

STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN

Adopted June 23, 2003¹

These standards apply to all attorneys serving as guardians ad litem for children in child protection,² custody and visitation, juvenile delinquency, child in need of supervision, child in need of services, status offense and other appropriate cases, as determined by the court, in juvenile and domestic relations district courts, circuit courts, the Court of Appeals and the Supreme Court of Virginia. These standards augment the policies governing the qualification of attorneys as guardians ad litem.

In fulfilling the duties of a guardian ad litem (GAL), an attorney shall:

- A. meet face-to-face and interview the child,
- B. conduct an independent investigation in order to ascertain the facts of the case,
- C. advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the GAL, the court process and the possible consequences of the legal action,
- D. participate, as appropriate, in pre-trial conferences, mediation and negotiations,
- E. ensure the child's attendance at all proceedings where the child's attendance would be appropriate and/or mandated,
- F. appear in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests,
- G. prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare,
- H. provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation,
- I. communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence,
- J. file appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case, and
- K. advise the child in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.

¹ The STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN adopted by the Judicial Council were reviewed by the Supreme Court of Virginia on 7/7/2003 and became effective 9/1/2003. On 5/8/2018, the Judicial Council approved the addition of an unannotated version of the STANDARDS rendered as one sentence (p. 1), and two paragraphs in the Commentary (p. 3) to clarify the functional distinction between "shall" and "should."

² "Child protection cases" includes cases where a public or private child welfare agency is involved and concern children who are the subject of any of the following petitions: child abuse or neglect; child at-risk for abuse or neglect; approval of an entrustment agreement or for relief of custody; foster care review; permanency planning and termination of parental rights.

Commentary on STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN

INTRODUCTORY COMMENT: Many of the competencies required to represent children are the same as those required for many other types of litigation. There are skills, abilities and actions expected of attorneys in all cases such as conducting interviews, framing and evaluating pleadings, engaging in discovery techniques, thoroughly preparing for trial, and negotiating on behalf of a client. These skills are of equal importance to other types of civil cases such as labor, tort, contract or family law. The need for practices such as comprehensive client interviews is present in every case. Likewise, attorneys involved in any form of litigation must make choices and determine strategic options. For example, the need to interview non-parties depends on the nature of the case and the litigator's goal. Hence, qualifying phrases like "as appropriate" or "in so far as possible" are found in several standards and commentaries.

Representing children, however, is also different from other forms of litigation. The importance of the dispositional process and the potential for court proceedings to affect the very nature of a family provide the basis for these distinctions. The long-term consequences to the child client make the role of a guardian ad litem (GAL) as crucial at the dispositional stage as at any other phase of the case. These consequences demand full attention to the formulation and articulation of well-supported arguments and appropriate recommendations, as well as critical evaluation of plans proposed by others.

The GAL acts as an attorney and not a witness, which means that he or she should not be cross-examined and, more importantly, should not testify. The GAL should rely primarily on opening statements, presentation of evidence and closing arguments to present the salient information the GAL feels the court needs to make its decisions.

The implicit set of checks and balances operative in non-juvenile cases is generally not likely to work for children. In a civil action involving adults, the successful party knows when a judgment is paid or a court order is implemented. In proceedings involving children this may not be so; the child may be too young to understand or monitor orders, or the legal proceedings may be too complex for the child to understand. Thus, these standards incorporate provisions regarding communication with the child, the implementation of orders and appeals.

Attorneys who serve as GALs are subject to the Rules of Professional Conduct promulgated by the Virginia State Bar as they would be in any other case, except when the

special duties of a GAL conflict with such rules. For example, an attorney would follow the general conflict rule (1.7) to determine if there would be a possible conflict of interest if the attorney served as GAL. But unlike the Rules of Professional Conduct as they apply to confidentiality, there may be times when attorneys serving as a GAL must, in furtherance of their role as GAL, disclose information provided by the child to the court. A GAL appointed to represent siblings should be alert to potential conflicts and, when appropriate, request that the court appoint a separate GAL for each child.

The role and responsibility of the GAL is to represent, as an attorney, the child's best interests before the court. The GAL is a full and active participant in the proceedings who independently investigates, assesses and advocates for the child's best interests. Decision-making power resides with the court.

