

IN THE COURT OF COMMON PLEAS, JUVENILE DIVISION, GEauga COUNTY, OHIO  
Judge Timothy J. Grendell

Information Sheet  
The Guardian Ad Litem

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**WARNING**

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code or cited case law. Finally, this Information Sheet is not intended as a substitute for legal advice from a competent licensed attorney, who is familiar with all of the relevant facts of your case, and therefore the Help Center recommends that you seek legal advice from a competent licensed attorney that you select before taking any action. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

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**Background.** While the role of a Mediator or a Parenting Coordinator is to assist the parents and others (e.g., grandparents) of a minor child to resolve disputes regarding child custody and parenting or companionship time (i.e., visitation), the role of the Guardian Ad Litem (“GAL”) is to protect the interest of the minor child(ren) and advise the Court as to what is in the best interest of the minor child(ren).<sup>1</sup> There are different types of GALs.

- There are fee-based GALs, who are paid for their services as a GAL, and in some cases, are paid as an attorney for the child(ren) for legal services rendered, but not all fee-based GALs are attorneys.
- There are voluntary GALs, who are not paid for their services as a GAL. The voluntary GAL is a member of the Ohio CASA/GAL Association (“CASA/GAL”). A CASA/GAL may be an attorney but will not act as an attorney for the child(ren).<sup>2</sup>

In certain juvenile cases the Court must appoint a GAL for a child, such as cases regarding an unruly or delinquent child or an abused, neglected or dependent child.<sup>3</sup> In private child custody and parenting/companionship time cases the Court may appoint, but is not required to appoint, a GAL for a child.<sup>4</sup>

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<sup>1</sup> The phrase “Ad Litem” means “for the lawsuit,” or rather guardian for the lawsuit. In fact, the Court may appoint a Guardian Ad Litem to protect the interest of an adult who is disabled, including an adult child in a dispute between the parents.

<sup>2</sup> CASA means Court Appointed Special Advocate.

<sup>3</sup> R.C. 2151.481 and Juv.R. 4 (Ohio Rules of Juvenile Procedure).

<sup>4</sup> RC 3109.04(B)(2)(a).

Sup. R. 48 sets forth requirements related to the role and responsibilities of a GAL. Additionally, The Court's Local Juvenile Rule 30 provides additional rules and requirements for a GAL.

**What Does A GAL Do?**<sup>5</sup> In custody cases, the GAL's primary responsibility is to tell the Court what the GAL believes to be in the best interest of the child(ren). The Court must consider the GAL's recommendation when determining the allocation of parental rights and responsibilities.<sup>6</sup> A listing of the GAL's responsibilities is provided in Sup. R. 48(D), which include the following:

- A GAL 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.
- A GAL 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 communications with the Court regarding the merits of the case without all parties permitted to be present.
- A GAL is an officer of the court and shall act with respect and courtesy to the parties at all times.
- A GAL shall appear and participate in any hearing for which the duties of a GAL or any issues substantially within a GAL's duties and scope of appointment are to be addressed.
- A non-attorney GAL must not engage in conduct that constitutes the unauthorized practice of law, must be vigilant in performing the GAL's duties, and request that the Court appoint legal counsel, or otherwise employ the services of an attorney, to undertake appropriate legal actions on behalf of the GAL in the case.
- A GAL who is an attorney may file pleadings, motions, and other documents as appropriate under the applicable rules of procedure.
- When the Court appoints an attorney to serve as both the GAL 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.
- When a GAL determines that a conflict exists between the child's best interest and the child's wishes, the GAL shall request in writing, at the earliest practical time, that the Court promptly resolve the conflict by entering appropriate orders.
- A GAL 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; and a GAL shall avoid self-dealing or associations from which the GAL might benefit, directly or indirectly, except from compensation for services as a GAL.
- Upon becoming aware of any actual or apparent conflict of interest, a GAL immediately shall act to resolve the conflict, shall advise the Court and the parties of the action taken

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<sup>5</sup> Sup. R. 48(D).

<sup>6</sup> RC 3109.04(F)(2)(e) provides that one factor the Court must consider in determining the allocation of parental rights and responsibilities is the advice given by a GAL.

and may resign from the matter with leave of Court, or seek Court direction as necessary; and because a conflict of interest may arise at any time, a GAL has an ongoing duty to comply.

- A GAL 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 GAL, at a minimum, shall do the following, unless impracticable or inadvisable because of the age of the child or the specific circumstances of a particular case:
  - 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;
  - visit the child at his or her residence in accordance with any standards established by the Court in which the GAL is appointed;
  - ascertain the wishes of the child;
  - meet with and interview the parties, foster parents, and other significant individuals who may have relevant knowledge regarding the issues of the case;
  - review pleadings and other relevant court documents in the case in which the GAL is appointed;
  - 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;
  - interview school personnel, medical and mental health providers, child protective services workers and relevant court personnel and obtain copies of relevant records;
  - recommend that the Court order psychological evaluations, mental health or substance abuse assessments, or other evaluations or tests of the parties as the GAL deems necessary or helpful to the court; and
  - perform any other investigation necessary to make an informed recommendation regarding the best interest of the child.
- A GAL shall immediately identify himself or herself as a GAL when contacting individuals in the course of a particular case and shall inform these individuals about the GAL's role and that documents and information obtained may become part of court proceedings.
- As an officer of the court, a GAL shall make no disclosures about the case or the investigation except in reports to the Court, as necessary to perform the GAL's duties, or as required by law. For example, R.C. 2151.421 requires a GAL to immediately report any suspicion of child abuse or neglect. The Court, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, may order disclosure of or access to the information that addresses the need to challenge the truth of the information received from the confidential source.

