

---

# VBBA~VBJDR CLE- GAL BEST PRACTICES

---



Hear from experienced attorneys who have served as GALs on topics including home visits, interactions with litigants, billing tips, motions practices and DHS involvement. You will also hear from J&DR judges regarding their perspective on various Guardian *ad litem* topics.

CLE and GAL Credit: 2.0

**January 17, 2025 ~ 1:30pm VBJDR  
Courtroom #7**

---

# VBBA~VBJDR CLE- GAL BEST PRACTICES

---

## AGENDA

### **i. WELCOME & OPENING REMARKS**

*Hon. Cheshire I. Eveleigh, Judge  
Virginia Beach Juvenile & Domestic Relations District Court*

### **ii. HOME VISITS & INTERACTIONS WITH LITIGANTS**

*Elizabeth Howerin, Esq.*

### **iii. BILLING**

*Peter Imbrogno, Esq.*

### **iv. MOTIONS PRACTICES**

*Elizabeth Barnes, Esq.*

### **v. DHS MATTERS**

*Christianna Dougherty-Cunningham , Esq. – Associate City Attorney*

### **vi. JUDICIAL PERSPECTIVES**

*Judges of the Virginia Beach Juvenile & Domestic Relations District Court*

## Speaker Bios

### **The Hon. Cheshire P'Anson Eveleigh**

Judge Eveleigh attended Oral Roberts University where she graduated in 1984 and then attended law school at William and Mary where she graduated in December 1989. She was elected to the bench of the Virginia Beach Juvenile and Domestic Relations District Court on July 1, 2019. Prior to that, she served as a Substitute Judge for the Second Judicial Circuit for 15 years. Judge Eveleigh practiced family law with the firm of Wolcott Rivers Gates for 29 years before ascending to the bench. While she was a practicing attorney, she served as Chair of the Virginia Family Law Coalition for 10 years. She became a fellow of the American Academy of Matrimonial Lawyers in 2010. In 2016 she became a diplomate in the American College of Family Trial Lawyers and is currently an emeritus member of the College. She provides the juvenile court judges with the annual case law update and currently serves as a Regional Representative on the Association of District Court judges as well as the chair of the Awards Committee.

### **Hon. Jennifer B. Shupert**

Judge Shupert received a B.S. in Family Studies & Child Development and a minor in Psychology from Oklahoma Christian University, and a Juris Doctorate from Regent University School of Law. She practiced law in the Commonwealth of Virginia for 18 years, focusing her practice on the areas of Family Law and Adoption. Jennifer was appointed as a judge for the Virginia Beach Juvenile & Domestic Relations District Court in 2022. Judge Shupert was a former member of the Executive Board for the Virginia Beach Bar Association and the Virginia State Bar's Young Lawyer's Conference. She has participated as a speaker for multiple continuing education courses on various family law topics and is the author of *Cooperative Communication: Tips to Improve Coparenting*.

### **Elizabeth K. Barnes, Esq.**

Attorney Elizabeth K. Barnes has been assisting clients with family law matters, including divorce, since she entered practice. Her commitment to helping clients, including military personnel, has given her the reputation of a personal and compassionate lawyer. Born and raised in Virginia Beach, attorney Barnes graduated from the College of William and Mary. She obtained her *juris doctorate* from the William S. Boyd School of Law, University of Nevada, in Las Vegas. Immediately after law school, she returned to her hometown of Virginia Beach and was admitted to the Virginia State Bar. She has practiced in the Virginia Beach and Hampton Roads area continuously since that time. Ms. Barnes has a philosophy of being both accessible and flexible for her clients' needs. As part of her commitment to helping others, attorney Barnes also serves as a court appointed guardian ad litem, representing children during divorce, child custody,

and abuse and neglect cases involving the Department of Social Services and Child Protective Services.

**Christianna Dougherty-Cunningham, Esq.**

Since 2004, Christianna Dougherty-Cunningham has been an Associate City Attorney for the City of Virginia Beach. Beginning in 2007, she was assigned to represent the Department of Human Services in all aspect of litigation, compliance, and protected information. She is a member of the VBJDR Court Improvement/JDAI Committee, the Virginia Beach Bar Association Juvenile Court Committee, and a Past President for the James Kent American Inn of Court. She was a recipient of the VBBA Bar Service Award in 2021, and presently serves on the VBBA executive board as their in-coming Treasurer. She serves a grader for the Virginia State Board of Bar Examiners and as a mock trial Judge for the College of William and Mary and Regent University. Mrs. Cunningham has been a speaker at numerous statewide CLEs and conferences on DSS and DARS matters, and has drafted teaching materials on a wide range of topics, including but not limited to, Adult Protective Services issues, Guardian and Conservatorships, HIPAA and 42 CFR Regulations, and Child Welfare in Virginia. Prior to joining the City Attorney's Office, Mrs. Cunningham was an Associate Attorney at Tavss Fletcher in Norfolk. Ms. Cunningham has a BA cum laude in Broadcasting from Arizona State University and a JD cum laude from Saint Louis University School of Law. She also completed the Advanced Trial Skills Certification through NITA in 2006 at Georgetown University School of Law.

**Elizabeth Howerin, Esq.**

Attorney Elizabeth Howerin is a native to Virginia Beach, where she graduated from First Colonial High School. She then went on to graduate from Longwood University, where she obtained her Bachelor of Arts degree in Political Science with a minor in German Language. After college, Elizabeth attended Regent University School of Law, where she excelled in many of her classes, but specifically in the areas of legal writing and trial advocacy. At graduation, Elizabeth earned yet another award – the Virginia Trial Advocacy Award from the Virginia Trial Lawyers Association. Most recently, in 2020, Elizabeth was voted by her peers to be in Legal Elite's Top Young Lawyers Under 40.

**Peter Imbrogno, Esq.**

Attorney Imbrogno received his BS in accounting from Old Dominion University and his JD from the Dickinson School of Law at Pennsylvania State University. He is active in the Virginia State Bar, the Virginia Beach Bar Association JDR Committee, and with the American Heart Association. His accounting background gives him a unique perspective into the areas in which he practices, which include Family Law, Domestic Relations, Estate Planning, Personal Injury, Commercial Litigation, Criminal Defense, Creditor's Rights and Collections, as well as traffic matters. He is qualified as a guardian *ad litem* for children and incapacitated adults

and works on many cases representing children and families involved in child protective services cases and adult protective services matters. He actively represents clients in both state and federal courts, and has obtained significant jury verdict and settlements in personal injury and wrongful death cases.

# Virginia MCLE Board

## Certification of Attendance (Form 2)

Report attendance online at [www.vsb.org](http://www.vsb.org). Keep this form for your records.

Name: \_\_\_\_\_ VSB ID#: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
City State Zip

Course ID: VIMM001  
Sponsor: Virginia Beach Bar Association  
Title: VBBA ~ VBJDR GAL Best Practices  
Type: Live  
Format: Speaker in Room  
Credits: 2.00 0.00 0.00  
CLE (Ethics) Well-being

### Credit Certification

Date completed: \_\_\_\_\_ Location: \_\_\_\_\_  
Do not leave blank or form will not be processed.

**By my signature below I certify:**

1. I attended a total of \_\_\_\_\_ (hrs/mins) of approved CLE of which (\_\_\_\_\_) (hrs/mins) were approved Ethics and \_\_\_\_\_ (hrs/mins) were approved Well-being. (Claim credit for actual time in attendance. Round to the nearest half hour. E.g. 75 min=1.5 CLE hours.)
2. The sessions for which I am claiming credit had written instructional materials to cover the subject matter.
3. I participated in this program in a setting physically suitable for the course.
4. I was given the opportunity to interact with the presenter (in real time if the program was live or by some other means if the program was pre-recorded).
5. I understand I may not claim credit for any course/segment for which credit has already been claimed in the current or preceding CLE periods.
6. I understand that a materially false statement shall be subject to appropriate disciplinary action.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

MCLE requirement: Paragraph 17, Section IV, Part Six of the Rules of the Supreme Court of Virginia and MCLE Board Regulations.  
Completion deadline: October 31. Reporting deadline: December 15. Fees are assessed for failure to comply with MCLE deadlines.

**Virginia MCLE Board**  
Certification of Teaching (Form 3)  
Email your completed form to [MyMCLE@vsb.org](mailto:MyMCLE@vsb.org).