"Shall" is used in the context of a broader, more fundamental, truly binding professional obligation. For example, Performance Standard F provides: "In fulfilling the duties of a [GAL], an attorney shall . . . Appear in Court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests." (Adopted 5/8/2018)

In contrast, "should" typically points to obligations which are expected and not merely aspirational, but could be an obligation which might not apply in all instances or might simply be a recommended path to the satisfaction of a "shall." For example, as a component of meeting Performance Standard F, "The GAL should prepare, present and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary." "Should" often functions in the comments as an explanation of how to fulfill mandates. (Adopted 5/8/2018)

Standards Governing Performance

In fulfilling the duties of a guardian ad litem (GAL), an attorney shall:

A. Meet face-to-face and interview the child.

COMMENT: The first duty of the GAL is to establish a relationship with the child client, as an attorney would with any client. This interview should be conducted face-to-face at a time and place that allows the GAL to observe the child and ascertain: the child's wishes, the safety and adequacy of the child's current placement, and the need for further testing, evaluation or interim judicial relief. Such interviews are best conducted on a date prior to the first court appearance and at a location other than the courthouse. It is important to meet with the child in a private setting, such as the GAL's office, the child's home, school or placement, away from the litigants so that the child can talk openly.

There should be sufficient time between the interview and court appearances for the GAL to fully analyze the information gleaned, take appropriate actions and formulate meaningful arguments and recommendations.

The content and direction of the interview should take into account the child's age, maturity and potential stress created by the circumstances of the case and prior interviews, especially in cases involving allegations of sexual or other abuse. In such cases, GALs should rely upon videotapes of forensic interviews or attend interviews of the child conducted by trained experts rather than conducting their own independent investigation and interviewing the child about the facts of their alleged victimization.

As appropriate, children should be encouraged to articulate their concerns and views. In custody and visitation cases, care should be taken so that the child never feels compelled to state a preference or choose between parents or placements.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the GAL should exercise caution when talking to the child about the circumstances of the offense and advise the child about the limitations on confidentiality that may apply.

Young children present a challenge, but the age and verbal ability of the child do not abrogate the responsibility to meet face-to-face with the child. In meetings with young children, and with children with limited language abilities or those with disabilities, the GAL

will rely much more heavily on observation. Conducting such meetings at the child's home or placement allows the GAL to observe the surroundings and the child's interactions with others, as well as to interview the child's caretaker.

If the child expresses wishes that are contrary to the GAL's assessment of the child's interests and welfare, the GAL is obligated to inform the court of these wishes. If appropriate, the GAL should request that an attorney be appointed to serve as counsel for the child. If the child is uncooperative or appears to have been influenced by a parent or custodian, the GAL should inform the court of these circumstances.

B. Conduct an independent investigation in order to ascertain the facts of the case.

COMMENT: The GAL shall review any and all relevant records, which may include court, social service, medical, mental health, and school records. The GAL should attach a copy of the Supreme Court of Virginia's Form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, to any written request for records since it delineates the statutory authority for access to records.

The GAL shall interview the parties to the dispute and any other persons with relevant knowledge of the child and the facts that gave rise to the allegations. Such other persons would include, for example, the child's parents, current caretaker including foster parents, an assigned Court-Appointed Special Advocate (CASA) worker, social worker, child care provider, clergy, neighbors, relatives, school personnel, and health and mental health providers. When the child is young, there is a greater need to seek independent sources of information and obtain verification of salient facts. Such interviews are best conducted on a date prior to the court appearances and at a location other than the courthouse.

GALs should communicate their role and responsibilities clearly to the parents and/or other party's attorneys including the GAL's legal status in the proceeding and responsibility to participate fully to protect the child's interests and express the child's wishes.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the GAL should contact the child's defense attorney.

There should be sufficient time between the interview and court appearances for the GAL to fully analyze the information gleaned, take appropriate actions such as issuing

subpoenas, filing motions for temporary or protective relief or appointment of an independent expert to evaluate the child, and formulate a meaningful strategy.

If the home environment is at issue, the GAL should visit the child's home and any proposed alternative placement.

GALs should independently evaluate all allegations of child abuse or neglect, or of risk to the child's safety or welfare, including but not limited to physical or mental abuse, sexual abuse, lack of supervision, educational neglect, and exposure of the child to domestic violence or substance abuse, regardless of whether such abuse or neglect or risk is identified in the parties' pleadings.

C. Advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the GAL, the court process and the possible consequences of the legal action.

COMMENT: The GAL shall make every effort to ensure that the child understands, by using language appropriate to the child's age and verbal abilities, the nature of the proceedings, the consequences which may result, the possibility of future modifications, the attorney's responsibilities as a GAL, and how to contact the GAL. If the child has significant emotional problems, the GAL should consult with a mental health specialist or the child's therapist in order to determine the best manner to present this information.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the GAL should explain how the GAL's role and responsibilities differ from that of the child's defense attorney and advise the child about the limitations on confidentiality that may apply.

The GAL must inform the child that there may be circumstances when confidentiality will apply to communication between the child and GAL, and circumstances when it may not. The GAL may use information received from the child to further the child's best interest. For example, the GAL may learn from the child that a custodian is taking illegal drugs and may use that information to request that the court order drug testing of the custodian.

The GAL should keep the child apprised of any developments in the case and actions of the court or parties involved. The GAL shall maintain meaningful contact with the child

throughout the term of the case to monitor the child's welfare and the parties' compliance with court orders.

D. Participate, as appropriate, in pre-trial conferences, mediation and negotiations.

COMMENT: The GAL should be involved, as appropriate, in all pre-trial conferences and negotiations including phone calls, formal or informal conferences and mediation.

Additionally, the GAL should take any action necessary to attempt to resolve the case in the least adversarial manner possible; however, a GAL should clarify, when necessary, that he or she is not acting as a mediator.

The GAL's role in such meetings is to represent and advocate for the best interests of the child. A GAL who participates in mediation is bound by the confidentiality rules governing mediation as found in § 8.01-576.10 of the Code of Virginia. As a general rule, the GAL should encourage settlements. In exceptional cases where the GAL reasonably believes that a proposed settlement would be contrary to the welfare of the child, the GAL should first discuss these concerns with the parties and their counsel. If these concerns are not addressed, the GAL should bring the facts that led to the concerns about the settlement to the court's attention by filing a motion to vacate the agreement in accordance with § 8.01-576.12 of the Code of Virginia. Any proposed settlement which is deleterious to the child should be opposed despite the agreement of the other parties.

E. Ensure the child's attendance at all proceedings where the child's attendance would be appropriate and/or mandated.

COMMENT: In so far as possible, the GAL should assure the meaningful participation of the child in all phases of the proceedings which would include attendance at appropriate court hearings.

The GAL should consult the child, caretaker, therapist and any other relevant individuals to determine the appropriateness of the child's attendance at a hearing. A decision to exclude the child from a hearing should be based on a particularized determination. In making this determination, the GAL should consider the age, maturity and desires of the child; the purpose of the hearing; the advice of those consulted; and the potential risk of trauma to the child evoked by such attendance.

In cases when the child has the right to attend hearings, the GAL should ensure that the child is informed of that right. As appropriate, the child should be provided sufficient information about such hearings to make an informed decision about whether to attend.

F. Appear in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.

COMMENT: As in any case, the GAL is expected to act as an advocate for the client child. This demands attendance at all hearings with the intention of presenting a well formulated position based on the facts. This position should be supported by the GAL's independent investigation, and through the development of a theory and strategy for the case. The GAL should prepare, present and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary. Although the child's position may overlap positions of other parties such as the parents, the GAL should be prepared to participate fully in every hearing and not merely defer to or endorse the positions of other parties. The GAL acts as an advocate and uses every attorney skill appropriate to further a result favorable to the child's best interest. The GAL should never engage in ex parte communications with the court or submit written material to the court without promptly delivering a copy to the other parties and their counsel.

G. Prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare.

COMMENT: The GAL should determine whether to call the child as a witness based on consideration of the child's need or desire to testify, developmental and verbal capabilities of the child and the child's ability to withstand cross-examination. For some children testifying is therapeutic and empowering, while for others it may be very traumatic. The GAL must determine the possible benefits and repercussions of testifying and the necessity of the child's direct testimony. The GAL shall consult a mental health specialist or therapist working with the child, if there is one, to assist in evaluating whether testifying will cause trauma to the child. Consideration should also be given to the availability of other evidence or hearsay exceptions that may substitute for direct testimony.

