

## Appendix N

### Guardians ad Litem

Ohio has, by civil statutes (2151.281; 2151.414), Civil Rules (Juv. R 4), Rule 48 of the Rules of Superintendence of the Supreme Court of Ohio, and Local Rules of Juvenile Court, provided for the role of a Guardian ad Litem (GAL) in Juvenile Court to **represent the best interests of children** in abuse, neglect, and dependency cases, in addition to Domestic Relations divorce and post-divorce cases (ORC \_\_3109.04). GALs must be certified by the Supreme Court of Ohio. In order to ensure high standards of competence and consistency in representation in every case, GALs should adhere to the following protocol of authority, duties, and responsibilities to meet the child's best interests and to ensure high standards of competence and consistency.

#### ***Guardian ad Litem Representation in Juvenile Court Abuse, Neglect, Dependency Cases***

Intimate partner violence (IPV), also referred to here as domestic violence (DV), can precipitate a filing of a Juvenile Court abuse, neglect, or dependency case, or can occur during a pending matter. Both occurrences should be treated with equal importance.

#### Authority of the GAL to the Child and Adult Survivor of DV

1. The GAL appointed to represent the minor's best interests is responsible to that minor and the Court. The GAL does *not* represent any other party to the case.
2. The GAL should correspond in writing with the parties (i.e. adult survivor, perpetrator, child) and their attorneys within seven days of appointment. Such correspondence should list the authority the GAL has been given by the Court and the duties and responsibilities owed to the child.
3. GALs shall be vested with all of the authority granted them under the laws of the United States and under the laws of the State of Ohio, including but not limited to those found in ORC \_\_2151.281. In addition, all GALs will follow the authority given by the Court. The GAL will verify with the Court the authority that establishes the scope of the GAL's duties and responsibilities. The authority to act on behalf of the child includes the following:
  - a. The GAL is to act as an independent gatherer of information.
  - b. The GAL is to review and obtain copies of all relevant records (excepting records protected in accordance with 42 C.F.R., Part 2 and records regarding the identity of a referral source), including but not limited to medical, dental, psychological, protective services, and school records.
  - c. Subject to the limitations imposed upon attorneys by the Ohio Code of Professional Responsibility regarding contact with the parties represented by counsel, the GAL is to have direct and independent communication with parents, social workers, teachers, foster parents, relatives, counselors, and any other

## Appendix N

### Guardians ad Litem

person necessary to ascertain the facts and circumstances of the child's situation.

- d. The GAL is to be provided with complete information regarding the location of the residence of the child named in the Order of Appointment.
- e. When appropriate, the GAL is to, when appropriate, monitor case plans and dispositional orders regarding provision of services and effectiveness.
- f. When possible, the GAL is to privately and confidentially interview each child at the child's residence, school, or otherwise without the prior consent or knowledge of the parent(s) or any private or public agency.
- g. The GAL is to observe each parent, custodian, relative, or foster placement custodian with the children when appropriate and within the confines of any court orders addressing DV.
- h. The GAL is to review the pleadings and consult with attorneys in the case.
- i. The GAL is to be notified of and attend all mediation sessions (although the appropriateness of mediation must be considered in every case in which DV has occurred) and administrative reviews.
- j. The GAL is to participate in educational meetings, including but not limited to meetings pertaining to individualized education plans.
- k. GALs who are attorneys or who are appointed in a dual capacity of Attorneys and Guardians ad Litem (Attorney/GALs) have the authority to file pleadings and motions and have the authority to prosecute same on behalf of the children.
- l. Attorneys who are GALs, or legal providers who are appointed in the dual capacity of Attorney/GALs, have the authority to issue subpoenas and to examine witnesses.

#### Duties and Responsibilities

The following are mandatory standards for GALs who are practicing in juvenile court in cases where a child is alleged to be or has been adjudicated to be an abused, neglected, or dependent child, and includes children who are impacted by DV committed against the child or any person causing the issue to affect the child.

1. Communicate with every child, who is able to do so, privately and confidentially, immediately (at least within 24 hours if possible) after the DV has occurred within sight or sound of the child, or otherwise in a way personally impacting the child physically, mentally, emotionally, or in a manner requiring a legal response so as to protect the child, and/or access quality and timely services (such as trauma-based therapy) appropriate to the child's needs. Participate in safety planning for the child

## Appendix N

### Guardians ad Litem

and explain to the child, in terms the child is most likely to understand, the terms of the safety plan and how the child, and the people and pets for whom the child may be afraid, will be kept safe.

