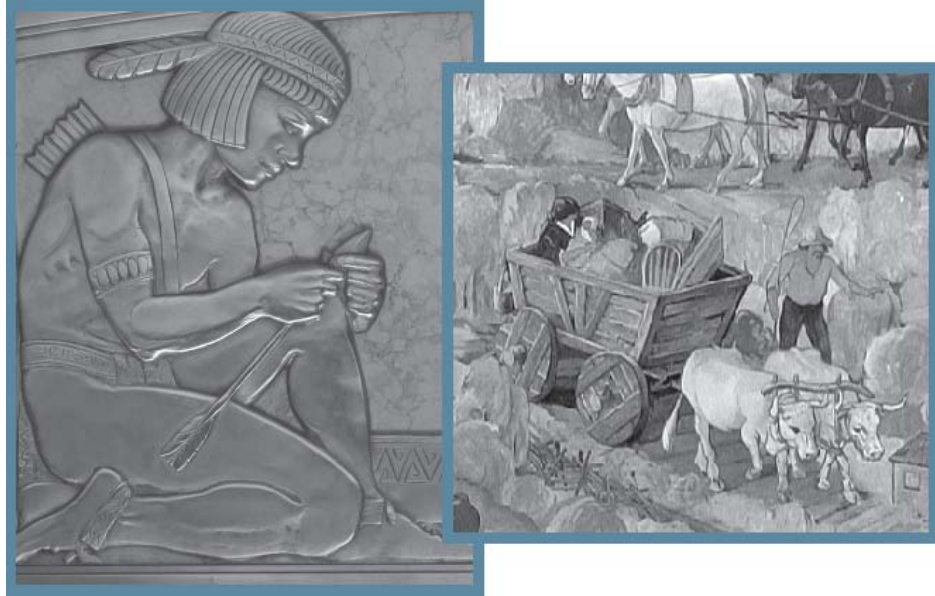


# THE SUPREME COURT *of* OHIO

Advisory Committee *on*

CHILDREN, FAMILIES & THE COURTS



REPORT AND RECOMMENDATIONS  
*on* Standards for Guardians Ad Litem

DECEMBER 2005



COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION

DAVID A. BASINSKI, JUDGE

ADMINISTRATION BUILDING  
226 MIDDLE AVENUE  
ELYRIA, OHIO 44035

November 21, 2005

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Chief Justice Thomas J. Moyer  
The Supreme Court of Ohio  
65 South Front Street  
Columbus, Ohio 43215

Dear Chief Justice Moyer:

As you requested, the Advisory Committee on Children, Families, and the Courts presents you with these two documents as final products of the Committee's work: *Recommendations on the Report of the Guardian Ad Litem Standards Task Force* and *Recommendations on the Ohio Task Force on Family Law and Children Report*. We look forward to the implementation of the Recommendations and offer our assistance as you deem necessary.

The *Guardian Ad Litem Standards* will best be implemented through the Rules of Superintendence. Although significantly unchanged from the original proposal, we have incorporated some changes advised through the public comment process. We believe when enacted, these Standards will establish a high level of quality of guardians in Ohio and a more consistent level of service from county to county.

The *Task Force on Family Law and Children Reports* will dramatically change the approach taken in mostly domestic relations cases. As suggested by the original Task Force's work, these reforms will mandate a more child-centered proceeding in our Domestic Relations Courts. Our report indicates changes will need to be made in the Ohio Revised Code as well as the Rules of Superintendence.

It has been an honor to work with this dedicated group of professionals. We believe the reforms being suggested are long overdue and will dramatically improve the court proceedings involving Ohio families. We believe the significant amount of public

comment already received regarding both of these documents has shaped them to be ready for implementation.

As the Advisory Committee begins planning for its work in 2006, we appreciate the growing staff assistance you have provided for our deliberations and renew our support for additional staff up to and including the creation of a formal family law section within your organization. We thank you for your support and confidence in our appointments and welcome your suggestions.

Sincerely,

A handwritten signature in black ink that reads "David A. Basinski". The signature is written in a cursive style with a large, prominent initial "D".

