

GUARDIAN AD LITEM PROTOCOL AND DISCRPTION

A) DESCRIPTION A Guardian Ad Litem is appointed in moderate, severe and extremely severe custody conflict cases which usually involve a central issue of a significant threat of the physical or psychological well being of the child(ren). It is the most invasive form of Court intervention during the pendancy of a custody dispute. The Guardian Ad Litem(hereinafter referred to as "GAL") is an attorney who is appointed as an officer of the Court to conduct an inquiry of the family with a focus on the best interests of the children.

B) APPOINTMENT

A GAL will be chosen and appointed by a Judge or Master if he/she believes there is a need for a neutral third party to provide information to the Court in an effort to protect the interests and well being of the child(ren). Attorneys in a custody dispute may also choose a GAL by agreement. Circumstances for which GALs have been appointed include, but are not limited to, the following:

- a primary physical custody or joint physical custody claim or decision is pending and the opinion of the child(ren) is at issue OR the claim is based on a safety issue.
- a relocation is pending and the opinion of the child(ren) is at issue OR a detailed investigation and comparison of the locations in question would be beneficial to the Court.
- either party has been diagnosed with a psychological disorder which would hinder a party's parenting abilities (IE: bi-polar condition, schizophrenia, personality disorders)
- psychiatric reports are pending and/or psychological disorders are alleged which may hinder a party's parenting abilities
- parties present a history of serious physical violence/stalking

- parties present a history of severe open hostility or attempts at alienation
- an Indicated or Founded finding of physical/sexual child abuse is a central issue
- an Unfounded finding of physical/sexual child abuse is a central issue or a history of false physical/sexual child abuse claim(s) is a central issue
- a CYS and/or police investigation of physical/sexual child abuse is pending
- a drug/alcohol dependency problem is the central issue
- allegations of neglect, abuse or lack of adequate parental supervision exist which were not addressed by CYS
- a child is refusing to visit or refusing to return home to the custodial parent
- chronic litigation or chronic Contempt of Court by the parties

C) SCOPE

The scope of the GAL's Inquiry depends on the directives contained in the Order that appoints the GAL. The Order should be mailed/faxed to the GAL within three (3) business days by the party listed as Plaintiff and/or Petitioner in the Custody action, unless it was mailed or faxed by the Court. Attorneys should call the GAL office within a week after the appointment to make sure that the Order reached the GAL. In all cases, the goal for the GAL is to present a neutral and objective assessment of the assigned subject matter when the inquiry is complete.

The GAL's duties may include, but are not necessarily limited to, the following:

- Obtain information from the Court and from each Counsel of record

- Review the file(s)/record at the Courthouse
- Attend Court proceedings involving the subject matter assigned. The GAL does not need to attend Court proceedings of the family unrelated to the matter assigned.
- Collect and review information received during Court proceedings and relevant documents/reports pertaining to the subject matter
- Consult with professionals: Psychologists, CYS, teachers, employers, police.
- Visit homes and/or schools. The Court may also permit the GAL to assign a third party to perform a home inspection. There may be an additional fee for home inspection and there may be additional costs for long distance home inspections
- Submit a Comprehensive Report to the Court with Recommendations and a full explanation for the basis for each Recommendation. Reports to the Court and Counsel of record one 10 days prior to a scheduled Court proceeding,
- Monitor the case to ensure compliance

D) PROCESS OF INQUIRY

1) Initial Contact: The office of the GAL will attempt to contact each party within two (2) working days of receipt of the Order of appointment. The parties should respond promptly. If a party does not receive a phone call from the GAL by the third (3rd) day after the date of appointment, he/she should call the GAL.

2) Form completion: The parties are to be advised to pick up standard Guardian Ad Litem questionnaires and are to be directed to have them completed by the date of the first

(1st) interview of the party by the GAL. Attorneys are encouraged to review the content of the answers to the questionnaire.