Name: \_\_\_\_\_ VSB ID#: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_  
\_\_\_\_\_  
City State Zip

Course ID: VIMM001  
Sponsor: Virginia Beach Bar Association  
Title: VBBA ~ VBJDR GAL Best Practices  
Type: Live  
Format: Speaker in Room  
Credits: 2.00 0.00 0.00  
CLE (Ethics) Well-being

**Credit Certification**

- Complete lines 1 and 3 if you are only claiming teaching credit. Leave line 2 blank.
- To claim teaching and attendance credits, enter the time spent teaching in line 1, time as an attendee (do not include your teaching segment) in line 2, and the amount of preparation credit in line 3.
- Up to four (4) hours of preparation credit can be claimed per one hour of teaching. Multiply the total minutes taught by '4' to determine the maximum preparation credit you can receive for your teaching segment. A maximum of eight (8) hours can be claimed for one course.
- The total credit that will be added to your record will be the sum of the three lines, rounded to the nearest half hour.

Date completed: \_\_\_\_\_ Location: \_\_\_\_\_  
**Do not leave blank or form will not be processed.**

1. My teaching segment was \_\_\_\_\_ (hrs/mins) of CLE which included (\_\_\_\_\_) (hrs/mins) of approved Ethics and \_\_\_\_\_ (hrs/mins) of approved Well-being.
2. I also attended other segments totaling \_\_\_\_\_ (hrs/mins) of CLE which included (\_\_\_\_\_) (hrs/mins) of approved Ethics and \_\_\_\_\_ (hrs/mins) of approved Well-being.
3. I am claiming \_\_\_\_\_ (hrs/mins) of preparation credit.
4. I understand that a materially false statement shall be subject to appropriate disciplinary action.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

MCLE requirement: Paragraph 17, Section IV, Part Six of the Rules of the Supreme Court of Virginia and MCLE Board Regulations.  
Completion deadline: October 31. Reporting deadline: December 15. Fees are assessed for failure to comply with MCLE deadlines.

### **Top 5 “Must Do’s” at Home Visits**

1. Tour of the entire house
  - a. Especially child’s room/closet!
  - b. If child is present, have child give you a tour (age appropriate)
  - c. Look into cabinets, fridge, and closets
2. Check the backyard and garage
3. Have all adults living in the home present
  - a. Ask questions about their work schedule, interactions with child
4. Don’t draw attention or comment as to anything you observe (use discretion)
5. Use your senses—eyes, ears, and nose

### **Home Visits Generally**

- Are they required?
  - If one parent raises a concern about the other parent’s home, then do home visit
- Warn the parent or caretaker that you are going to be nosy and look everywhere
- Ask about pets
- If no concern is raised, then use your discretion
  - If a parent with little parenting time wants to expand parenting time, do home visit
    - Ensure home is appropriate if parenting time is expanded
  - Always err on the side of caution and try to do home visit as best you can
- Always ask about firearms
  - Where are they kept
  - Virginia Code §18.2-371.1 addresses the safekeeping of firearms for caretakers
- If parent is not local, do FaceTime home visit
  - Try and do when child is there if age appropriate
- During home visits—use this time to speak to the parent in depth about case if child is not present
  - If child present, speak with child in another room and request parent to step away
  - If parent has a problem, politely explain that you are the child’s lawyer and need to speak with the child alone
- Do you accept refreshments/gifts from parents?
  - No
- If you feel uncomfortable then LEAVE
- If parent is wearing inappropriate clothing, then ask them to change



## **Speaking with Litigants**

- Have them provide background of child and family dynamic
  - How did we get here?
  - Were parents married?
  - Breakdown in relationship
  - Read their completed questionnaire before speaking with them
- What is current parenting time schedule
- What is the parent looking for in the litigation?
  - WHAT DO THEY WANT
  - A lot of time, the parents know nothing about process and have little ability to articulate legalities
  - Sometimes they don't know what they want, so try and ask questions to help them
  - Explain the process to some degree
- Don't tell them what the child told you!
- Ask them the difficult questions
  - Sometimes they just want to vent
  - You will listen more than you will speak
- If they become inappropriate or speak to you in a rude manner, then leave the situation whether in person or over the phone
  - Redirect them as to why you are involved (for the best interests of the child)
  - If the party continues to be rude then alert the court in your report
  - Don't engage with people and get into an argument
- If you speak to both parties and they seems close to wanting the same thing, then try to settle the case
  - Try to meet in the middle
  - Share what your recommendation will be—it may be helpful in settling the matter
  - Offer to draft a settlement agreement and send to parties
- Be prepared to request that they only show up to your office by appointment

# Advocacy in Motion

A GUIDE TO IMPLEMENTING THE  
*Standards to Govern the Performance  
of Guardians Ad Litem for Children*

## **COURT IMPROVEMENT PROGRAM**

Office of the Executive Secretary  
Supreme Court of Virginia

100 N. 9th Street, 3rd Floor  
Richmond, VA 23219  
804.786.6455  
[www.vacourts.gov](http://www.vacourts.gov)

**KARL R. HADE**  
Executive Secretary

**SANDRA L. KARISON**  
Director  
Court Improvement Program

**LORI A. BATTIN**  
Editor  
Court Improvement Program

This Guide was prepared under a grant from the U.S. Department of Health and Human Services (HHS). The practice tips provided herein were developed to facilitate implementation of the *Standards to Govern the Performance of Guardians Ad Litem for Children* and have not been reviewed or approved by the Supreme Court of Virginia or HHS. This information is in the public domain. Readers may copy portions of the text. Please credit the source of any copied text to the Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia.

November 2018

## Acknowledgements

The Court Improvement Program would like to thank the following individuals for their review of and contributions to this Guide.

Hon. Deborah V. Bryan, Judge, Virginia Beach J&DR District Court

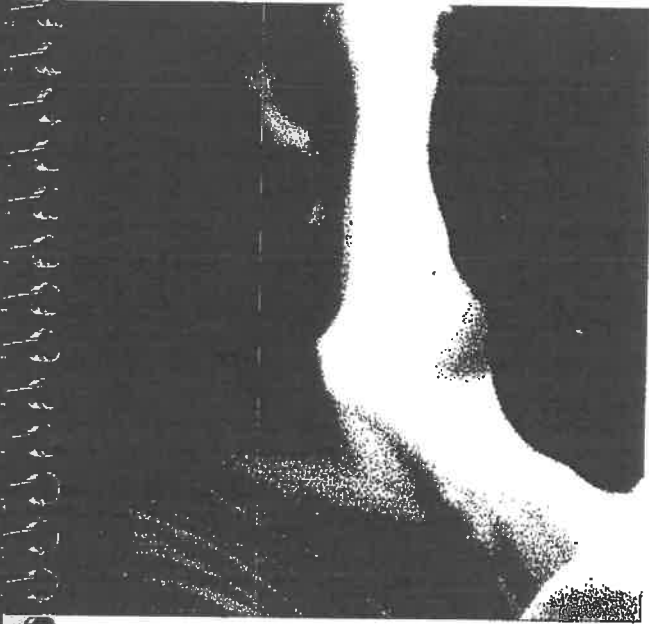
Hon. Stephen W. Rideout, Judge (ret.), Alexandria J&DR District Court

Hon. Frank W. Somerville, Judge, Culpeper J&DR District Court

Hon. Thomas P. Sotelo, Judge, Fairfax J&DR District Court

Leslie A.T. Haley, Esq., ParkHaley L.L.C. (formerly Assistant Ethics Counsel, Virginia State Bar)

Design by the  
Office of Graphic Communications  
Virginia Department of General Services



“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.”