Honorable David A. Basinski  
Co-chair

Sincerely,

A handwritten signature in black ink that reads "Helen E. Jones-Kelley". The signature is written in a cursive style with a large, prominent initial "H".

Helen E. Jones-Kelley  
Co-chair

**The Advisory Committee on Children, Families, and the Courts  
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General Counsel, Ohio Department of Youth Services

Robert N. Wistner  
Attorney at Law

Michael Smalz  
Ad-hoc Committee Member, Ohio State Legal Services Association

## **I. GUARDIAN AD LITEM SERVICE AND DUTIES**

### **Recommendation One (1)**

When the court appoints a guardian ad litem in any proceeding involving a minor child, the guardian ad litem shall act in the best interest of the child and shall perform the following minimum duties unless impracticable or inadvisable to do so:

#### **Out-of-Court Duties**

- (a) Interview the child and observe the child with each parent, foster parent, guardian or physical custodian. At least one interview shall be away from the presence of said parent, guardian, or physical custodian;
- (b) Review pleadings and other relevant court documents;
- (c) Review criminal, civil, educational and administrative records pertaining to the child;
- (d) Conduct home visits in accordance with standards established by the local court;
- (e) Suggest the possible necessity for psychological evaluations, mental health and/or substance abuse assessments, or other intervention;
- (f) Contact school personnel, medical and mental health providers, child protective services workers and relevant court personnel;
- (g) Explore the wishes of the child; and
- (h) Perform any other investigation necessary to make an informed recommendation regarding the best interests of the child.

#### **In-Court Duties**

In accordance with Recommendation Three below shall do all of the following:

- (a) Actively participate in all court proceedings;
- (b) Monitor court orders to ensure compliance; and
- (c) Cause to be filed motions and other pleadings as appropriate under the applicable rules of procedure.

### **Recommendation Two (2)**

It is critical that only qualified persons perform the duties of a guardian ad litem. At a minimum, the person should be well-trained, knowledgeable and capable of communicating effectively with adults and children of varying backgrounds and circumstances. Further, courts should:

- (a) Establish a list of criteria and educational requirements for consideration in appointing or removing a guardian ad litem;
- (b) Require a resume or information sheet outlining the applicant's training, experience and expertise related to children;
- (c) Conduct or cause to be conducted, a criminal and civil background check and investigation of other relevant information; and
- (d) Conduct an annual review of appointments to determine the applicant's demonstrated skill and knowledge. (This annual update should include certification from the applicant that he/she has not been the subject of any criminal investigation or convicted of any offense since that application or last review.)

### **Recommendation Three (3)**

A lay guardian ad litem must avoid engaging in conduct that constitutes the unauthorized practice of law. Therefore, the lay guardian ad litem must be vigilant in performing his or her duties, so as to request the court to appoint legal counsel, or otherwise employ the services of an attorney, to undertake appropriate legal actions.

Additionally, a lay guardian ad litem has a duty to advise a child of his or her right to an attorney if the guardian ad litem's recommendations differ from the wishes of said child.

### **Recommendation (4)**

When a court appoints an attorney to serve as both the guardian ad litem and attorney for a minor child, the attorney shall advocate for the child's best interest and the child's wishes in a vigorous manner conforming to the Code of Professional Responsibility. When an attorney serving in this dual role determines that a conflict exists between the child's best interest and the child's wishes, he or she shall, at the earliest practical time, request the court to promptly resolve the conflict by entering appropriate orders in compliance with applicable statutes.

### **Recommendation Five (5)**

A guardian ad litem must maintain objectivity. Any relationship or activity, including but not limited to those of employment, business, professional or personal contacts with respect to parties or others involved in the case, may conflict with the guardian ad litem's responsibilities and must be disclosed. Since a conflict of interest may arise at any point in time, the guardian ad litem has an ongoing duty to disclose the existence of any actual or potential conflicts.

### **Recommendation Six (6)**

The guardian ad litem should remain on the case until his or her duty is effectively discharged pursuant to statute or by leave of court. Whenever feasible, the same guardian ad litem should be re-appointed in any subsequent filings related to the child's best interest.

