

GUIDELINES FOR GUARDIANS AD LITEM  
PRACTICING IN THE COURT OF COMMON PLEAS  
FOR CUYAHOGA COUNTY - JUVENILE DIVISION

*A guardian ad litem fulfills a critical role in a juvenile case. The guardian ad litem is an attorney licensed to practice in the State of Ohio and meets the criteria set down by the juvenile court in order to represent what is in the best interests of a child identified hereafter as "ward". (Ward can be a juvenile, adult, or a person with a disability). The guardian ad litem does not necessarily represent his/her ward's desires, but formulates an independent position regarding issues presented to the court for determination. A guardian ad litem shall render a recommendation when appropriate.*

*The Guidelines identified herein are statements of norms, expressing in general terms the standard of professional conduct expected of guardians ad litem in relationships with their wards, with the legal system and with the legal profession.*

*The Guidelines are aspirational in character and represent the objectives toward which every guardian ad litem should strive. They constitute a body of principles upon which a guardian ad litem can rely for guidance in many specific situations.*

*These Guidelines were approved by the Guardian Ad Litem Advisory Committee of the Guardian Ad Litem Project. They are an effort to insure optimal representation of the best interests of wards and a means to prevent the guardian ad litem's role from being merely symbolic. These Guidelines may be amended from time to time.*

## **GUIDELINE 1**

### **A GUARDIAN AD LITEM SHALL SEEK TO DETERMINE AND ADVOCATE FOR WHAT IS IN THE BEST INTERESTS OF HIS/HER WARD.**

*1.1 - The guardian ad litem shall seek to determine all of the relevant facts and circumstances affecting his/her ward and from that information make a determination of what the guardian ad litem believes is in the ward's best interest. The guardian ad litem shall advocate to the court such determination.*

*1.2 - The guardian ad litem may be appointed as counsel and guardian ad litem for his/her ward and, if so, shall advocate accordingly.*

*1.3 - If a conflict appears between the guardian ad litem's role as guardian ad litem and counsel, the guardian ad litem shall immediately notify the Court of the conflict and request that the guardian ad litem be appointed counsel and that a separate attorney be appointed guardian ad litem or in the alternative, shall request permission to withdraw. Withdrawal from the case often causes delays and hardship on the parties and therefore, should not be requested except in unusual circumstances.*

*1.4 - If a guardian ad litem determines that a case in which the guardian ad litem is appointed contains issues that the guardian ad litem cannot adequately handle, the guardian ad litem shall request that the court appoint an additional guardian ad litem, appoint counsel for the guardian ad litem, permit the guardian ad litem to withdraw, or take other appropriate action.*

*1.5 - A guardian ad litem may be appointed for more than one (1) ward in a case. In the event that the guardian ad litem determines that a conflict exists between what is in the best interests of each ward, the guardian ad litem shall apprise the Court of the nature of the conflict and request appropriate relief, such as appointment of a separate guardian ad litem for one or more of the wards.*

*1.6 - A guardian ad litem shall adhere to the Rules of Professional Conduct and rules applicable to the Cuyahoga County Juvenile Court.*

*1.7 - Guardian ad litem practice in Juvenile court is unique and increasingly complex and therefore, the guardian ad litem shall comply with the continuing education requirements of the Guardian Ad Litem Advisory Committee as adopted and approved by the Cuyahoga County Juvenile Court.*

## **GUIDELINE 2**

### **A GUARDIAN AD LITEM SHALL INVESTIGATE A CASE IN ORDER TO PREPARE FOR HEARING.**

*2.1 - The guardian ad litem advocates for what is in a ward's best interest, not necessarily a ward's desires. Although a ward may express a desire that the guardian ad litem believes is not in the ward's best interest, no conflict may exist. In the event a conflict does exist at any stage of the proceeding the guardian ad litem shall apprise the Court of the conflict and seek the appropriate relief.*

*2.2 - Statements made to a guardian ad litem in his/her capacity as guardian ad litem and evidence coming to a guardian ad litem are not confidential. A guardian ad litem should advise the ward, where appropriate, that such statements and evidence are not confidential.*

*2.3 - A guardian ad litem is subject to the reporting provisions of the Ohio Revised Code concerning abuse and neglect. A guardian ad litem should advise his/her ward of such reporting requirement where appropriate.*

*2.4 - The guardian ad litem should present evidence when necessary to advance the best interests of a ward. This may include filing subpoenas for attendance of witnesses and filing appeals where necessary.*

*2.5 - The guardian ad litem should attempt to speak with all parties and appropriate witnesses, including all interested individuals and professionals involved with the ward and the ward's family.*