– Introductory Comment, *Standards to Govern the Performance of Guardians Ad Litem for Children*

## Table of Contents

Purpose.....	6
Appointment of Guardians <i>Ad Litem</i> .....	7
Duration of Guardian <i>Ad Litem</i> Appointment .....	8
Duties and Authority of Guardians <i>Ad Litem</i> .....	8
<i>The Standards to Govern the Performance of Guardians Ad Litem for Children</i>	
About the Performance Standards .....	10
Introductory Comment .....	10
Standard A – Meet face-to-face and interview the child .....	14
Standard B – Conduct an independent investigation in order to ascertain the facts of the case .....	18
Standard 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 .....	22
Standard D – Participate, as appropriate, in pre-trial conferences, mediation and negotiations .....	24
Standard E – Ensure the child’s attendance at all proceedings where the child’s attendance would be appropriate and/or mandated .....	26
Standard F – Appear in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child’s interests .....	28
Standard G – Prepare the child to testify, when necessary and appropriate, in accord with the child’s interest and welfare.....	32

Standard H – Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation .....	34
Standard I – Communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence.....	36
Standard 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.....	38
Standard 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 .....	40
Ethical Considerations for Attorneys Serving as Guardians <i>Ad Litem</i> .....	42
Court of Appeals of Virginia Rulings Related to Guardian <i>Ad Litem</i> Representation .....	48
Requalification Requirements for Guardians <i>Ad Litem</i> .....	50
Continuing Education Courses for Guardians <i>Ad Litem</i> .....	52
Compensation of Guardians <i>Ad Litem</i> .....	52
Compensation of Experts.....	53
On-Line Resources for Guardians <i>Ad Litem</i> .....	54
District Court Form DC-540, GUARDIAN AD LITEM DISCLOSURE.....	56
District Court Form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM .....	58
Endnote .....	60

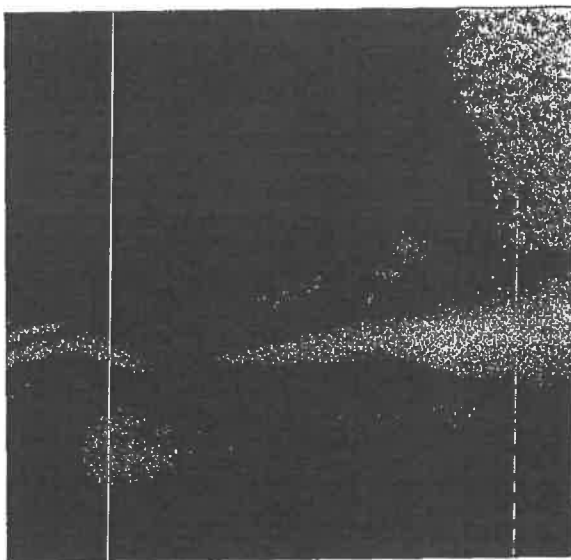
## Purpose

The *Standards to Govern the Performance of Guardians Ad Litem for Children* ("Performance Standards") adopted by the Judicial Council of Virginia are designed to address case types in which the trial courts appoint guardians *ad litem* for children (GAL), and to provide for a comprehensive approach to best practices for child representation. The purpose of this Guide is to present attorneys serving as a GAL with practice tips to assist them with keeping advocacy in motion. The effective and efficient implementation of the *Performance Standards* helps ensure that the best interests of the child are appropriately represented. The practice tips are not required procedures for GALs.

In addition to the practice tips provided, this Guide includes ethical considerations attorneys should be aware of when serving as a GAL. It also provides a description of when a GAL should or may be appointed by the juvenile and domestic relations district court or circuit court; the duration of the GAL's appointment; the duties and authority of the GAL as provided in Rule 8:6 of the *Rules of the Supreme Court of Virginia*, the DISTRICT COURT FORM DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, and the selected judicial opinion, *Stanley v. Fairfax County Department of Social Services*. Information on how attorneys maintain their GAL qualification, as well as information about GAL compensation and the compensation of experts, is also included.

Finally, in an effort to assist GALs with reporting and courts with evaluating guardian ad litem compliance with the *Performance Standards*, district court form DC-540, GUARDIAN AD LITEM DISCLOSURE, has been developed to facilitate review and any adjustment of the cost of guardian ad litem services. (See § 16.1-267.) The use of this form is left to the

discretion of the J&DR district court. It is recommended that GALs contact the courts in which they serve and inquire about any requirement to use this form for reporting compliance with the *Performance Standards*.



## Appointment of Guardians Ad Litem

The appointment of a guardian *ad litem* (GAL) by a juvenile and domestic relations district court is mandatory in certain cases and permissive in others. Virginia Code § 16.1-266 provides that a juvenile and domestic relations district court shall appoint a GAL in any case involving a child who is:

- alleged to be abused or neglected.
- the subject of an entrustment agreement.
- the subject of a petition seeking termination of residual parental rights.
- the subject of a proceeding where the parent(s) seeks to be relieved of the child's care or custody.

A juvenile and domestic relations district court shall also appoint a GAL in cases involving a child who is:

- the subject of a foster care plan review or a hearing to review the child's status in foster care. § 16.1-281.
- seeking emancipation. § 16.1-332.
- the subject of a proceeding by parents seeking to commit an objecting minor, 14 years of age or older, to a psychiatric facility. § 16.1-339.
- the subject of a petition for involuntary commitment. § 16.1-341.

The court may appoint a GAL in other cases, which in the discretion of the court require a GAL (§ 16.1-266). These include certain custody cases where parents or persons claiming a right to custody are represented by counsel (§ 16.1-266), as well as those cases in which a petition is filed by a juvenile seeking judicial authorization for a physician to perform an abortion (§ 16.1-241).

The circuit court may appoint a GAL for a child in a custody, visitation or support case incident to divorce proceedings. See *Verrocchio v. Verrocchio*, 16 Va. App. 314, 429 S.E. 2d 482 (1993). The circuit court is authorized by § 16.1-266 to appoint a GAL in appeals of cases from the juvenile court (§ 16.1-296 I).



## Duration of Guardian Ad Litem Appointment

Virginia Code § 16.1-268 provides that the attorney appointed as a GAL for a child “shall represent the child...at any such hearing and at all other stages of the proceeding unless relieved or replaced in the manner provided by law.” Standard J of the *Performance Standards* contemplates the GAL continuing representation of the child through the conclusion of any appeal. This is supported through amendments to the Rules of the Supreme Court of Virginia, which provide for GAL participation in the appellate process. (See Rules 5A:1, 5A:19, 5A:24 and 5A:28.) Please note that upon learning of an appeal to the circuit court, it is the responsibility of the attorney appointed to serve as the GAL in the juvenile court to seek a new appointment as the GAL in the matter appealed to the circuit court. Similarly, reappointment as a GAL should be sought in any appeal to the Court of Appeals of Virginia or the Supreme Court of Virginia.

## Duties and Authority of Guardians Ad Litem

In addition to the *Performance Standards*, the following sources give rise to the duties and authority of the GAL.

- Virginia Supreme Court Rule 8:6 - The Roles of Counsel and of Guardians Ad Litem When Representing Children

Rule 8:6 provides that “When appointed for a child, the guardian ad litem shall vigorously represent the child, fully protecting the child’s interest and welfare. The guardian ad litem shall advise the court of the wishes of the child

in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child’s interest and welfare.”  
[Emphasis added.]



• DISTRICT COURT FORM DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

This Order provides that the GAL is appointed "to protect and represent the interests of [the child] in connection with all proceedings involved in the matter[.]" and orders that the GAL "perform the duties and have access to the parties and documents specified on the reverse and incorporated by referenced into [the] order." (See page 56 for a full copy of the Order.)

Virginia State Bar Legal Ethics Opinion 1729 (1999) addresses those duties incorporated by reference as follows:

1. Represent the child in accordance with Rule 8:6 of the Rules of the Supreme Court of Virginia.
2. Advise the court relative to the following: (a) the results of the guardian ad litem investigation of the case; (b) the guardian ad litem recommendation as to any testing necessary to make an effective disposition of the case; (c) the guardian ad litem recommendation as to the placement of the child and disposition of the case; (d) the results of the guardian ad litem monitoring of the child's welfare and of the parties' compliance with the court's orders; (e) the guardian ad litem recommendation as to the services to be made available to the child and family or household members.

The Order also authorizes the GAL "to appear at the Family Assessment and Planning Team and at panel review hearings conducted by the local department of social services pursuant to § 63.2-907."

• Judicial Opinion

*Stanley v. Fairfax County Department of Social Services*, 242 Va. 60, 62, 405 S.E.2d 621 (1991). Provides that a GAL can file "affirmative pleadings necessary to protect the ward's interest."

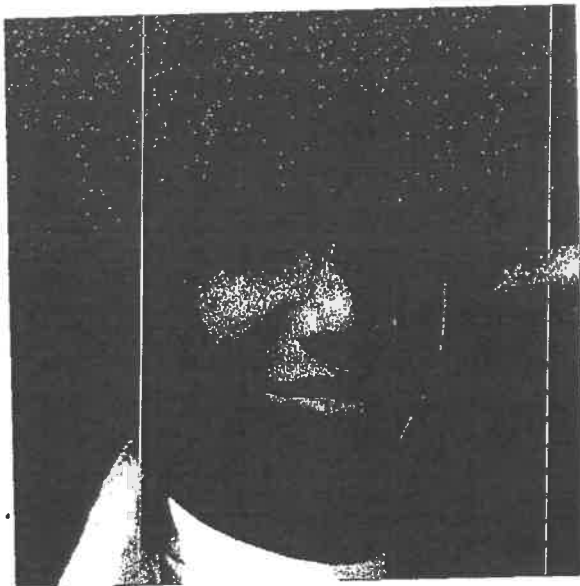
## STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN

Adopted June 23, 2003<sup>1</sup>

These standards apply to all attorneys serving as guardians ad litem for children in child protection<sup>2</sup>, 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,



<sup>1</sup> 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, and two paragraphs in the Commentary to clarify the functional distinction between "shall" and "should."