3) Interviews:

i) Attorneys:

The Attorneys should be highly active during the course of the inquiry. They should ensure that the GAL has a clear idea of their respective parties' positions and that the GAL has an opportunity to review all documents that would support those positions. The Attorney should provide the GAL with the case background and position of his/her client. If new developments take place during the inquiry, the Attorney should keep the GAL informed. The Attorneys may contact the GAL for feedback at an time during the inquiry.

ii) Parties: Interview Procedure and Communication with the GAL:

The parties should not bring children to the initial interview with the GAL unless otherwise directed. The parties should present their completed forms and any additional documents they wish to have reviewed by the GAL to the initial interview. Supplemental documents may be submitted to the GAL anytime throughout the inquiry. Attorneys may submit a comprehensive package of documents to the GAL. The initial interview is approximately one (1) hour in duration but can be longer. Attorneys do not usually attend the interviews with the GAL, however, they are welcome to attend. If a party wishes to call his/her lawyer during an interview he/she should be permitted to do so. **Attorneys should advise their Clients that GAL interviews are not confidential and that anything said in an interview or submitted in writing to the GAL can possibly be used in Court. The parties will NOT have unlimited direct contact with the GAL.**

With the exception of:

- A) The initial interview;
- B) Subsequent interviews by appointment;
- C) Telephone calls initiated/requested by the GAL; AND
- D) emergencies (IE: when the child is in immediate danger of physical or emotional abuse).

The parties must voice their issues through their Attorneys and their Attorneys will present the issues to the GAL if he/she deems it necessary and appropriate.

If a party proceeds Pro-Se (without counsel), the party should voice issues to the GAL by fax or through mail. Information should not be excessive or repetitive and should contain appropriate language (IE: no profanity, threats, etc.).

iii) Parties: Conduct During Inquiry

Legal Questions

If the parties have legal questions which arise during the interviews, they will be instructed to contact their Attorneys, or an Attorney, for the answers. They will also be instructed to call their Attorneys with collateral issues that arise in the course of the inquiry. The GAL does not replace the function of the Attorney in any way.

Psychological, Emotional Concerns

If the parties have non-legal, psychological and/or emotional concerns, the parties will be instructed to contact a counselor, therapist, Psychologist or Psychiatrist. The GAL is not a source of emotional support for the parties. If the GAL believes that it would be helpful to interview the child in a neutral setting, the GAL may arrange to interview the child at school or daycare. Prior arrangements should be made with the facility. The GAL may be able to obtain a Court Order if necessary. They may also be instances whereby the GAL is present for an interview of the child by CYS, the police and/or the Child Advocacy Center.

When possible, the GAL will interview the children in a room separate from the party. A party will be permitted in the room with the GAL and the child if it is clear that the child will not communicate otherwise. The GAL will not generally interview the children in the presence of an Attorney. The reason for the presence of the party or the Attorney during the interview should be reflected in the GAL's report.

iv) Third Parties:

The GAL may interview other significant individuals (spouse, non-party Grandparent, paramour, teacher, police, CYS, pediatrician, Psychologist, etc.). Telephone interviews are often utilized for third parties who do not reside with the children. The parties may submit signed statements (including name, address and telephone number) from individuals who wish to submit references.

4) Records Collection:

Parties may be asked to sign an Authorization for Release of Information to allow the GAL to collect records and speak with professionals such as Psychologists and teachers. The GAL should make sure that the releases contain the appropriate HIPPA language. The GAL may also provide Counsel with Notice and obtain an Order of Court for release of CYS and police records. The Attorneys should make sure that the GAL has copies of all pleadings, correspondence, and other documents that the Attorney believes that the GAL should review prior to making a report.

The GAL may obtain child abuse and/or criminal record background checks on an individual. If a party or his/her Attorney requests a record check, the party requesting the check is responsible for the cost of the same. The cost of each check in the Commonwealth of Pennsylvania is currently \$12.00 per background check. Out of state or multi-state background checks may cost more. Payments for record checks must be received by the GAL prior to the time that the record check is processed. If the GAL believes there is a need for a background check and neither party's counsel is willing to request the same, the GAL will request an Order for the Court for the same.

5) Contact with the GAL:

Each GAL may provide the Attorneys and the parties to the action with his/her procedure for contacting the GAL. Attorneys should generally be able to contact the GAL by telephone, by fax or in writing during business hours. The GAL may have policies on when and how the parties or third parties may contact the GAL.

