.

(13) A guardian ad litem shall immediately identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and shall inform these individuals about the guardian ad litem's role and that documents and information obtained may become part of court proceedings.

(14) As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of personal identifiers, as defined in Ohio Rule of Superintendence 44, or addresses where there are allegations of domestic violence or risk to a party's or child's safety. A guardian ad litem may recommend that the court restrict access to the report or a portion of the report, after trial, to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed in accordance with Ohio Rule of Superintendence 45. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or access of the information that addresses the need to challenge the truth of the information received from the confidential source.

(15) A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, an attorney guardian ad litem may request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

(16) A guardian ad litem who is to be paid by the court or a party, shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment.

(H) 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 the child(ren) by request, through deposition, and by subpoena.

(I) Reports and Court Appearances

The guardian ad litem may prepare and file written interim reports detailing observations and recommendations, but in all cases shall be present at all hearings pertaining to the children. The attorney/guardian ad litem may subpoena and examine independent witnesses.

The guardian ad litem has a duty to notify the court and counsel if the child's wishes are in opposition to the guardian ad litem's recommendation.

A guardian ad litem shall prepare a written final report, including recommendations to the court, within the times set forth in this division. The report shall detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted and all other relevant information considered by the guardian ad litem in reaching the guardian ad litem's recommendations and in accomplishing the duties required by statute, by court rule, and in the court's Order of Appointment. In addition, the following shall apply to guardian ad litem reports:

(1) In domestic relations and juvenile proceedings involving the allocation of parental rights and responsibilities, the final report shall be filed with the court and made available to the parties for inspection no less than seven days before the final hearing unless the due date is extended by the court. Written reports may be accessed in person or by phone by the parties or their legal representatives. A copy of the final report shall be provided to the court at the hearing. The court shall consider the recommendation of the guardian ad litem in determining the best interest of the child only when the report or a portion of the report has been admitted as an exhibit.

(J) Filing Fees and Court Costs

All filing fees and court costs are waived as to guardians ad litem.

(K) Termination of Appointment

The guardian ad litem shall represent the best interest of the minor child(ren) until discharged by the court. At the conclusion of the proceedings for which the appointment was made, the guardian ad litem shall submit a motion and entry for withdrawal as the guardian ad litem, and dismissing the child(ren) as party(ies) to the case, to the assigned judge.

However, whenever feasible, the same guardian ad litem shall be appointed for a specific child in any subsequent case relating to the best interest of the child.

(L) Complaints Regarding Guardians ad Litem; Motions To Remove Guardian ad Litem

(1) Comments or complaints regarding the performance of a guardian ad litem appointed pursuant to this rule shall be in writing and shall be directed to the administrative domestic magistrate, Franklin County Common Pleas Court, Division of Domestic Relations and Juvenile Branch.

A copy of comments and complaints submitted to the court shall be provided to the guardian ad litem who is the subject of the complaint or comment. The administrative domestic magistrate may forward any comments and complaints to the administrative judge of the court for consideration and appropriate action. The administrative domestic magistrate shall maintain a written record in the guardian ad litem's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the subject guardian ad litem of the disposition.

(2) Motions to remove a guardian ad litem shall be scheduled for hearing before the judge or magistrate assigned to adjudicate the allocation of parental rights and responsibilities.

(M) Annual Certification

The court shall annually conduct a review of its list to determine that all individuals are in compliance with the training and education requirements of this rule, that they have performed satisfactorily on all assigned cases during the preceding calendar year and are otherwise qualified to serve.

All individuals on the guardian ad litem list shall certify annually they are unaware of any circumstances that would disqualify them from serving, and shall report the training they have attended to comply with division (C) of this rule.

Effective July 1, 1995; Amended eff. 12/1/04; 3/23/09