<sup>2</sup> "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.

- 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.

### 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.

- Prior to interviewing the child, speak with professionals (e.g., teacher(s) or other school officials, school guidance counselor, daycare provider(s), doctors, mental health or other health professional(s)), as appropriate, who have worked with the child. This provides the opportunity to learn about the personality and presentation of the child and any emotional, mental or physical limitations that might impact the interview process. If necessary, ask those professionals to assist with the interview.
- For younger children, be willing to get down on their level and build a rapport with them. Pose questions in a non-threatening manner, using concrete terminology and focused, open-ended questions that will allow the child to tell his/her story. For example, it may be appropriate for the GAL to:
  - Keep in his/her office, a basket of toys, drawing/coloring paper, coloring pens/pencils, or games to use with the child.
  - Keep in his/her office, child-appropriate drinks and foods (e.g., animal crackers, juice boxes). (Note: Before giving food to a child, always seek permission of the parent/caretaker.)
  - Create an area in his/her office that provides space to get down on the floor with the child to play and talk. It may be helpful for the GAL to avoid uncomfortable environments for the child, which may prevent open communication (e.g., the hallway at the courthouse), as well as barriers between himself/herself and the child (e.g., a desk).
  - Ask questions that begin with who, what, where, when, why, and how. Avoid suggesting answers in questions. As the attention span of younger children is less than older children, avoid long interviews. Have multiple meetings with the child of smaller duration in multiple settings (e.g., the GAL's office, the child's school, the child's therapist's office, the child's home).
  - Reaffirm to the child where the parent/caretaker will be waiting when taking the younger child to the interview room.
  - Orient the young child to the office environment by showing the young child and parent/caretaker around and, where appropriate, making introductions. This may help the child feel more comfortable.



- For older children, be tolerant of pauses and silences. A child may sometimes come to a complete stop in narration just before expressing deep feelings or revealing important facts. Consider communicating to the older child that he/she will not be required to hand over his/her “loyalty card” for a parent/caretaker.
- Be willing to allow questions to go unanswered. Do not force the older child to answer. Likewise, because the child “said so” does not necessarily make it so. Similar to the younger child, use open-ended questions that will require the child to give particularized facts that can be investigated and validated by collateral sources. It may also be appropriate for the GAL to:
  - Meet with the child in his/her office, the child’s school, the child’s therapist’s office, or the community (e.g., with the parent’s/caretaker’s permission, take the child to eat at a local restaurant).
  - Advise the older child of when the child and GAL will meet again. If any representations are made to the child, follow-through. If it is necessary to miss a meeting, let the child know beforehand. Doing so will build trust.
  - Avoid the appearance of drawing a judgment based upon an older child’s answer. Listen as opposed to speaking. Be genuine.
- Be aware of any speech, cognitive or emotional limitations/challenges that may limit the child’s ability to communicate and, when necessary, speak in simple sentences, even if the child is a teen.
- Never forego the interview process, even if a child is unable to communicate verbally. Conduct the meeting at the child’s home, other placement, daycare facility, therapist’s office, or in the community to observe the child’s surroundings and interaction with others. As previously suggested, ask professionals to assist with the interview to ensure a proper determination of the child’s wishes and the child’s best interests.
- Interview the child at various stages of the court process, not only prior to court appearances. This will provide an opportunity, as indicated in Standard C, to monitor the child’s welfare and the parties’ compliance with court orders.
- Follow the requirements provided by Standard C and Standard K when communicating with the child.



“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.”

– Comment, Standard A



## **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.

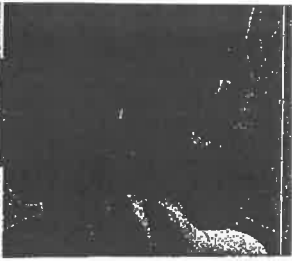
- Consider developing processes, procedures, and protocols that evidence neutrality and that will be employed in each and every case upon appointment. Be open-minded and willing to adapt these processes, procedures and protocols to the needs of a particular case. For example:
  - Create a form introductory letter that may be sent to all parties involved in the case. Include contact information, a description of the GAL's role in the process, and a request that each party be in contact with the GAL to schedule a meeting. It may also be helpful to include a copy of district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, received from the court.
  - If a party is represented by counsel, contact the attorney and determine the type of access that will be allowed to his/her client (e.g., open-ended communication without a need to contact counsel, communication with counsel present, etc.).
  - Create a tickler system for sending follow-up correspondence to individuals who do not make the requested contact.
  - In the initial meeting with the parties, explain what the role of the GAL is and is not, and the processes that will be employed to perform that role.
- Review the court file for the reason(s) a petition was filed with the court, and to determine if previous petitions involving the child client have been filed and whether any adjudications have been made involving the child, any siblings, or any of the parties to the case. The intake summary/statement may contain the identity of witnesses or sources of documentary evidence.
- As part of the independent investigation, review, at a minimum, the following:
  - Initial report of abuse.
  - Initial intake report.
  - Reports by agencies mandated to investigate to gather information.
  - Agency follow-up reports.
  - Police reports.
  - Medical, psychological and/or psychiatric evaluations and home studies.
  - Central registry records of founded child abuse and neglect reports.
  - Photographs, x-rays, and other medical information.
  - School records (including attendance or disciplinary records).

- Present a copy or certified copy of district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, when requesting records from state and local agencies, health care providers, etc., because the agency or provider may require this authorization to release the requested records. If necessary, a subpoena duces tecum may be issued by the attorney, or, upon motion, be issued by the court.
- Interview persons who have a relationship with the child. Such persons may include, but not be limited to, relatives (e.g., the child's parents, grandparents, and siblings), current caregiver (e.g., foster parents), friends, neighbors, social worker, mental health care providers, teachers, coaches, clergy, and CASA. Prior to interviewing the parents, determine if they are represented by legal counsel and obtain any necessary permissions. Be willing to meet with a party in the presence of that party's counsel.
- Do not hesitate to request assistance from experts. The Virginia Code specifically authorizes the court to order psychiatric, psychological and physical evaluations of a child alleged to have been abused, the child's siblings, and the parents or guardian.
- As provided in Standard I, contact the CASA volunteer assigned to the case and coordinate all aspects of the investigation with him/her. CASA can offer significant information and assistance to the GAL, such as interviewing hard-to-reach witnesses. CASA may also be able to supplement information gathered by the GAL. Meeting the child with the CASA may also be appropriate.



“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. .... 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.”

– Comment, Standard B



- 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.

- When speaking with the child, use age appropriate language and communicate in terms he/she can understand. Avoid the use of legal terminology. If necessary, use diagrams and put information on paper to help the child understand possible options and outcomes.
- Explain to the child the GAL's role of representing the child's best interest. To further aid in the child's understanding, consider also explaining to the child the roles of other individuals involved in the case, the role of the judge, and the purpose of the hearing.
- Explain to the child the GAL's responsibility to inform the court of the child's expressed wishes, if such are contrary to the GAL's determination of what is in the child's best interest. Ask if there is anything he/she would like communicated to the court.
- Explain the term "confidentiality" to the child and let the child know that there may be instances in which information provided by the child may not remain confidential.
- Speak with the child before and after court proceedings; before to let the child know what is expected to happen during the proceeding and after to inform the child of (or if the child is present, clarify for the child) any court rulings and service requirements (e.g., visitation with parents or siblings).
- Bear in mind that a child may be aware of an upcoming court proceeding. Waiting until the last minute (e.g., right before court) to speak with the child will not help the GAL's rapport with the child.
- While continuances are possible, they can be very upsetting to a child who is expecting the court to make a final decision at a particular proceeding. Continuances should be avoided, unless granted under extenuating circumstances.
- Provide the child and, if necessary, the child's caregiver, with current contact information (e.g., phone number, e-mail address, mailing address, etc.). Business cards are a great way to provide current contact information, and they can be given out after every meeting. This is essential for children because they often lose or easily misplace things.