### **Recommendation Seven (7)**

Any guardian ad litem who makes a recommendation or conducts an investigation concerning the interests of the child in a proceeding in which the guardian ad litem is appointed shall be immune from civil or criminal liability as to that investigation or recommendation unless the guardian ad litem has acted in bad faith or with malicious purpose.

## **II. GUARDIAN AD LITEM TRAINING**

### **Recommendation Eight (8)**

- (a) Successful completion of a minimum of six (6) hours of pre-service training shall be required in order to qualify for consideration for a guardian ad litem appointment. Thereafter, a guardian ad litem shall complete a minimum of three (3) hours of specific training per year to be allowed to qualify for continued appointment;
- (b) The six hour pre-service training must be either the "sanctioned" course developed by the Supreme Court of Ohio GAL Curriculum Workgroup; the State CASA/GAL

Association pre-service training program; or any training, with prior approval of the judge, that covers all topic areas referred to in GAL Taskforce Recommendation Number Nine.

- (c) A comprehensive statewide training program shall be made available. Support should be sought from the Commission on Continuing Legal Education, the Ohio Department of Job and Family Services (ODJFS), the Attorney General's Office, Ohio CASA/GAL Association, among others, and augmented by universities and local and/or national training programs;
- (d) The training should be easily accessible on a county- by- county basis and not cost prohibitive. Ohio Department of Jobs and Family Services is encouraged to explore the feasibility of permitting attorneys who have completed at least one pro bono appointment in the preceding year to attend Ohio Child Welfare Training Program courses free-of-charge as space is available. Continuing Legal Education accreditation should be sought for these courses and the number of training hours available to any attorney should be commensurate with the pro bono service;
- (e) The Ohio Commission on Continuing Legal Education and other professional educational commissions, e.g. Social Worker Licensing Board, should support guardian ad litem training by offering appropriate education units;
- (f) The Ohio Judicial College should provide training for judges and magistrates to enhance their understanding of guardian ad litem-related issues, including the role of the guardian ad litem and related work product; and
- (g) Each court shall identify and make public the name of the individual employee responsible for providing training information for guardians ad litem.

*Committee Comments: Added 8(b) to clarify what courses are specifically designed for pre-service training. Wanted to allow flexibility to local judges to provide prior approval for other courses that may meet the local court's needs.*

### **Recommendation Nine (9)**

The required list of topics for guardian ad litem training should include the following:

- (a) Assessing risk and safety;
- (b) Stages of child development;
- (b) Family dynamics;
- (c) Child abuse and neglect;
- (d) Basic psychopathology for adults and children;
- (e) Substance abuse and its effects;
- (f) Domestic violence and its' effects;
- (g) Communication skills/ability to speak with children and adults, including critical questions, open-ended questions, interview skills;
- (h) Perspective of a child;
- (i) Records checks, accessing, assessing and appropriate protocol;
- (j) Building trust;
- (k) Guardian ad litem's role in court;
- (l) Multicultural awareness;
- (m) Sensitivity;
- (n) Local resources and service practice;
- (o) Dispute resolution;

- (p) Confidentiality; and
- (q) Report content.

### **Recommendation Ten (10)**

A guardian ad litem appointed by a probate court whose appointment requires duties similar to those of a juvenile or domestic relations court guardian ad litem shall be trained in the same manner as a juvenile or domestic relations court guardian ad litem.

## **III. GUARDIAN AD LITEM REPORTS**

### **A. Reports in proceedings concerning the termination of parental rights and concerning abuse, neglect, and dependency**

#### **Recommendation Eleven (11)**

Interim reports of the guardian ad litem may be filed any time prior to the dispositional hearing and prior to hearings on actions to terminate parental rights. Interim reports may be written or given orally. Any guardian ad litem interim report submitted to the court shall conform to the following requirements:

- (a) If written, it shall be filed with the court and made available to the parties for inspection no less than three (3) days before hearing, unless extended by the court for good cause shown;
- (b) If written, the guardian ad litem shall provide a copy to the court at the hearing;
- (c) All reports, written or oral, should list all hearings attended, interviews performed, reports and documents reviewed, and consultations with experts;
- (d) All reports, written or oral, shall be used by the court to ensure that the guardian ad litem has performed those responsibilities required by R.C. 2151.281; and
- (e) All reports, written or oral, shall not contain information relating to the allegations before the juvenile court and shall not be considered by the court as substantive proof as to any issue.