The GAL is not to be used to provide legal advice to the parents. The GAL may call or meet with Counsel prior to the completion of a GAL Report and inform Counsel of the probable Recommendations in an effort to allow Counsel to come to an Agreement without returning to Court.

E) DURATION

There is no specific duration for a GAL inquiry. The Court may indicate a time limit for submission of a Comprehensive Report. If the GAL is unable to produce a report within the specified time limit, the GAL should advise the Judge and/or Master as well as the Attorneys the reason why the Report cannot be completed (IE: party in rehabilitation, party incarcerated, abuse investigation/expungement process pending, parties delayed in response to GAL, records pending, etc.). If no time is designated on the GAL Order, the GAL should issue at least a status report within ninety (90) days after the date of the appointment.

F) COMPREHENSIVE REPORT

If time permits, the GAL may call the Attorneys and provide an overview of the pending Report and Recommendations before they are completed. The GAL will provide the Attorneys with a copy of the Report and Recommendations simultaneously to the issue of the document to the Court. **For the protection of the child(ren), the Attorneys are encouraged to have the client read the Recommendation in his/her office.**

There is usually an opportunity for the Attorneys to attempt to reach an Agreement before a hearing or conference is held. If there is no Agreement, the matter will go to a hearing.

After a Report and Recommendation is complete, the GAL remains on record and should be provided Notice of Court proceedings until the Guardian is dismissed by Court Order.

G) COSTS

Payment by the parties. *The standard hourly rate for a GAL in Wyoming County is \$50.00 per hour.* Each Order of appointment will include an indication of an initial retainer which is to be made with the GAL within ten (10) days of the date of the Order and an indication of which parties are responsible for payment of the costs of the GAL. The GAL may Petition the Court to Compel Payment according to the directive of the Order in response to non-payment.

The ultimate cost of the GAL inquiry will vary according to the difficulty of the case and the amount of time that is expended by the GAL. The Attorneys may benefit from contacting the proposed GAL at the time of their appointment for a general estimate of both initial and ultimate costs if their clients are responsible for payment. Clients should be advised that their share of the GAL fee can be several hundred dollars each or significantly more depending on the hours that the GAL must dedicate to the case and the amount and frequency of litigation. The parties may also be responsible for costs such as travel, bulk postage, service, home inspections, records fees and reproduction.

Each party will receive a Notice and an itemized Bill through Counsel if the Guardian fees exceed the initial retainer. Payment of the Bill shall be due thirty (30) days after the date of each Bill. If a Bill is not paid within thirty (30) days of the date on the Bill, the Guardian may file a Petition to Compel Payment of GAL Fee and may request reimbursement for time spent on collection at the GAL's regular billing rate (most regular rates exceed \$100.00 per hour).

H) TRIAL AND EVIDENCE

The GAL usually provides the Attorney with a great amount of material for trial and may produce evidence through the documents acquired and considered by the GAL. The Attorneys may request to view all documents collected and used by the GAL during the inquiry process. The Attorney should provide the GAL with ample notice if he/she is requesting to view documents. The Attorney may be required to view the documents in the office of the GAL. Work product and other confidential information may be excluded. Attorneys should keep in mind that the issue of confidentiality may arise frequently in connection with medical and/or psychological records pertaining to the children and/or parties.

A sampling of what a Report can contain is as follows:

- Whether a change in the Custody schedule is advisable including the basis for the Recommendation

- Whether the GAL believes a parent is a danger to the child and the basis for that belief

- Whether the GAL collected evidence to form a belief that a child has been neglected or abused and the basis of that belief

- Whether the GAL collected evidence to form a belief that a child receives more adequate care with one party than the other and the basis of that belief

- What statements the GAL received from the child in connection with the child's care and custody, whether the GAL believes the child and the basis of that belief. Comparisons of the child's statements to writings or the child or statements to counselors, teachers, family members, CYS, etc.