If the child does not wish to testify or would, in the GAL's opinion, be harmed by being forced to testify, the GAL should seek an agreement of the parties not to call the child as a witness or utilize other remedies such as an order from the court to limit the scope or circumstances of the testimony.

If the child is compelled to testify, the GAL should seek to minimize the adverse consequences by seeking appropriate accommodations as allowed by law, such as testimony taken by closed circuit television in accord with § 63.2-1521 of the Code of Virginia or an "in camera" interview of the child in the judge's chambers. The GAL should prepare the child for "in camera" interviews or testimony by explaining the nature and purpose of the proceeding and the use or disclosure that may be made of the information that the child provides during the proceeding.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the child's defense attorney will take responsibility for preparing the child to testify when necessary.

H. Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.

COMMENT: The GAL is obligated to assure that all facts relevant to the case, available dispositional remedies and possible court orders are presented to the court. The GAL's arguments to the court should address every appropriate aspect of the litigation including: analysis of any allegations of abuse, neglect or risk; analysis of factors to be considered in a determination related to custody and visitation; placement of the child; services to be made available to the child and family; dispositional alternatives for the child or parents in juvenile delinquency, child in need of supervision, child in need of services, status offense cases and custody and visitation arrangements; and any other orders the GAL deems to be in the child's interest. Recommendations for placements outside the home should take into consideration the availability and appropriateness of placement with relatives or friends, parental visitation and keeping a sibling group together.

The GAL's arguments should contain, but not be limited to, an analysis of and comment on plans presented by other parties such as the Department of Social Services, court services staff, or as a result of mediation.

In certain circumstances, a summary of the GAL's findings with recommendations and the basis for those recommendations may be presented to the court. Such circumstances include the dispositional phase of a case involving both an adjudicatory and dispositional phase or, at the request of the court, in a custody/visitation case. This summary may be written or oral. If written, copies of the summary should be provided to the other parties and their counsel at least five days prior to the hearing unless otherwise directed by the court.

In foster care placement, permanency planning, foster care review proceedings, and mediated agreements, the GAL should be aware of the proposed plans, should consult with the child about the proposal, and explore any alternatives the GAL believes are more appropriate. If the GAL disagrees with such plans, the court should be advised of this disagreement supported by evidence or information gleaned from the GAL's independent investigation.

I. Communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence.

COMMENT: Whenever it is appropriate to the child's needs and consistent with the direction of the court, the GAL should attend all meetings or hearings involving legal, educational and therapeutic issues specifically related to the case. These would include meetings of the Family Assessment and Planning Team, Individualized Education Plan (IEP) meetings, school disciplinary or other educational meetings, and foster care placement and review meetings. The GAL can present the child's perspective, gather information necessary to proper representation, and potentially achieve a negotiated settlement of all or some issues of the case at such meetings.

The GAL should contact any CASA volunteer assigned to the case and coordinate all aspects of the investigation with the CASA volunteer. Such volunteers can offer significant information and assistance to the GAL.

The GAL should contact the attorneys for the other parties to the case as soon as possible and at least seventy-two hours prior to any hearing. Counsel for other parties to the case may have information not included in any of the available records and can provide

their respective clients' perspectives. Appropriate communication should be maintained between the GAL and all agencies and professionals involved in the case.

J. File appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case.

COMMENT: The GAL should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's best interest in court and during other proceedings. When necessary, the GAL should file briefs in support of legal issues. The GAL should file a show cause against a party who is not following a court order or a motion under § 16.1-278 to compel an agency to provide services if it is not doing so as ordered.

If the GAL believes the court's determination is contrary to the child's interest or welfare, after considering the wishes of the child, a notice of appeal should be filed and measures taken to assure that the appeal is perfected expeditiously. The GAL should file any appropriate pleadings on behalf of the child, including responses to pleadings of other parties.

The GAL should also ensure that the child has representation in any appeal related to the case regardless of who files the appeal. During an appeal process initiated by another party, the GAL for a child may file a brief and participate fully at oral argument.

If the GAL feels he or she lacks the necessary experience or expertise to handle an appeal, the GAL should notify the court and seek to be replaced.