2. Communicate with every child, who is able to do so, privately and confidentially *no less than thirty days* prior to and no less than thirty days after every court hearing regarding the child.
3. Unless otherwise permitted by the court by express order, have face-to-face contact with each child at least once every ninety days in the home where the child resides or at the child's school. Consider the needs of the child who has been impacted by DV as needing more frequent contact so as to assess the child's ongoing needs and to ensure that appropriate and quality services are provided in a timely manner and that such services are consistent regardless of whether the child remains in the same placement or moves to another placement(s).
4. Respond promptly to any request made to communicate with the child or investigate the child's circumstances when made by the child or any person closely connected to the child.
5. Present independent and thorough recommendations to the court made as a result of the GAL's statutorily required independent investigation of the circumstances of the child. The initial investigation is to include, at a minimum, contact with the child, the child's parents, the child's foster parents, the child's teacher(s), and any other family or non-family member with whom contact would be helpful in preparing a full report regarding the child's circumstances to the court. In this regard, the GAL is encouraged to be creative and to think independently in presenting those recommendations.
6. Review criminal, civil, educational, and administrative records pertaining to the child and, if appropriate, to the child's family or other parties in the case.
7. Interview school personnel, medical and mental health providers, child protective services workers, and relevant court personnel, and obtain copies of relevant records.
8. Recommend that the court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the GAL deems necessary or helpful to the court.
9. Be present during the entirety of any mediation concerning the child. The appropriateness of mediation in cases involving DV must be considered in each case.
10. Consult with DV experts regarding issues relating to the impact of DV on children in appropriate cases in which the GAL needs said expertise to plan for and to act to protect the individual child. If local experts are not available, the GAL should contact

## Appendix N

### Guardians ad Litem

the Ohio Domestic Violence Network for direct consultation or for a referral to an appropriate resource.

11. Submit a written report if required to do so by Ohio Sup. R. 48 or as ordered by the court. A written report, including recommendations to the court, should detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted, and all other relevant information considered by the GAL in reaching the GAL's recommendations and in accomplishing the duties required by statute, by court rule, and in the court's Order of Appointment. Written reports are to be submitted to the court and available to the parties *seven days before* the hearing.
12. Submit supplemental recommendations as required by Ohio Sup. R. 48 or as ordered by the court.
13. Be present at every hearing concerning the child except when said presence is excused by the court and provided, further, that the GAL presents to the court a written report prior to any such hearing wherein their presence has been excused.
14. Be present at every administrative review concerning the child which does not conflict, in terms of scheduling, with a court proceeding, provided that the GAL is given *at least two weeks* written notice regarding said administrative review.
15. Explain as much as possible the court proceedings and the role of the GAL to the child in terms the child is most likely to understand.
16. Advocate for the best interests of the child giving due regard to the factors required to be considered by the court in determining the child's best interests.
17. Monitor implementation of case plan services, safety plan provisions, and dispositional orders so as to determine whether or not those services are being provided in a timely manner and are accomplishing their desired goal.
18. Attorney/GALs will advocate for the best interests of the child and will advise the court when an irreconcilable conflict arises between the role of GAL and attorney for the child.
19. Ascertain the interests of every child, taking into account the child's age and maturity consistent with providing the child a safe home without DV, taking into account the need for family preservation and permanency planning.
20. As an officer of the court, a GAL shall make no disclosures about the case or the investigation except in reports and as necessary to perform the duties of a GAL. Specifically to cases in which there is DV, the GAL shall maintain the confidential nature of addresses where there are allegations of DV or risk to a party's or the child's safety. The GAL should recommend that the court restrict access to the report or a portion of the report after trial to preserve the privacy, confidentiality, or safety

## Appendix N

### Guardians ad Litem

of the parties or the child for whom the GAL was appointed, in accordance with Rule 45 of the Rules of Superintendence.

#### ***Guardian ad Litem Representation in Divorce and Post-Divorce Custody Cases***

GALs are appointed to represent the best interests of children in divorce and post-divorce custody matters upon motion of the Domestic Relations Court or either party. (ORC \_3109.04; Civil Rule 75 (B) (3)). The role of the GAL is *not* that of an attorney. A Domestic Relations Court may, in its discretion, appoint an attorney to represent the legal claims of a child involved in the court's proceedings, but not the GAL.