- Whether a child appears to have been coached or influenced by one parent or both prior to interviews and the basis for the opinion

- Whether an issue of sexual/physical abuse should be re-examined by a professional and the basis for the opinion

- The extent to which the child has been affected by a parent's psychological illness or conflict between the parents including basis and a proposed resolution

- Whether an issue of alleged alcohol/drug abuse is supported by information collected and whether urine, breath, blood or hair testing is recommended

- Whether there is excessive police involvement or CYS with the family and the reason for the involvement

- Whether or not the parties cooperated with the GAL, if not, which party did not cooperate and in what manner

- A Recommendation of family, child or individual counseling including the basis for the Recommendation and referrals to the type of counselor suggested

- A Recommendation for Psychological/Psychiatric Evaluation including the basis for the Recommendation

- A Recommendation for non-professional supervised visits with a basis for the Recommendation and suggestions for who could provide the supervision

- A Recommendation for professionally supervised visits with a basis for the Recommendation and suggestions for what person or agency could provide supervision as well as the estimated costs of the same.

- A Recommendation for Court Ordered Sanctions (usually in monitor stage)

The GAL will appear at a regularly scheduled Custody Conference or hearing. Adequate written Notice from the Attorney requesting the presence of the GAL at an interim or emergency hearing, a Motion or a PFA hearing would be necessary.

I) PETITIONS BY THE GUARDIAN

The GAL will usually make Recommendations as opposed to filing Petitions. Most Recommendations favor a position of one party or another. As such, the Attorneys should file Petitions in response to the Recommendation of the GAL. In the event that a GAL believes there is a need to file a Petition on behalf of the child and parties Attorneys are willing to file a Petition, the GAL may file a Petition on behalf of the child. Examples for such circumstances would be: the GAL has discovered that both parties are using illicit drugs, both parties are violating the Court Order in a manner which is harmful to the child, a Pro-Se litigant does not possess the skill and/or knowledge to file an appropriate Petition which the GAL deems to be necessary for the protection of the child.

The GAL will abide by the Pennsylvania Legislation changes to the GAL rules which went into effect as of January 1, 2011 as follows:

§ 5334 Guardian ad litem for child

(a) **Appointment** – The court may on its own motion or motion of a party appoint a guardian ad litem to represent the child in the action. The court may assess the cost upon the parties or any of them or as otherwise provided by law. The guardian ad litem must be an attorney at law.

(b) **Powers and duties** – The guardian ad litem shall be charged with representation of the legal interests and best interests of the child during the proceedings and shall do all of the following:

(1) IF APPROPRIATE TO THE CHILD’S AGE AND MATURITY , MEET with the child as soon as possible following the appointment, on a regular basis thereafter.

(2) On a timely basis, be given access to relevant court records, reports of examination of the parents or other custodian of the child and medical, psychological and school records.

(3) Participate in all proceedings.

(4) Conduct such further investigation necessary to ascertain RELEVANT FACTS FOR PRESENTATION TO THE COURT.

(5) Interview potential witnesses, including the child’s parents AND CARETAKERS, if any. THE GUARDIAN AD LITEM MAY examine and cross-examine witnesses and present witnesses and evidence necessary to protect the best interests of the child.

(6) Make specific recommendations IN A WRITTEN REPORT to the court relating to the best interests of the child, including any services necessary to address the child’s needs and safety. THE COURT SHALL MAKE THE WRITTEN REPORT PART OF THE RECORD SO THAT IT MAY BE REVIEWED BY THE PARTIES. THE PARTIES MAY FILE WITH THE COURT WRITTEN COMMENTS REGARDING THE CONTENTS OF THE REPORT. THE COMMENTS FILED BY THE PARTIES SHALL ALSO BECOME PART OF THE RECORD.

(7) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition and emotional condition.

(8) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court. A difference between the child's wishes under this paragraph and the recommendations under paragraph six (6) shall not be considered a conflict of interest for the guardian ad litem.

(c) **Abuse** – If substantial allegations of abuse of the child are made, the court shall appoint a guardian ad litem for the child if:

(1) counsel for the child is not appointed under section 5335 (relating to counsel for child); or

(2) the court is satisfied that the relevant information will be presented to the court only with such appointment.

(d) **Evidence subject to examination** – A guardian ad litem may not testify except as authorized by Rule 3.7 of the Rules of Professional Conduct, but may make legal argument based on relevant evidence that shall be subject to examination by the parties.

(e) **Costs** – The court may order a party to pay all or part of the costs of appointing a guardian ad litem under this section.