2.6 - *The guardian ad litem should communicate with social workers, therapists, counselors, school personnel, mental health professionals and health care providers where appropriate. Such communication may include homemakers, parent aids, neighbors, ministers, baby-sitters, daycare providers, relatives, and others.*

2.7 - *The guardian ad litem should obtain through the appropriate source professional assistance for the ward where necessary, or in the alternative should apprise the Court of the need of the ward for such assistance.*

2.8 - *The guardian ad litem should speak with all Department of Children and Family Services personnel where necessary to prepare for hearing.*

2.9 - *The guardian ad litem should review all documents and records necessary to prepare for hearing.*

2.10 - *The guardian ad litem should give his/her office telephone number to the ward unless clearly inappropriate.*

2.11 - *The guardian ad litem should interview a ward who can communicate. This communication should usually be done with the ward alone. This communication may be informal and the guardian ad litem may or may not discuss the specific allegations of the case. The interview should take into consideration prior investigations or evaluations and a guardian ad litem should be sensitive to the comfort level of the ward, recognizing that repeated interviews can be abusive.*

2.12 - *The guardian ad litem should assist in easing the trauma for a ward by determining the ward's concerns about issues such as visitation with relatives, participation in specific sports or activities, and access to pets.*

*2.13 - The guardian ad litem should have access to confidential information concerning the ward. If the guardian ad litem is unable to obtain such information informally, then the guardian ad litem should obtain such information by court order or by obtaining the appropriate releases.*

*2.14 - A guardian ad litem should obtain permission from counsel for each party in order to communicate with such party. The guardian ad litem should communicate with the ward's physical custodian or placement staff.*

*2.15 - The guardian ad litem should meet with his/her ward or observe the ward in placement, except in unusual circumstances.*

### **GUIDELINE 3**

#### ***A GUARDIAN AD LITEM SHALL FULLY LITIGATE A CASE.***

*3.1 - The guardian ad litem should recognize that the representation of the best interests of a ward may require obtaining discovery and filing pleadings. Pleadings may include original actions, motions, and appellate pleadings.*

*3.2 - The guardian ad litem shall be involved in all negotiations in order to represent the best interests of the ward. A guardian ad litem must be knowledgeable of the effect of continuances and delays on the ward and advocate accordingly.*

*3.3 - The guardian ad litem shall attend all hearings unless a particular hearing involves issues completely unrelated to the child for which the guardian ad litem may request that his/her presence be waived.*

*3.4 - The guardian ad litem may request authority to pursue issues on behalf of the ward not specifically arising from the court appointment, e.g. SSI, paternity, personal injury or criminal matters.*

*3.5 - Custody proceedings necessarily involve visitation orders and support issues. A guardian ad litem should address these issues which may involve proceedings for sanctions for failure to comply with orders of court.*

*3.6 - It is the guardian ad litem's choice to present evidence through other witnesses or through his/her own testimony. A guardian ad litem should, whenever possible, present testimony through other witnesses. If the guardian ad litem chooses to present evidence which*

*has not otherwise been presented to the Court, due process requires that the guardian ad litem be available for cross-examination. If the guardian ad litem presents all of his/her evidence through other witnesses, he/she should not testify or submit to cross-examination.*

*3.7 - The guardian ad litem should, where necessary, obtain expert testimony to advance the best interests of a ward. In the event that the guardian ad litem submits sworn testimony concerning a material fact, then the guardian ad litem should request permission from the Court to withdraw.*

*3.8 - The guardian ad litem shall determine whether it is in the best interest of his/her ward to testify. In the event it is not in his/her best interest to testify, and any other party desires to obtain such testimony, the guardian ad litem shall file the appropriate pleading for the purpose of advancing the best interest of the ward, which may include the filing of protective orders and/or motions to quash.*

## **GUIDELINE 4**

### ***THE GUARDIAN AD LITEM SHALL ACTIVELY PARTICIPATE IN DISPOSITION.***

*4.1 - The guardian ad litem should identify and advocate for needed resources such as drug and alcohol treatment, vocational assistance, parenting education, counseling, and programs for special needs.*

*4.2 - The guardian ad litem shall formulate an independent position after considering all relevant information, including, but not limited to, the desires of the ward and parents.*

*4.3 - The guardian ad litem's recommendation should result from his/her independent investigation. The guardian ad litem does not necessarily adopt or advocate for the ward's desires unless it would serve the ward's best interest. Unless there are compelling reasons concerning the ward's welfare, the guardian ad litem shall communicate the ward's desires to the Court or arrange for the ward to do so directly.*