The child's best interests and the child's wishes for case resolution are not necessarily the same. When the child's wishes and the child's best interests are the same, the GAL may present them as such. When they are not the same, the GAL must present what the child wants and must advocate for what is in the child's best interest.

An incident of DV can precipitate a claim for custody, modification of custody, or modification of parenting time in a divorce or post-divorce case. When DV occurs during the course of an ongoing case, it should be investigated and responded to with the importance it would receive if a precipitating incident.

GALs should have the following qualifications:

1. The GAL must be a registered attorney and member in good standing with the Ohio Bar Association.
2. To ensure competency in the issues relative to general domestic relations practice as well as the issues confronting children impacted by divorce (such as brain trauma, domestic violence, therapies and other services available to children involved in high conflict divorce) the GAL must have a divorce practice of **two years or more** in the county of appointment or any other Ohio county. Recommendations for GAL appointment in divorce cases regarding competency in practice should come from a Domestic Relations judge or magistrate and two domestic relations providers with at least two years' practice who are members of the local bar association. **At least twenty-five percent** of the attorney's practice during the last two years must be in the areas of domestic relations and/or juvenile law.
3. The attorney must be certified by the Ohio Supreme Court and must maintain certification status throughout appointment to the case.
4. The court will maintain a file for every GAL approved for appointment. The GAL must be responsible for providing the court with a statement indicating compliance with all initial and continuing educational and training requirements. The compliance

## Appendix N

### Guardians ad Litem

statement must include information detailing the date, location, contents, and credit hours of any relevant training or education received by the GAL. A previously approved GAL who fails to continually meet the court-required qualifications for being an appointed GAL with the court will be removed from the list and will not be considered for further appointments.

#### Authority of a GAL for a Child in Divorce or post-divorce Cases Involving DV

1. Upon Motion of the Court or either party, the court shall appoint a GAL to protect the best interests of the child.
2. The GAL appointed to represent the best interests of the child does not represent any other party in the case. The GAL advocates on behalf of the best interests of ***the minor only***. **The GAL does not act in the capacity of the child's attorney.**
3. The GAL shall be vested with all the authority granted to GALs under the laws of the United States and under the laws of the State of Ohio, including but not limited to those found in ORC Chapter 3109. In addition, all GALs will follow the authority given by the Court.
4. The GAL's role is to act as an independent gatherer of information, to assess all available relevant information regarding the child, and to submit final recommendations to the court. The recommendations will focus on the best interests of the child as distinct from what the child wants unless the best interest and what the child wants are the same.
5. Unless otherwise agreed by the parties and approved by the court, the GAL's report shall not be entered into direct evidence absent testimony by the GAL. The parties shall be entitled to cross-examine the GAL concerning the contents of the report and the basis for the GAL's recommendation. The report of the GAL shall not be filed with the Clerk of Courts.
6. Any complaints or other comments regarding a GAL's competency or performance must be submitted to the Court Administrator or any other person on the court's staff as the court may choose.
7. GALs are appointed from a rotating list of qualified GALs as maintained by the court. Where the court believes that unique circumstances exist for which a particular GAL has the required experience and expertise, the magistrate may appoint that individual from the qualified GAL list. If a party objects to the appointment of a particular GAL, a motion supported by affidavit that states with specificity the objection must be filed and a hearing held before the assigned magistrate.
8. Parties or counsel must forward all relevant pleadings or documents to the GAL and must provide the GAL with any relevant information regarding the child or any issues in the case.

## Appendix N

### Guardians ad Litem

#### Duties and Responsibilities

The following are best practice standards for GALs who are practicing in divorce and/or post-divorce cases involving children who are impacted by incidents of mental, emotional, and/or physical violence committed against the child or against any person causing the issue to affect the child.