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

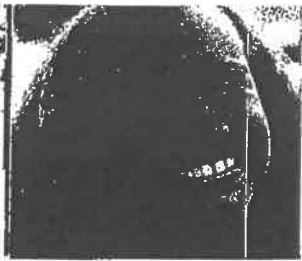
**COMMENT:** The GAL should be involved, as appropriate, in all pre-trial conferences and negotiations including phone calls, formal or informal conferences and mediation. Additionally, the GAL should take any action necessary to attempt to resolve the case in the least adversarial manner possible; however, 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.



- Be an active, not passive, participant in the child's case by attending, as appropriate, pre-trial conferences, mediation sessions, and other negotiations or meetings to ensure the child's best interests are represented. Standard I references other negotiations and meetings involving legal, educational (e.g., school disciplinary and Individualized Education Plan (IEP) meetings and parent-teacher conferences) and therapeutic issues (e.g., Family Assessment and Planning Team (FAPT) and other service coordination meetings) that the GAL may attend, as such are appropriate to the child's needs and consistent with the direction of the court.
- Participate in Family Partnership Meetings (FPM) arranged by the local department of social services. The Virginia Department of Social Services (VDSS), as part of the Children's Services System Transformation, implemented FPM as the family engagement model in Virginia. As a party appointed by the court to represent the child's best interest, the GAL should be invited to the FPM. If the GAL is invited to attend the FPM but is not available, the meeting may go forward, particularly if the date scheduled is convenient to the child's family. However, the GAL may provide comments prior to the meeting and request that he/she be notified after the meeting of any decisions or plan of action impacting his/her client.

If the GAL is not being invited to these meetings, he/she may speak with the social worker assigned to the child's case or, if necessary, the social worker's supervisor.
- Review any settlement and/or mediation agreements developed by the other parties to ensure the provisions are in the child's best interest. Note any concerns with the agreement to the parties and, if not addressed, inform the court of the concerns.



- 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.

- Ensure the child's meaningful participation in court proceedings. Depending upon the child's age, the GAL is the child's voice in court proceedings.
- Advise the child of his/her right to attend court proceedings. In doing so, inform the child of the nature of the court proceedings, as required by Standard C, to allow the child to make an informed decision as to whether he/she wants to attend the court proceeding.
- When determining whether a child should attend a particular proceeding, consider the child's age, maturity, and wishes, as well as information received from persons consulted, such as mental health professionals, and the purpose of the court proceeding.
- If the child attends a court proceeding, considering the child's age and development level, try to prevent the child from having to wait for long periods of time for the proceeding. It may be appropriate to ask the court to take into account the reasons for the child's attendance first and allow the child to leave.
- If the child would like to provide input at court proceedings but is not comfortable attending, recommend that the child write a statement to the court to communicate his/her wishes. If the child cannot miss school to attend court, suggest the proceeding be scheduled at a time that would not interfere with the child's school day.
- If it is believed that the information provided during the proceeding would be traumatic for the child to hear, request that the child be excused from the courtroom during the time the traumatic information is produced, or recommend that the child not attend the court proceeding.
- If the child is called to testify, consider discussing the environment under which the child will testify with counsel and unrepresented parties and offer possible alternatives. For example, meeting with the judge in chambers; meeting with the judge and GAL in the courtroom but not in the presence of the parties and/or counsel; meeting with the judge, GAL and counsel in the courtroom but not in the presence of the parties; or testifying in open court without any accommodations. (See §§ 18.2-67.9, 16.1-252 D, 63.2-1521 and 20-124.2:1 (applicable in circuit court only).)



- 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.

- Prior to accepting appointment as a GAL, ensure your availability for subsequent court proceedings. Consider planned vacations, upcoming trials, due dates for appellate briefs, etc. that might interfere with the completion of required duties. Although specific dates may not be available at the time of appointment, consider the time line requirements for child dependency cases, particularly those occurring within the first 80 days, and carefully assess whether to accept the appointment. If there is a potential conflict, advise the court so that a decision can be made about whether another attorney should be appointed to the case.
- Remind the parties and counsel of the GAL's entitlement to notice of all proceedings, as well as a copy of any and all pleadings filed with the court.
- Be prepared for court proceedings. Have a theory and strategy for the case. Present opening remarks, cross-examine witnesses, make objections, present evidence, when appropriate, and present closing remarks. If required by the court, submit, as indicated by Standard H, a written report to the court and provide this report to the parties and counsel at least 5 days prior to the scheduled court date. Provide the court with findings and recommendations resulting from completion of the interview with the child and independent investigation required by *Performance Standards A and B*.
- If a written report is not required, organize a statement to the court as to findings, recommendations, services, etc.
- Be familiar with the statutorily mandated hearings for child dependency cases and with the types of court orders entered in these proceedings. Review any court orders placing the child in foster care to ensure the following:
  - The court has stated the basis for its determination.
  - The court noted that *continued placement in the home would be contrary to the welfare of the child*.
  - The court noted that *reasonable efforts to prevent removal were made*.

Note: If these findings are not included on the first order placing the child into foster care, the child's entire stay in foster care may be ineligible to receive federal financial assistance. The first order placing a child in foster care may be an emergency removal order,

preliminary removal order, or disposition order, if the child has not previously been removed from the home, or enters foster care for a reason other than abuse or neglect.

- Review the foster care review hearing order and permanency planning order to ensure that the court has stated the factual basis for its determination as to whether reasonable efforts to reunite the child with his/her parents were made, or reasonable efforts are not required, or as to whether or not reasonable efforts to finalize a permanent plan were made.

Note: If these findings are not made, the child's stay from the date the findings should have been made, may be ineligible to receive federal financial assistance in foster care maintenance.

- If contrary to the GAL's assessment of the child's best interests, inform the court of the child's expressed wishes.
- Review the Comment provided as a part of Standard H, as it includes items that the GAL's arguments to the court should address.
- Facilitate timely scheduling of all hearings and avoid continuances.



“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.”

—Comment, Standard F





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

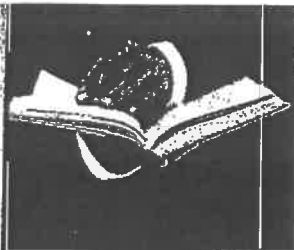
**COMMENT:** The GAL should determine whether to call the child as a witness based on consideration of the child's need or desire to testify, developmental and verbal capabilities of the child and the child's ability to withstand cross-examination. For some children testifying is therapeutic and empowering, 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.

- Consider *should* the child testify, as well as the advantages and disadvantages of the child testifying. For example, does the child want to testify? Would testifying be harmful to the child and, if so, is there other evidence available that would alleviate the need for the child's testimony? Will the child be able to effectively communicate information to the court?
- If the child is required to testify, consider a request to testify by closed-circuit television or in camera with a judge. (See §§ 18.2-67.9, 16.1-252 D, 63.2-1521 and 20-124.2:1 (applicable in circuit court only).)



**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.

- For those jurisdictions where the GAL accepts appointments, know the court's approach and expectations regarding written reports.
- Present a case to the court that includes findings and recommendations and argue those findings and recommendations during the closing argument. GALs are not a rubber stamp for the beliefs and arguments of any party, whether the local department of social services, a parent, a third party, the Commonwealth's Attorney, etc.
- If the child is the subject of a protective order, advise the court of conditions needed to protect the life, health, safety and normal development of the child while remaining in the home.
- Provide recommendations to the parties and/or counsel prior to the hearing date and time. Be willing to defend the recommendations, but also be willing to modify the recommendations, as appropriate, based upon new or revised information acquired during the court proceedings. When appropriate, be willing to admit error.
- If representing siblings, consider separate recommendations for each child.
- Review § 20-124.3, which provides a list of items to consider when determining the best interests of the child in custody or visitation arrangements. Additionally, understand child development issues and develop custody/visitation recommendations based on the age and needs of the child, as well as the circumstances of the family. Consider consulting with professionals, as appropriate, to screen recommendations. Actively filter biases and be willing to challenge personal assumptions. Do not allow personal life experiences to become the lens through which matters related to the child are considered.
- As provided in the Standard, "assure that all facts relevant to the case, available dispositional remedies and possible court orders are presented to the court."



1. 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.

- Listen on behalf of the child, but also be a voice for the child. The information gathered during the course of a case will provide opportunities to recommend and advocate new and innovative solutions to issues that will promote the child's best interests.
- In jurisdictions that have a CASA program, it is important to contact the CASA volunteer assigned to the case and to coordinate the GAL's investigation with the CASA. The Virginia Code specifies "assisting any appointed guardian ad litem..." as among the duties of a CASA. § 9.1-153. CASA can offer significant information and assistance, including interviewing hard-to-reach witnesses and supplementing information relevant to the case. However, do not relinquish the responsibility to investigate by leaving it solely up to the CASA volunteer. The GAL works cooperatively with CASA. CASA does not work at the pleasure of the GAL.