*4.4 - The cases in which the guardian ad litem becomes involved usually evoke strong feelings in the parties and their family and friends. The guardian ad litem should attempt to understand the emotional dynamics of the situation and should not be unduly influenced by concern that his/her position is offensive to one side or by pressure or threats from anyone. The guardian ad litem is not required to tolerate harassment, assault, or other criminal behavior.*

*4.5 - The guardian ad litem should avoid even the appearance of bias or impropriety. The guardian ad litem has a responsibility to commence his/her role in a neutral posture. At some point in the proceedings, the guardian ad litem must form an opinion concerning the ward's best interests. An attempt to persuade the Court to that view does not indicate bias.*

*4.6 - The guardian ad litem should make clear recommendations to the Court concerning the best interests of the child at every stage of litigation, including all placement decisions.*

*4.7 - The guardian ad litem need not submit written reports or recommendations to the Court or any party unless required by law or court order, but may do so if it will promote the best interests of the child. If a written report or recommendation is to be submitted, due consideration should be given to the timing of the report. In some cases, clear recommendations by the guardian ad litem, in advance, may promote settlement in the child's best interest. However, it is inappropriate for the guardian ad litem to make recommendations if information will be developed in a hearing which will bear on the ward's best interest and that information is not available to the guardian ad litem until the evidence is presented. Except as provided by statute it is suggested that the report or recommendation of the guardian ad litem be presented in the form of argument.*

**GUIDELINE 5**

***THE GUARDIAN AD LITEM SHALL ACTIVELY ASSIST  
IN POST DISPOSITIONAL MATTERS.***

*5.1 - The guardian ad litem shall continue to attend to all relevant matters of his/her ward until such time as the Court approves his/her withdrawal from a case, or the guardian ad litem's duties terminate by operation of law.*

*5.2 - In custody and visitation cases, the guardian ad litem shall continue to represent the best interests of his/her ward until a final order relative to the ward has been issued by the Court, subject to the duties set forth in Guideline 6.*

*5.3 - The guardian ad litem shall initiate and/or participate in appellate proceedings arising from the matter in which the guardian ad litem has been assigned to represent the child's best interests in accordance with the requirements of Guideline 6.*

*Guideline 5 – Amended 1/8/09*

## **GUIDELINE 6**

### **A GUARDIAN AD LITEM SHALL INITIATE AND/OR PARTICIPATE IN APPELLATE PROCEEDINGS IF IN THE BEST INTEREST OF THE WARD.**

*6.1 - A guardian ad litem who has been assigned to represent the best interests of a child in juvenile court proceedings should recognize that the trial court may issue a decision that is contrary to the guardian's recommendation as to the child's best interest.*

*6.2 - A guardian ad litem shall file a Notice of Appeal regarding a trial court decision if such action would serve to protect the best interests of the child. Once the Notice of Appeal has been filed, a guardian ad litem shall comply with Subsections 6.4 and 6.6 of this Guideline.*

*6.3 - A guardian ad litem shall seek to protect the best interests of the child in any appellate proceedings arising from the matter in which the guardian ad litem has been assigned to represent the child's best interests.*

*6.4 - Unless a guardian ad litem wishes to represent himself/herself on appeal, a guardian ad litem shall seek appointment of legal counsel to represent the guardian ad litem in pending appellate proceedings. A guardian ad litem shall file an appropriate motion requesting that another guardian ad litem be appointed to serve in that capacity if the guardian ad litem lacks the requisite knowledge, ability and/or time commitment necessary to participate in the appellate proceedings.*

*6.5 - A guardian ad litem is a distinct party to a juvenile proceeding, and a guardian ad litem's initiation of, or participation in, an appeal is distinct from an appeal by the child. In those cases where the trial court has issued a dual-appointment order and the child is of*

*sufficient maturity to direct that an appeal be filed on the child's behalf, the attorney/guardian ad litem shall initiate a separate appeal or cross-appeal, on behalf of the child, in keeping with the attorney's role and general ethical obligations. The guardian ad litem may also request a separate appointment of counsel for the child for the child's appeal. In the event a dual-appointment leads to uncertainty in relation to the responsibilities of a guardian ad litem for purposes of appeal, the guardian ad litem shall immediately consult with the Guardian Ad Litem Project Administrator.*

*6.6 - A guardian ad litem who appears on behalf of a ward, and/or is appointed as legal counsel by the appellate court, shall fully participate in briefing and oral argument in the pending appellate proceedings to the extent necessary to protect the child's best interest.*