1. The GAL will correspond in writing with the parties and their attorneys **within seven days of appointment**. Such correspondence will note the authority the GAL has been given by the court and the duties and responsibilities owed the child.
2. The GAL will review the pleadings in the case and consult with attorneys involved in the case.
3. The GAL will review and obtain copies of all relevant records of the child, including but not limited to medical, dental, psychological, and school records. Parents' medical and mental health records will be obtained when authorizations/releases are signed by the parents.
4. The GAL will observe each parent with the child when appropriate within the confines of any court orders addressing intimate partner violence.
5. The GAL is to be notified of and attend all mediation sessions. The appropriateness of mediation must be considered in every case in which DV has occurred.
6. The GAL will communicate with every child who is verbal privately and immediately (within 24 hours after an incident of DV has occurred within sight or sound of the child, or otherwise in a way personally impacting the child physically, mentally, emotionally, or in a manner requiring a legal response so as to protect the child), and/or access quality and timely services (e.g., trauma-based therapy) appropriate to the child's needs. The GAL should participate in safety planning for the child and explain the safety plan to the child in terms the child is most likely to understand and how the child, and the people and pets for whom the child may be afraid, will be kept safe.
7. The GAL will respond promptly to any reasonable request made to communicate with the child or to investigate the child's circumstances when made by the child or any person closely connected to the child. The GAL has the discretion to determine the appropriateness of the request and to respond in an appropriate manner.
8. The GAL will present independent and thorough recommendations to the court made as a result of the GAL's statutorily required independent investigation of the circumstances of the child. The initial investigation is to include, at a minimum, contact with the child, the child's parents, the child's teacher(s), and any other family or non-family members with whom contact would be helpful in preparing a full

## **Appendix N**

### **Guardians ad Litem**

report regarding the child's circumstances to the court. In this regard, the GAL is encouraged to be creative and to think independently in presenting those recommendations.

9. The GAL will review criminal, civil, and school records pertaining to the child and, when appropriate, to the child's family or other parties to the case.
10. The GAL will recommend that the court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the GAL deems necessary and helpful to the court in its rendering a decision.
11. The GAL will submit supplemental reports and recommendations as required by case demands.
12. The GAL will be present at every hearing concerning the child except when such presence is excused by the court.
13. The GAL will explain to the child, as much as possible, the court proceedings and the role of the GAL in terms the child is most likely to understand and to the extent that the child can understand the court process and the GAL role.
14. The GAL will advocate for the best interests of the child, giving due regard to the statutory factors required to be considered by the court in determining the best interests of a child.
15. The GAL will ascertain the interests of every child, taking into account the child's age and maturity consistent with providing the child with a safe and secure home without DV.
16. As an officer of the court, the GAL shall make no disclosures about the case or the investigation except in reports and as necessary to perform the duties of a GAL. Specifically to cases in which there is DV, the GAL will maintain the confidential nature of addresses where there are allegations of DV or risk to a party's or the child's safety. The GAL will 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 child for whom the GAL was appointed, in accordance with Rule 45 of the Rules of Superintendence.

#### ***Training***

Pursuant to Ohio Sup. R. 48, GALs who are appointed to represent children in abuse, neglect, and dependency cases, including cases in which DV is the precipitating incident for the court's intervention, or is an incident that occurs during the pendency of the abuse, neglect, dependency case, must have, at a minimum, **six hours of training in a variety of topics**, including DV. Such training is provided by the Ohio Supreme Court as part of the certification



## Appendix N

### Guardians ad Litem

training required for GALs. The issue of DV requires extensive training to protect the rights of children and to ensure their health and safety. The Ohio Domestic Violence Network should suggest and/or provide specific trainings child advocates must attend and must demonstrate understanding of, prior to being assigned cases involving DV.

Additional training needs are as follows:

- GALs should be aware of the principles of Ohio's *Safe and Together*<sup>TM</sup> model, which values non-offending parents' independently formulated safety plans for themselves and the children, and which works to engage batterers to learn from the consequences of their actions and to stop the violence. GALs should contact the Ohio Intimate Partner Violence Collaborative through Capital Law School to discuss this training further.
- GALs must have training in how to interview children and communicate with them, especially when they are experiencing crisis. Such techniques as getting down to the child's level, choosing appropriate settings, building rapport, and training on basic do's and don'ts are vital to learn so as to understand the child, and to foster communication between the child and the GAL.
- GALs need training in report writing so as to provide objective, fact-based reports, with recommendations based on evidence rather than opinion. The Ohio Supreme Court training curriculum should add to the quality of training provided on this topic.
- GALs need training on being cross-examined in court. The Ohio Supreme Court should add to the quality of training and provide this topic in their curriculum.