- 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.

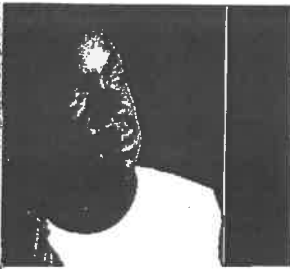
If the GAL believes the court's determination is contrary to the child's interest or welfare, after considering the wishes of the child, a notice of appeal should be filed and measures taken to assure that the appeal is perfected expeditiously. The GAL should file any appropriate pleadings on behalf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

- Be an active, not passive, participant in court proceedings. Ensure petitions, motions, pleadings, briefs, and appeals are filed in a timely manner and that a hearing date is obtained as soon as possible. Court dockets, particularly juvenile court dockets, can be congested and waiting until the last minute will not provide for timely proceedings.
- Work with the other parties to solve problems. If it is in the child's best interest, be a "peacemaker."
- Timely note any appeal on behalf of the child and actively participate in any matters that are appealed. This includes cases appealed *de novo* to the circuit court and on the record to the Court of Appeals of Virginia and the Supreme Court of Virginia.
- If representation of the child has come to an end, consider having termination of representation language inserted into any final order entered by the court.





**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 role of the GAL extends to meeting with the child and explaining to him/her the outcome of the court proceedings and court ruling(s).
- Speak with the child as soon as possible after court proceedings are concluded to explain any court rulings, services to be provided, etc. If the child is present, meet with him/her at the court. If the child is not present, arrange to speak with the child by phone. For a child who is in a residential setting, it may be appropriate to coordinate the call with the resident counselor or therapist. Be as straightforward as possible in explaining the court's ruling(s) to the child.
- When informing the child of court proceedings, do so based on the ability of the child to understand. Be clear and simple and invite him/her to ask questions when there is an aspect of the explanation that is unclear. If the community has a handbook for court-involved youth that will help the child better understand the court process, provide a copy to the child.
- As appropriate, have the child appear in court with the parties and/or counsel and ask the court to explain the outcome of the proceedings to the child.

## Ethical Considerations for Attorneys Serving as Guardians Ad Litem

### Rules of Professional Conduct - Virginia State Bar

- **RULE 1.1: COMPETENCE:** As a general rule, attorneys must competently represent their clients. Rule 1.1 defines competent representation as having “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
- **RULE 1.2: SCOPE OF REPRESENTATION:** The GAL must provide to the court what he/she believes is in the child’s best interest, not the child’s expressed wishes. In doing so, the GAL must consider the child’s position. This requires an assessment of the child’s age, maturity, mental capacity, competence, and environment.

This duty conflicts with the traditional role of an attorney and is inconsistent with the attorney’s responsibility under Rule 1.2 of the Rules of Professional Conduct, which requires an attorney to “abide by a client’s decisions concerning the objectives of representation,....” However, the GAL is required by statute to present to the court what he/she believes is in the child’s best interest, as well as the reasoning behind such assessment, regardless of what the child client has expressed. Additionally, the GAL has a duty to inform the court of any wishes expressed by the child that are inconsistent with the GAL’s assessment of what is in the child’s best interest.

- **RULE 1.3: DILIGENCE:** Paragraph (a) of Rule 1.3 requires an attorney to “act with reasonable diligence and promptness in representing a client.” Comment [1] further demands action “with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”
- **RULE 1.4: COMMUNICATION:** As previously provided, Virginia Supreme Court Rule 8:6 requires the GAL to protect the child’s “interest and welfare.” Standard C further provides that the GAL shall “advise the child,...., of the nature of all proceedings, ... the court process and the possible consequences of the legal action.” The child’s interest and welfare should take precedence over communication requirements if the GAL believes that the information, if shared, would be detrimental to the child.
- **RULE 1.6: CONFIDENTIALITY:** Attorneys who serve as GAL are often unsure about the level of confidentiality that should be given to

certain conversations with the child. A strict reading of Rule 1.6 of the Rules of Professional Conduct would prevent the GAL from disclosing information shared by the child that the child does not want disclosed to his/her parents or other parties. This would be true even if the GAL believed the information would be important for the court to consider in determining the child's best interest under the statute.

However, not disclosing certain information may hinder the GAL's statutory duty to advocate for the child's best interest. As such, there are strategies the GAL may consider to alleviate concerns of a breach of confidentiality. These strategies include: (i) the GAL requests the permission of the court to redact the GAL's written report of the sensitive information and (ii) the GAL requests that the court issue a protective order to allow only counsel to review the sensitive information.

If the child is old enough to understand the limitations on confidentiality, the GAL should ensure that the child is aware of these limitations from the beginning of the representation.

If questions regarding confidentiality remain, Legal Ethics Opinion 1844 (2008) further addresses the issue. It notes that Rule 1.6 (b)(1) allows an attorney to disclose information protected by Rule 1.6 if such disclosure is necessary "...to comply with law or court order." Compliance, therefore, with the *Performance Standards* and Virginia Supreme Court Rule 8:6 justify disclosure.

The Opinion further provides, based on the *Performance Standards*,

that the duties of a GAL may extend further than those anticipated by the typical lawyer/client relationship, as the GAL not only serves as the child's advocate but is obliged to identify and recommend the outcome that best serves the child's interests. Therefore, the GAL needs to investigate information obtained from and about the child in order to ascertain certain facts. The GAL must interview parties and other persons who have relevant knowledge of the child and facts that give rise to the allegations. ....

Only after this investigation can the GAL independently make an evaluation. Through this independent investigation, the GAL assesses the risk of probable harm to the child. That assessment then leads to the determination of whether the GAL has a duty, as an advocate for the child's best interests, to disclose to the court or appropriate authority information necessary to safeguard the best interests of the child. That disclosure would be permitted in light of the Committee's analysis ... of Rule 1.6(b)(1), where a lawyer can reveal protected information to the extent reasonably necessary to comply with law.

- **RULE 4.2: COMMUNICATIONS WITH PERSONS REPRESENTED BY COUNSEL:** This rule applies even though the represented person initiates or consents to the communication. Therefore, even if a parent approaches a GAL with questions or comments about the case, the GAL must immediately end communication unless the GAL obtains consent from the parents' attorney to speak with the parent.

Additionally, because the parties to child dependency cases work together closely outside of court, difficulty arises when applying Rule 4.2. The caseworker and child's counsel, in particular, have extensive contact with parents and the child, which is almost always outside the presence of attorneys. Issues arise not only when an attorney is preparing for court, but during home visits, educational meetings, case staffings, and other routine activities. It is best for GALs to get a clarification at the beginning of their appointment about when and how communication with parents may occur when parents' counsel is not present.

Parents' attorneys who are concerned about protecting their clients, especially in the pre-adjudication phase when allegations have not been sustained, should make clear to GALs, caseworkers, the agency's attorney, and the child's attorney, if applicable, that they are not consenting to any contact with their client outside of their presence. This rule also precludes parents' counsel from meeting with the minor child without the GAL's permission, because it prohibits *ex parte* communications with "persons" rather than "parties."

As to communications with caseworkers, the caseworker is not the "client" of the agency attorney, because the agency attorney represents the child welfare agency, not the individual caseworker.

Legal Ethics Opinion 1870 (2013) further addresses communications with persons represented by counsel.

**Additional Ethical Considerations**

- **CONFLICTS & REPRESENTATION OF MULTIPLE CHILDREN:** A GAL may face a different conflict analysis when representing multiple children of the same family. These conflicts, however, are viewed differently than traditional conflicts by the GAL whose duty is to protect the interests of the child even if contrary to the child's wishes. Because the GAL's role differs from that in the traditional attorney-client relationship, the GAL's unique role complicates resolving traditional ethics conflicts.

From the GAL's perspective, when representing multiple children, there may be no conflict of interest because the arguments for placing the children, although seemingly contradictory, ultimately serve their best interests. Possible conflicts may arise when the

siblings want different outcomes in the case, such as wanting to live with different parents. Advocating for the best interest of one sibling may compromise the best interests of another sibling. Contrary to traditional ethics conflict analysis, where an attorney should withdraw from *both* cases when a conflict arises, that analysis may differ where a GAL is involved. A GAL may be able to continue to represent one child and ask the court to appoint a different GAL for the second child.