K. Advise the child, in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.

COMMENT: The GAL should review all orders to ensure they conform to the court's verbal orders and statutorily required findings and notices. The GAL should discuss all such orders and their consequences with the child. The child is entitled to understand what the court has done and what that means to the child. The GAL should explain whether the order may be modified or whether the actions of the parties may affect how the order is carried out. For example, an order may permit an agency to return the child to the parents if certain goals are accomplished.

The American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, approved by the American Bar Association House of Delegates, February 5, 1996; American Bar Association Family Law Section Standards of Practice for Lawyers Representing Children in Custody Cases, Committee final draft approved April 24, 2003, and approved by the Section Council on May 2, 2003; The New York State Bar Association Committee on Children and the Law: Law Guardian Representation Standards, Volume II, Custody Cases, November 1999; Representing Children: Standards for Attorneys and Guardians Ad Litem in Custody and Visitation Proceedings, American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (NACC Revised Version), National Association of Counsel for Children, February 1996; American Academy of Matrimonial Lawyers, 1995; and Richmond Juvenile and Domestic Relations District Court Guardian Ad Litem Standards were heavily relied upon in the development of these standards.

**ORDER FOR APPOINTMENT
OF GUARDIAN AD LITEM**

Commonwealth of Virginia VA. CODE § 16.1-266

Court Case No.:

Circuit Court
 Juvenile and Domestic Relations District Court

.....
CITY OR COUNTY

In re:

JUVENILE

V.

PETITIONER

RESPONDENT

This proceeding involves a Petition/Motion regarding:

- | | | |
|--|---|---|
| <input type="checkbox"/> custody | <input type="checkbox"/> child abuse or neglect | <input type="checkbox"/> delinquency |
| <input type="checkbox"/> visitation | <input type="checkbox"/> termination of parental rights | <input type="checkbox"/> child in need of services |
| <input type="checkbox"/> child support | <input type="checkbox"/> entrustment | <input type="checkbox"/> child in need of supervision |
| <input type="checkbox"/> paternity | <input type="checkbox"/> family abuse protective order | <input type="checkbox"/> relief of custody by parent |
| <input type="checkbox"/> consent to adoption | <input type="checkbox"/> other: | |

and the Court finds that:

the Juvenile named above is entitled to the appointment of a guardian *ad litem* pursuant to § 16.1-266 of the Code of Virginia, and the best interests of the child are not adequately protected by the parties or the appointment of a guardian *ad litem* is otherwise required by law.

OR

the Petitioner Respondent Defendant named above is a person under a disability and is unable to protect his/her interest in this proceeding and is entitled to the appointment of a guardian *ad litem* pursuant to § 16.1-266 of the Code of Virginia because of the following disability:

- | | |
|---|--|
| <input type="checkbox"/> incarceration | <input type="checkbox"/> intellectual disability |
| <input type="checkbox"/> mental illness | <input type="checkbox"/> minor <input type="checkbox"/> other: |

The Court Orders that:

.....
NAME OF ATTORNEY

.....
TELEPHONE NUMBER OF ATTORNEY

is hereby appointed as guardian *ad litem* to protect and represent the interests of
..... in connection with all proceedings involved in this matter.

The date and time for the next hearing is:

The Court further orders that the guardian *ad litem* perform the duties and have access to the parties and documents specified on the reverse and incorporated by reference into this order.

So Ordered.

.....
DATE

.....
JUDGE

In conforming to the following standards of performance, guardians *ad litem* shall comply with Rule 8:6 of the *Rules of the Supreme Court of Virginia* and shall be further informed of their duties and responsibilities by the commentary of the *Standards to Govern the Performance of Guardians Ad litem for Children* as adopted by the Judicial Council of Virginia effective September 1, 2003.

In fulfilling the duties of a guardian *ad litem* as appointed pursuant to this Order, an attorney shall:

- A. Meet face to face and interview the child.
- B. Conduct an independent investigation in order to ascertain the facts of the case.
- C. Advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the guardian *ad litem*, the court process and the possible consequences of the legal action.
- D. Participate, as appropriate, in pre-trial conferences, mediation and negotiations.
- E. Ensure the child's attendance at all proceedings where the child's attendance is appropriate and/or mandated.
- F. Appear in Court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.
- G. Prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare.
- H. Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.
- I. Communicate, coordinate and maintain a professional working relationship, in so far as possible, with all parties without sacrificing independence.
- J. File appropriate petitions, motions, pleadings, briefs and appeals on behalf of the child and ensure that the child is represented by a guardian *ad litem* in any appeal involving the case.
- K. Advise the child, in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.