*6.7 - A guardian ad litem is a party to an appeal of a trial court decision resulting from proceedings to which the guardian ad litem is a party. In addition to the requirements listed at Subsections 6.4 and 6.6, a guardian ad litem shall immediately notify the Guardian Ad Litem Project Administrator if it is either determined or anticipated that an appeal may involve any issues relevant to the practice of guardians ad litem. Information to be provided shall include the issue(s) involved, along with the case name, appellate case number, and any other information deemed appropriate.*

*New Guideline 6 – Adopted 1/8/09*

## GUIDELINE 7

### **A GUARDIAN AD LITEM FOR AN ADULT WARD OR MINOR PARENT SHALL SEEK TO DETERMINE AND ADVOCATE FOR WHAT IS IN THE WARD'S BEST INTERESTS.**

7.1 - *When a guardian ad litem is appointed for an adult ward or a minor parent in a juvenile court proceeding pursuant to Ohio Revised 2151.281(C) and Juvenile Rule 4(B)(3), the guardian ad litem shall determine whether the ward demonstrates an inability to act in his/her own best interests and to understand the proceedings.*

7.2 - *The guardian ad litem for an adult ward or minor parent shall investigate the issues raised in the case and by the ward. The guardian ad litem shall interview the ward, parties, relatives, and service providers and may assist the ward in the proceedings.*

7.3 - *The guardian ad litem shall take all reasonable steps to promote the ward's best interests, to ensure that an appropriate case plan is developed, and to monitor the ward's progress on the case.*

7.4 - *Upon appointment or at any time during the proceedings, if the guardian ad litem determines that his/her services are not necessary, the guardian ad litem shall file a motion to withdraw as guardian ad litem.*

7.5 - *If the guardian ad litem is unsure as to the necessity of the guardian ad litem's continuing involvement in the case, the guardian ad litem should consult with the ward's counsel, if any, and may request a hearing on this issue.*

*Guideline 7 – Adopted 4/2/09*

*GUIDELINE 8*

*Reserved*

*GUIDELINE 9*

*Reserved*

*GUIDELINE 10*

*Reserved*

## **GUIDELINE 11**

### **A GUARDIAN AD LITEM SHALL BE COMPENSATED FOR HIS/HER SERVICES RENDERED.**

*11.1 - Compensation of guardians ad litem is subject to Rule 17 of the Rules of the Juvenile Division of the Court of Common Pleas for Cuyahoga County.*

*11.2 - A Guardian ad Litem may file a Motion, Entry and Certification for Appointed Counsel Fees, Ohio Public Defender Form 1026R in accordance with the Fee Bill Policy in effect for GALs practicing in the Cuyahoga County Juvenile Court.*

*11.3 - Upon the Court's approval of a Guardian ad Litem's properly filed OPD Form 1026R, Cuyahoga County will pay a Guardian ad Litem for services rendered in accordance with the Assigned Counsel and Guardian ad Litem Fee Bill Policy, revised 7/11/08 and the Fee Bill Schedule in effect for GALs practicing in the Cuyahoga County Juvenile Court, revised 9/1/2008, and BOCC Resolution No. 004368, as amended on March 2, 2006.*

*11.4 - In addition to filing the OPD Form 1026R, a Guardian ad Litem may file a Motion for Extraordinary Fees to be paid out of the County treasury, which will be ruled on in accordance with the Fee Bill Policy in effect for GALs practicing in the Cuyahoga County Juvenile Court.*

*11.5 - In the alternative to filing the OPD Form 1026R, a guardian ad litem may file a Motion to Assess Guardian Ad Litem Fees to the Parties. In the absence of an agreement, the GAL shall appear at a hearing to determine a reasonable amount of compensation to be paid to the guardian ad litem for services rendered by the guardian ad litem based upon the customary*

*hourly rate for attorneys practicing in Cuyahoga County and an itemization by date for services rendered by the guardian ad litem. The court will apportion such fees between the parties as the court deems appropriate. Such fees are subject to the criteria set forth Rule 1.5 of the Ohio Rules of Professional Conduct and Swanson v. Swanson (1976) 48 Ohio App. 2d 85.*

*11.6 - A guardian ad litem who intends to file a motion with the court requesting that the court order the parties to pay the guardian ad litem's fees shall submit monthly itemized statements to the parties or their counsel of record identifying the date services were performed, a description of the services performed, and the time expended for the services performed.*

*11.7 - If the court orders the parties to pay the guardian ad litem's fees, the guardian ad litem waives all right to any compensation from the County Fund for services rendered. This waiver of further compensation relates only to fees the Court orders the parties to pay for the period of time the Guardian ad Litem rendered the services set forth in the Motion to Assess Fees to the Parties.*

**Guideline 11 – Adopted 1/8/09**