In LEO 1725, the attorney/GAL raised the question of what to do when a GAL has a conflict in a case. The opinion indicates that in such situations the GAL must go to the appointing court to resolve the conflict. Because the relationship between the GAL and the "ward" is not the same as a traditional attorney-client relationship, and because the "ward" is a juvenile, the GAL cannot have the appropriate discussion to disclose the conflict and cannot get the consent that may be necessary to resolve a conflict.

- **GAL AS A WITNESS:** Because of the special nature of GAL appointments and the role of the GAL, the GAL may continue to represent a child and also testify as to disputed issues of material fact. However, as provided in the Introductory Comment to the *Performance Standards*,

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 guardian *ad litem* should minimize his/her personal statements to the court to include only those events that the guardian *ad litem* personally witnessed, as well as recommendations that are based upon evidence, which has been admitted.

As to the issue of calling the GAL as a witness; LEO 1729 opines that there is a conflict between the attorney's ethical obligations under the "witness-advocate" rule and the attorney's duty as a GAL to report facts to the court that were learned during the GAL's appointment and investigation, and to make recommendations to the court based upon such facts. If the GAL cannot report to the court what the GAL has observed or learned during the visitation, for fear of violating the "witness-advocate" rule, then the GAL cannot discharge the legal obligations of his/her appointment. The GAL is charged with the duty of "fully protecting the child's interest and welfare." (See Virginia Supreme Court Rule 8:6.)

- **THE CHILD WITH "DIMINISHED CAPACITY":** Determination of a client's capacity to make decisions and understand each issue relevant to the representation is not an easy task, nor is it one for which most attorneys are trained. Further, unlike the concept of "competency," "capacity" occurs along a continuum; therefore, capacity can be "diminished" but still exist.

Capacity refers to a client's ability to understand information relevant to the case and the ability to appreciate the consequences of a decision. Does the client really know what the case is about, what is happening, and what consequences might result from certain actions or inactions? Again, capacity refers to ability and comes in various degrees.

Competence is a legal standard, and denotes a specific level of skill, knowledge, or ability; a legal status the client either possesses or does not possess.

Factors to consider when assessing client capacity include: cognitive ability, emotional and mental development and stability, ability to communicate, ability to understand consequences, consistency of decisions, strength of wishes, and the opinions of others that play a role in the child's life. The child's age and developmental stage need to be taken into consideration with these factors.

To the extent possible, the GAL should attempt to maintain a relationship with the child that consists of regular communication, interviews, advice and coordination with other parties.

Rule 1.14(b) provides guidance in those events where capacity issues are problematic.

When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical ... or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonable necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client...

- **CHILD HAS A GAL AND DEFENSE COUNSEL:** The defense attorney cannot deny the GAL access to his/her client. However, it may be reasonable for a GAL to conclude that a child's right to competent defense and right to due process of law is an important consideration in the best interests of the child and takes precedence over other considerations. Best practice supports postponing an interview with the child until the GAL has had an opportunity to confer with defense counsel.

- **REQUESTS FOR THE GAL'S FILE:** The GAL acts as a fact-finder, investigator, and then, ultimately, as an advocate for the best interests of the child. The GAL can only turn over a copy of his/her file with the permission of the court. If the GAL receives a subpoena for a copy of his/her file or materials, the GAL should file a formal Motion to Quash the subpoena and let the court decide if anyone receives access to the file.
- **GIFTS TO CHILD CLIENTS:** In LEO 1830, the Legal Ethics Committee found that it was not improper for a criminal defense attorney to provide nominal funds for commissary purchases to his/her criminal client on an occasional basis as long as it did not impair the attorney's independent judgment. Similar to the above, the critical issue in a GAL giving a gift to a child he/she is representing would be the attorney's independent judgment. (See Rule 2.1)

The GAL is acting as an arm of the court in carrying out his/her duties. As such, the GAL is required to act independently and to maintain a professional working relationship with all parties. The GAL should be mindful of his/her role as an advisor, pursuant to Rule 2.1, and his/her duty of independence and advocacy and not confuse that with a more personal role of involvement with the child. While the rules would not preclude a GAL from giving a nominal gift to a child, the greater duty of maintaining the independence of the role and relationship leads to foregoing such gifts unless very specific circumstances exist.

- **LAW FIRM ASSOCIATES SHARING GAL DUTIES AND RESPONSIBILITIES:** When completing district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, the court specifies the name of an attorney to "protect and represent the interests" of the child. The order does not provide for a specific law firm to represent the child. Therefore, it is not permissible for attorneys working together in a law firm to determine who will serve as the child's GAL or share in the duties of the GAL based on caseload and availability, even if all are qualified as GALs. Only the attorney whose name is referenced on the order may "perform the duties and have access to the parties and documents specified on the ... order."

The *Rules of Professional Conduct* may be accessed through the Virginia State Bar's website at <http://www.vsb.org/pro-guidelines/index.php>. For additional information about the above-referenced ethical considerations, or to discuss other ethics related issues involving the duties as a GAL, please contact the Virginia State Bar at 804.775.0500.



## Court of Appeals of Virginia Rulings Related to Guardian Ad Litem Representation

Selected Court of Appeals of Virginia rulings related to the representation of children by guardians *ad litem* are provided below. Included are the issue addressed by the court and the court's specific ruling. It is recommended that each case be reviewed for the factual basis of the ruling.

### GAL Appointment

*Ferguson v. Grubb*, 39 Va. App. 549, 560, 574 S.E.2d 769, 774 (2003). "[B]oth the J&DR and circuit courts specifically found that this was a 'foster care prevention case,' requiring the continued intervention of the court, through the guardian *ad litem*, to protect the best interests of the children at issue. Under these circumstances, we find no error in the court's order directing the continued appointment of the guardian *ad litem*."

### Duties of the GAL

*Norfolk Division of Social Services v. Unknown Father*, 2 Va. App. 420, 425 n.5, 345 S.E. 2d 533, 536 n.5 (1986). Footnote 5 provides that "the duties of a guardian *ad litem* when representing an infant are to defend a suit on behalf of the infant earnestly and vigorously and not merely in a perfunctory manner. [The guardian *ad litem*] should fully protect the interest of the child by making a bona fide examination of the facts and if he does not faithfully represent the interest of the infant, he may be removed,...."



### GAL as a Witness

*Hernandez v. Chesterfield-Colonial Heights Department of Social Services*, Memorandum Opinion, Court of Appeals of Virginia, Record # 2203-08-2, page 4, May 12, 2009 (unpublished opinion). "By overruling mother's objection, the trial court stated that it was accepting the guardian *ad litem*'s statements about the children because 'it's a basis for her recommendation.' At this point in the trial, the guardian *ad litem* was explaining her recommendation to the circuit court. She was not testifying, as mother alleges."

### Role and Responsibilities of the GAL in Termination of Parental Rights Cases

*Stanley v. Fairfax County Department of Social Services*, 10 Va. App. 596, 603, 395 S.E.2d 199, 202 (1990). "...Code § 16.1-283 does not restrict the guardian *ad litem* from initiating a termination petition as long as the required foster care plan recommending termination has also been filed."

*M. G. v. Albemarle County Department of Social Services*, 41 Va. App. 170, 177, 593, S.E.2d 761, 764 (2003). "[I]n a suit involving a termination of parental rights, a guardian *ad litem* for the child or children is an indispensable party to the appeal and, thus, qualifies as an 'opposing counsel' under Rule 5A:6(a), to whom the appellant has a duty to mail or deliver a copy of the notice of appeal."

This ruling was reaffirmed in *Watkins v. Fairfax County Department of Family Services*, 42 Va. App. 760, 595 S.E.2d 19 (2004).

## Requalification Requirements for Guardians Ad Litem

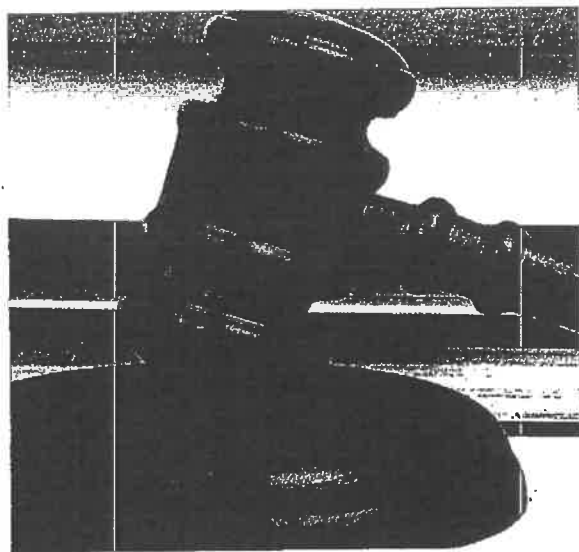
The requirements to requalify as a GAL are provided in Section II of the *Standards to Govern the Qualification of Guardians Ad Litem for Children* ("Qualification Standards"). Section II.A states, in part,

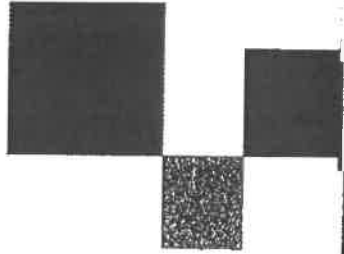
**Complete six hours of approved continuing education biennially [after initial qualification] on any topic related to the representation of children as a guardian ad litem.** Credit for repeating the basic training class, "Representation of Children as a Guardian Ad Litem" will be approved once within a six-year period. A maximum of six hours will be approved within a six-year period for programs designed especially for attorneys specializing in adoption.