Decision-making power resides with the court.

Failure to perform these duties may result in the appointing court's refusal to authorize payment of the fees requested by the guardian *ad litem* or a reduction of the payment requested, removal from the assigned case or removal from the court's *Guardian Ad Litem* Appointment List.

The guardian *ad litem* is authorized to appear at the Family Assessment and Planning Team and at panel review hearings conducted by the local department of social services pursuant to Virginia Code § 63.2-907.

The guardian *ad litem* appointed to represent the child shall have access to the following persons and documents without further Order of the Court:

- A. The child.
- B. Parties to the proceeding.
- C. Court Appointed Special Advocate (CASA), local department of social services and court services unit worker in the case, and school personnel involved with the child.

Upon presentation by the guardian *ad litem* of this order, the guardian *ad litem* shall have access to any records relating to the child held by any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health provider who shall permit the guardian *ad litem* to inspect and copy such records without the consent of the child or his parents. Upon the request of a guardian *ad litem* made at least seventy-two hours in advance, a mental health provider shall make himself available to conduct a review and interpretation of the child's treatment records which are specifically related to the investigation. Such a request may be made in lieu of or in addition to inspection and copying of the records.

§ 16.1-267. Compensation of appointed counsel

A. When the court appoints counsel to represent a child pursuant to subsection A of § 16.1-266 and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parents for such legal services in the maximum amount of that awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court.

When the court appoints counsel to represent a child pursuant to subsection B or C of § 16.1-266 and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163.

C. 1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to § 16.1-266, the court shall order the parent, or other party with a legitimate interest who has filed a petition in such proceeding, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court determines to be indigent pursuant to § 19.2-159 shall be required to pay reimbursement except where the court finds good cause to do so. The Executive Secretary of the Supreme Court shall administer the guardian ad litem program and shall report August 1 and January 1 of each year to the Chairmen of the House Appropriations and Senate Finance Committees on the amounts paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management actions taken to further enhance savings under this program.

2. For good cause shown, or upon the failure by the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem pursuant to § 16.1-266 .1, the court may adjust the cost sought by the guardian ad litem of such services.

3. For the purposes of this subsection, "other party with a legitimate interest" shall not include child welfare agencies or local departments of social services.

Code 1950, § 16.1-173; 1956, c. 555; 1966, c. 709; 1968, c. 581; 1970, c. 87; 1973, c. 440; 1974, c. 513; 1975, cc. 465, 559; 1977, c. 559; 1981, c. 213; 1984, c. 709; 1986, c. 425; 1993, c. 344; 2004,

cc. [342](#), [437](#);2017, c. [676](#);2018, c. [688](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

GUARDIAN AD LITEM DISCLOSURE
Commonwealth of Virginia Va. Code § 16.1-266.1, Rule 8:6

Case No.

.....
DATE OF HEARING

[] Circuit Court
..... [] Juvenile and Domestic Relations District Court

In re:

I have taken the following actions in performing the duties of the guardian *ad litem* for the child according to the *Standards to Govern the Performance of Guardians Ad Litem for Children* as indicated below.

1. I [] have [] have not met face-to-face with the child since the last court hearing in this matter in a setting other than the courthouse.

Comments:
.....
.....

2. I [] have [] have not conducted an independent investigation of this matter.

In conducting my independent investigation, I interviewed the parties and any other persons with relevant knowledge of the child and the facts, including:

- | | |
|---|--|
| <input type="checkbox"/> Parent(s)/Guardian(s)/Custodian(s) | <input type="checkbox"/> CASA, if applicable |
| <input type="checkbox"/> DSS Case Worker | <input type="checkbox"/> Counselor |
| <input type="checkbox"/> Foster Parent(s) | <input type="checkbox"/> Household Members |
| <input type="checkbox"/> School Personnel | <input type="checkbox"/> Other |
-

AND

I reviewed relevant records, including but not limited to:

- | | |
|--|---|
| <input type="checkbox"/> Medical Records | <input type="checkbox"/> Counseling Records |
| <input type="checkbox"/> School Records | <input type="checkbox"/> Foster Care Plan |
| <input type="checkbox"/> CASA | <input type="checkbox"/> Other |
-

3. I [] have [] have not discussed this proceeding in an age appropriate manner with the child to ensure the child understands his or her rights, the nature of the proceeding, my role and responsibilities as guardian *ad litem*, the court process, the possible consequences of the legal action, the circumstances under which confidentiality may or may not apply, and how to contact me.