- A GAL shall perform responsibilities in a prompt and timely manner, and, if necessary, an attorney GAL may request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.
- A GAL 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.

In addition to the duties listed above, the GAL shall prepare and present to the Court at the final hearing a written report that sets forth the GAL's recommendation.<sup>7</sup> The GAL shall deliver a copy of that written report to the parties not later than seven days before the final hearing.<sup>8</sup> The GAL may not copy or give the report to any other person other than the GAL's attorney.

**How The GAL Process Is Started?** In cases involving the child custody and parenting/companionship time, the court may appoint a GAL on its own motion or that of a party.<sup>9</sup>

A party requesting the appointment of a GAL must file the written request within 45 before the hearing to determine custody and parenting time. Unless otherwise ordered by the Court, a party requesting the appointment of a GAL shall pay a deposit to pay future costs, unless the GAL is a CASA/GAL.

In some situations, the Court must appoint a GAL for the minor child(ren)(and in one instance for the parent), without a motion requesting the appointment. Juv.R. 4(B) provides:

*The court shall appoint a guardian ad litem to protect the interests of a child or incompetent adult in a juvenile court proceeding when:*

- (1) The child has no parents, guardian, or legal custodian;*
- (2) The interests of the child and the interests of the parent may conflict;*
- (3) The parent is under eighteen years of age or appears to be mentally incompetent;*
- (4) The court believes that the parent of the child is not capable of representing the best interest of the child.*
- (5) Any proceeding involves allegations of abuse or neglect, voluntary surrender of permanent custody, or termination of parental rights as soon as possible after the commencement of such proceeding.<sup>10</sup>*
- (6) There is an agreement for the voluntary surrender of temporary custody that is made in accordance with section 5103.15 of the Revised Code, and thereafter there is a request for extension of the voluntary agreement.*
- (7) The proceeding is a removal action.*
- (8) Appointment is otherwise necessary to meet the requirements of a fair hearing.*

**Who Is A GAL?**<sup>11</sup> A GAL is a qualified professional who must have completed specific training before his or her appointment as a GAL, including.

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<sup>7</sup> Sup. R. 48(F).

<sup>8</sup> See Sup. R. 48(F)(1)(c) and Loc.R. 7 (L) of the Court of Common Pleas of Geauga County, Juvenile Division.

<sup>9</sup> R.C. 3109.04(B)(2)(a).

<sup>10</sup> See also R.C. 2151.281(B).

<sup>11</sup> Sup. R. 48(E).

- Successful completion of a pre-service training course consisting of the six hour guardian ad litem pre-service course provided by the Supreme Court of Ohio and the Ohio CASA/GAL Association's pre-service training program consisting of 30 hours, or with prior approval of the Court, a course that is at least six hours in length and covers the topic areas in Sup. R. 48(E)(3).
- To meet the requirements of Sup. R. 48, the pre-service course shall include training on all the following topics:
  - Human needs and child development including, but not limited to, stages of child development;
  - 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;
  - Preventing child abuse and neglect including, but not limited to, assessing risk and safety;
  - 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; and
  - 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.
- The continuing education course must be at least three hours in length and must be provided by the Supreme Court of Ohio or by the Ohio CASA/GAL Association, or with prior approval of the appointing Court, any training that complies with Sup. R. 48. To meet the requirements, the three-hour continuing education course shall:
  - be specifically designed for continuing education of a GAL and not preservice education; and
  - consist of advanced education related to topics identified in Sup. R. 48.

**What Is The Cost Of A GAL?** If the GAL is not a CASA/GAL, then the Court may require the parties to pay a deposit with the Court, and the Court may require the parties to pay the GAL's fees, as approved by the Court, including attorneys' fees if the GAL is also serving as the attorney for the child(ren).

If the GAL is a CASA/GAL, then the Court will not require any payment of fees. A CASA/GAL is a volunteer with extensive training. The primary use and focus of a CASA/GAL is in abuse, neglect, and dependency cases, which typically involve Job and Family Services.

**Should I Request a GAL?** That is a difficult question to answer. Before requesting a GAL consider the following:

Pros -

- If you are not represented by legal counsel, the work performed by the GAL could assist you to obtain the result you are seeking. The GAL will perform an extensive investigation that you may not otherwise be able to perform or benefit from. If the result is a recommendation that supports the outcome you seek, that may be beneficial. The Court is likely to give considerable weight to the GAL's recommendation.
- The GAL works for the best interest of the child(ren). Unlike a mediator or a parenting coordinator, the GAL will meet with and listen to the child(ren).
- If a CASA/GAL is appointed, you should have no cost as a result.
- If you are the parent and either (1) under age 18 or (2) mentally incompetent the Court must provide you with a GAL.<sup>12</sup>

Cons –

- Of course, the work performed by the GAL and the resulting recommendation could result in the outcome that you do not desire. You need to carefully consider what the GAL is likely to discover about you and your abilities as a parent. Again, the Court is likely to give considerable weight to the GAL's recommendation. If you have any concerns you should consider seeking advice from an attorney.
- If the GAL is not a CASA/GAL, then you may be required to pay the cost of the GAL pertaining to the services rendered, including approved fees and expenses.

**LEGAL PRACTICE IN THE JUVENILE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.**

**IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.**

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<sup>12</sup> R.C. 2151.281(C) and Juv.R. 4(B)(3).