[Emphasis added.]

Upon completing a course approved for continuing education credit for GALs, certify attendance by entering the completed continuing education credits into the Guardian Ad Litem Information System, accessible through the Member Portal at [www.vsb.org](http://www.vsb.org). Alternatively, submit the completed Certification of Attendance form to [galadmin@vacourts.gov](mailto:galadmin@vacourts.gov) or fax it to 804-786-1301.

The biennial timeframe noted above begins from the date of initial qualification, which is provided to the attorney in a letter from the Office of the Executive Secretary, Supreme Court of Virginia, confirming receipt of the information required to qualify the attorney as a GAL. There are four possible qualification dates - January 1, April 1, July 1, and October 1. Thus, if the GAL's qualification date is October 1, 2018, the GAL is required to complete six hours of approved continuing education prior to October 1, 2020, and submit evidence of the completion of this requirement to the address above ten days prior to that date.





Qualification Standard III.A.2 provides that failure to complete the continuing education requirement outlined in Standard II.A and Standard II.B shall result in the GAL's removal from the list of qualified GALs. Qualification Standard III.B provides that an attorney removed from the list of qualified GALs may again be included on the list of attorneys eligible for appointment by submitting the following:

- a. Within one year of being removed from the list, certification of attendance indicating completion of the required six (6) hours of continuing education.
- b. If more than one year passes since removal from the list, certification of attendance indicating completion of seven (7) hours of approved continuing education.
- c. If more than five years pass since removal from the list, complete the initial qualification process as outlined in Standard I.

The Office of the Executive Secretary will notify the GAL six months prior to the end of the biennial timeframe if the GAL has not completed the required six hours of continuing education. Thus, a GAL with a qualification date of October 1, 2018 will be notified on or about April 1, 2020 that the GAL must complete the required six hours of continuing education to remain qualified after October 1, 2020.

The *Standards to Govern the Qualification of Guardians Ad Litem for Children* is available online at <http://www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html>

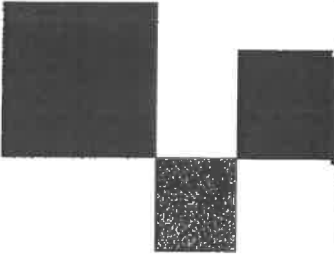
## Continuing Education Courses for Guardians Ad Litem

Courses meeting the continuing education requirement are approved by the Office of the Executive Secretary, Supreme Court of Virginia. A list of approved courses is available online at <http://www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html>. If the GAL has attended a course that is not included on the list and believes it will satisfy the continuing education requirement for guardians *ad litem* for children, the GAL may submit the complete agenda, any course/session descriptions, and speaker biographies to the Guardian Ad Litem Program at [galadmin@vacourts.gov](mailto:galadmin@vacourts.gov) or 100 N. 9th Street, 3rd Floor, Richmond, VA 23219.

## Compensation of Guardians Ad Litem

Guardians *ad litem* are compensated at the rate of \$75 per hour for in-court service and \$55 per hour for out-of-court service, a rate approved by the Supreme Court of Virginia. The documentation method for payment as a GAL is the same as that used for court-appointed counsel, district court form DC-40, LIST OF ALLOWANCES, which must be approved by the appointing judge. As provided in the Chart of Allowances, GAL time shall be recorded in increments not greater than .10 hour (6 minutes). If the amount of reimbursement exceeds \$500, GALs submit an itemized statement that details the dates, times and tasks performed for the hours claimed (e.g., "meeting with client," "interviewing parent," etc.). The court is authorized to pay for the reasonable expenses of a GAL incurred in representing a child. Guardians *ad litem* should seek preapproval of the court for all large expenses, including all long-distance travel greater than 80 miles.





Chapter 7 of the *Court-Appointed Counsel Procedures and Guidelines Manual* provides additional information regarding payment of attorneys serving as a GAL. The *Court-Appointed Counsel Procedures and Guidelines Manual* is available online at <http://www.vacourts.gov/legal.html>.

### Compensation of Experts

Section 17.1-612 authorizes “Every witness who qualifies as an expert witness, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may, if requested in its discretion, order without regard to any limitation described [in this section] but the same shall be paid by the party in whose behalf he shall testify.”

An opinion by the Virginia Attorney General provides for compensation of expert witnesses in child abuse cases in the juvenile court. (See 1979-80 Op. Va. Atty. Gen. 401.)

Before engaging any expert witness, the GAL should obtain prior approval from the judge.

The documentation method for payment of an expert witness is district court form DC-40, LIST OF ALLOWANCES, which must be approved by the judge. A court order qualifying the individual as an expert witness and an itemized invoice is required and must be submitted with the DC-40.

## On-line Resources for Guardians Ad Litem

### Virginia's Children's Services Act (CSA)

[www.csa.virginia.gov](http://www.csa.virginia.gov)

Learn more about the Children's Services Act. Information includes the CSA Manual and other publications, statewide statistics, and local contacts.

### Virginia's Court Appointed Special Advocate (CASA) Program

[www.dcjs.virginia.gov/juvenile-services/grants/casa](http://www.dcjs.virginia.gov/juvenile-services/grants/casa)

Become familiar with CASA programs in Virginia. Information includes a description of Virginia's CASA program, including a listing of operational local CASA programs.

### Virginia Department of Social Services

[www.dss.virginia.gov](http://www.dss.virginia.gov)

Provides local agency contact information, as well as a description and information about the various programs and services for children.





## Virginia's Judicial System

[www.vacourts.gov](http://www.vacourts.gov)

Provides general information about Virginia's court system and court administration.

### Guardian Ad Litem for Children Program

[www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html](http://www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html)

Information used to administer the GAL program in Virginia is included here. Provided are links to the *Standards to Govern the Appointment of Guardians Ad Litem for Children*, forms required for submission of continuing education credit, a list of courses approved for GAL continuing education credit, and listings of currently qualified GALs for children.

### Juvenile and Domestic Relations District Courts

[www.vacourts.gov/courts/jdr/home.html](http://www.vacourts.gov/courts/jdr/home.html)

General information about the juvenile courts is provided. Included are links to individual court home pages, forms, programs, manuals (e.g., *Court-Appointed Counsel Procedures and Guidelines Manual*, *District Court Judges' Benchbook*, *Juvenile and Domestic Relations District Court Manual*, etc.) and other resources and reference materials.

### Virginia State Bar

[www.vsb.org](http://www.vsb.org)

The Member Portal provides Virginia attorneys with selected circuit and district court forms. These forms include the district court forms DC-500 series, which are used in child dependency cases before the juvenile and domestic relations district courts.



District Court Form DC-540, GUARDIAN AD LITEM DISCLOSURE

**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: \_\_\_\_\_  
\_\_\_\_\_

FORM DC-540 (MASTER, PAGE ONE OF TWO) 04/18



Case No. \_\_\_\_\_

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.

FORM DC-540 (MASTER, PAGE TWO OF TWO) 04/18

DISTRICT COURT FORM DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

**ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM**

Commonwealth of Virginia VA. CODE § 16.1-266

Court Case No. ....

.....  Circuit Court  
 CITY OR COUNTY .....  Juvenile and Domestic Relations District Court

In re: .....

..... JUVENILE .....  
 PETITIONER ..... V. .... 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.

In addition, the guardian *ad litem* shall .....

So Ordered.

..... DATE ..... JUDGE

FORM DC-514 FRONT 10/18

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.**

---

The following resources were heavily relied upon in the development of the *Standards to Govern the Performance of Guardians Ad Litem for Children*:

- 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 Academy of Matrimonial Lawyers, 1995.
- 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.
- Richmond Juvenile and Domestic Relations District Court *Guardian Ad Litem* Standards.