Comments:
.....
.....

4. [] I have participated in [] pre-trial conferences [] mediations [] family assessment and planning team (FAPT) meetings
[] negotiations [] family partnership team (FPM)/team decision making (TDM) meetings
[] other (please specify)

[] I have not participated in any of the above.

Comments:
.....
.....

5. I have have not ensured the child’s attendance at all proceedings, where such attendance would be appropriate and/or mandated, and I have have not prepared the child to testify in accord with the child’s interest and welfare.

Comments:
.....
.....

6. I have have not appeared in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child’s interests.

Comments:
.....
.....

7. I have have not provided will provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.

I have have not shared my preliminary recommendations with counsel and self-represented parties by phone letter in person written report. If shared in a written report, report was provided on:
DATE

Comments:
.....
.....

8. I have have not communicated, coordinated and maintained a professional working relationship in so far as possible with all parties without sacrificing independence.

I have have not requested permission from the appropriate attorney/guardian *ad litem* to discuss this case with the child’s mother father guardian other represented party. (Legal Ethics Opinion 1870)

Comments:
.....
.....

9. I have filed petitions motions pleadings briefs and/or issued subpoenas.
 I have not filed any of the above documents.

Comments:
.....
.....

10. I will will not advise the child, in terms the child can understand, of the court’s decision and its consequences for the child and others in his or her life.

Comments:
.....
.....

I have provided or will provide copies of this completed form to the court and to all counsel and self-represented parties at the beginning of the hearing.

.....
NAME OF GUARDIAN AD LITEM

.....
DATE

.....
GUARDIAN AD LITEM

.....
VSB NO.

Guardian Ad Litem Costs – Frequently Asked Questions

What counts as “in court” time versus “out of court” time?

- This determination is at the discretion of the judge
 - In court time: participating in court hearing after case has been called
 - Out of court time: most other work on case (i.e., meeting with parties and witnesses outside of court, reviewing records, participating in negotiations, etc.)
 - What about: waiting in courthouse for case to be called, discussing the case with parties and witnesses while waiting for case to be called, arriving at courthouse early for hearing and working on other matters, traveling to court for hearing (from home? from office?)
 - The GAL should discuss questionable time entries with the judge.

How are the GAL’s time and expenses apportioned when there are multiple children?

- Divide total time and expenses by number of children

How should a GAL handle long-distance travel?

- Get preapproval of court for large expenses (i.e., travel farther than 80 miles)
 - In evaluating request for preapproval of travel, consider whether the GAL’s physical presence is necessary given the facts and circumstances of the case, whether there is another way to get the information (i.e., videoconferencing, home study conducted locally.)
 - Travel expenses should be in accordance with the Judicial System Meal and Lodging Guidelines, available at:
<http://www.courts.state.va.us/courtadmin/aoc/fiscal/home.html>
 - Receipts should be attached to the DC-40, LIST OF ALLOWANCES.
 - The GAL should discuss treatment of long commute times with the court.

How should the GAL’s staff’s time be handled?

- Staff time is overhead and should not be billed separately.

What about payments to experts?

- GAL should seek court approval before engaging an expert.
 - Can enter an order authorizing a specific amount of compensation to expert to be paid by the Commonwealth where the parties are indigent.
 - The GAL should not pre-pay for the expert and seek reimbursement as an expense.

How should the court handle questionable time entries or expenses?

- New language in Va. Code § 16.1-267 (C) authorizes the court to adjust the costs sought by the GAL.
- Form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN *AD LITEM* contains a listing of GAL duties and responsibilities and warns that “Failure to perform these duties may result in the appointing court's refusal to authorize payment of the fees requested by the guardian *ad litem* or a reduction of the payment requested, removal from the assigned case or removal from the court's Guardian *Ad Litem* Appointment List.”
- Use DC-540, GUARDIAN *AD LITEM* DISCLOSURE to evaluate whether the GAL’s performance meets the performance standards.

Guardian Ad Litem Payment Procedures

Recent Legislation

2017 amendments to Va. Code § 16.1-267 added language that was previously included in the Appropriations Act requiring that the court assess the costs of the GAL's services against the parents or other party with a legitimate interest unless the court determines that such party is unable to pay. The Office of the Executive Secretary is required to report to the General Assembly twice a year "on the amount paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management action taken to further enhance savings under this program."

During the 2018 session, HB278 made additional amendments to Va. Code § 16.1-267, providing that "for good cause shown, or upon the failure by the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem pursuant to § 16.1-266.1, the court may adjust the cost sought by the guardian ad litem of such services."

Guardian Ad Litem Billing Procedures

Guidelines for Payment of Guardians Ad Litem for Children are set out in Chapter 7 of the Court-Appointed Counsel Procedures & Guidelines Manual available at, <http://www.courts.state.va.us/courtadmin/aoc/djs/resources/manuals/ctapptatty/chapter07.pdf>

Billing Rates: GAL in court time - \$75/hr, GAL out of court time - \$55/hr

- GAL time shall be recorded in increments not greater than .10 hour (6 minutes), as provided in the Chart of Allowances.
- An itemized statement is required if the amount claimed is greater than \$500. This statement should detail dates, times and tasks performed for the time claimed on the DC-40.
- GAL should submit a DC-40 after the entry of each appealable order in a case which involves judicial determinations.

Expenses: Mileage in 2018 is 54.5 cents per mile.

- Receipts showing payment are required for each expense over \$20 (i.e., long-distance phone charges, copying, courier fees.)
- GAL should seek preapproval of the court for all large expenses, including all long-distance travel (> 80 miles).
 - Enter an order indicating a reason for the expense and authorizing the expense up to a set amount.

- Assess expenses against the parties per Va. Code § 16.1-267.
- The appointing court is responsible for reviewing and approving the GAL's request for compensation.

Assessments

- Inform parents or parties with a legitimate interest who have filed a petition in the case of their obligation under the law to reimburse the Commonwealth for the GAL costs.
 - Form DC-510 SUMMONS includes notice language regarding the assessment of GAL costs.
 - Form DC-533 ASSESSMENT/PAYMENT ORDER contains provisions effectuating the assessment of GAL costs against the appropriate parties.
- Determine who should pay: The total amount may be apportioned between parents or parties with a legitimate interest, as appropriate.
- Determine when to assess: For multi-stage or lengthy proceedings, the GAL should submit expenses and the expenses should be assessed on an interim basis. This should be done when each an appealable order is entered.
- Determine the ability to pay: Va. Code § 16.1-267 (C) provides that “[i]f the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court determines to be indigent pursuant to § 19.2-159 shall be required to pay reimbursement except where the court finds good cause to do so.”
 - Potentially responsible parties should complete Form DC-606 FINANCIAL STATEMENT FOR APPLICATION TO PROCEED IN CUSTODY/VISITATION CASE WITHOUT FILING FEES OR FOR ASSESSMENT OF GUARDIAN *AD LITEM* COSTS.
 - Any party who currently receives public assistance, as noted on the DC-606, should not be assessed any GAL costs.
 - Any party who has been determined to be indigent for the purpose of appointment of counsel should not be assessed any GAL costs.
 - Any party who is otherwise determined to be indigent (available funds at or below 125% of the Federal Poverty Guideline) should not be assessed any GAL costs.

- After consideration of the DC-606 financial statement, consult the Table to Govern the Reimbursement of GAL Fees and Expenses Using Federal Poverty Guidelines Plus 25% to identify the party's expected contribution amount to the GAL costs, available at, <http://www.courts.state.va.us/courtadmin/aoc/djs/resources/manuals/ctapptatty/galfees.pdf>
 - Consider any case-specific facts and circumstances that might warrant a deviation from the recommended assessment amount.
- Enter an order for the assessment of GAL costs using Form DC-533 ASSESSMENT/PAYMENT ORDER.
 - It is recommended that the DC-533 Order be served on the parties in person at the conclusion of the court hearing. Otherwise, the order should be mailed to the parties and the GAL.
 - The due date for GAL fees should be set by the court and ordered on the DC-533 Order. In determining the due date, consider the total amount due by each party.
 - Assessments are collected in the J&DR court, even if the matter is appealed to Circuit Court.