*Committee Comments: The committee wanted to differentiate between “interim and “final” reports of the GAL. If the report is written, the committee wanted to emphasize the necessity of allowing all parties an opportunity for review of the document prior to the hearing except in extreme circumstances.*

#### **Recommendation Twelve (12)**

Final reports of the guardian ad litem in juvenile abuse, neglect, and dependency cases and in actions to terminate parental rights shall conform to the following requirements:

- (a) A final guardian ad litem report shall be submitted in writing at the dispositional hearing. Unless extended by the court for good cause shown, the report shall be filed with the court and made available to the parties for inspection no less than seven (7) days before hearing;
- (b) The final report may contain any reliable information that is relevant to the matters before the court;



- (c) The guardian ad litem may orally supplement the final report at the conclusion of the hearing; and
- (d) The court has the discretion to order confidential records attached to or discussed in the report to be sealed. All portions of the report shall be made part of the record for purposes of appeal. Guardians ad litem shall be available to supply testimony if necessary.

*Committee Comments: The committee wanted to emphasize the need for a written final report and that ample time should be allowed for parties to review the report in preparation for hearings. The committee also wanted to allow the GAL the opportunity to orally supplement the written report in light of new information that may be discovered during the course of litigation.*

## **B. Reports in proceedings concerning the allocation of parental rights and responsibilities**

### **Recommendation Thirteen (13)**

Reports of the guardian ad litem in proceedings involving the allocation of parental rights and responsibilities shall conform to the following requirements:

- a) The guardian ad litem shall prepare a written report including recommendations to the court;
- b) Said guardian ad litem report shall be submitted to the court and available for review by parties to the case no less than seven (7) days before the scheduled hearing, unless otherwise required by the court;
- c) The guardian ad litem's report shall detail the activities performed, persons interviewed, documents reviewed and all other relevant information considered by the guardian ad litem in reaching his or her recommendation;
- d) The guardian ad litem shall be available to provide testimony as necessary;
- e) The court shall consider the recommendation of the guardian ad litem in determining the best interests of the child(ren) only when the report or a portion thereof has been submitted as an exhibit.

*Committee Comments: The committee wanted to emphasize the necessity of the GAL to provide a written report, in advance, and be available to provide testimony if required. The committee wanted to allow the judge the flexibility, as with other testimony and evidence, to decide how much weight to give the GAL's testimony and any portion of the report entered into evidence.*

## **C. Reports in Probate Court proceedings**

### **Recommendation Fourteen (14)**

Reports in Probate Court Proceedings shall conform to the following requirements:

- (a) The guardian ad litem's report shall detail the activities performed, persons interviewed, documents reviewed and all other relevant information considered by the guardian ad litem to accomplish the duties as set forth in the appointment;
- (b) The substantive information gathered by the guardian ad litem shall be submitted to the court in accordance with the Rules of Evidence and the standards set forth in these recommendations;

- (c) These reports shall be provided to the parties prior to the hearing and filed with the court; and
- (d) The court shall consider the recommendation of the guardian ad litem.

*Committee Comments: The committee wanted to ensure that specific information as to “persons interviewed, documents reviewed and all other relevant information considered” was included in the GAL report.*

## **GUARDIAN AD LITEM FUNDING AND PAYMENT**

### **Recommendation Fifteen (15)**

The enactment of an amendment to R.C. 2303.201(E), should be pursued in order to permit all courts of common pleas to charge a filing fee in addition to other court costs for the establishment of a special project fund for guardians ad litem.

### **Recommendation Sixteen (16)**

R.C. 120.33 “Court-Appointed or Selected Counsel; Payment” should be amended to allow for the reimbursement of or payment for services of an attorney or lay guardian ad litem appointed by the court pursuant to R.C. 2151.281 of the Revised Code.

Reimbursement or payment may only be made when the guardian ad litem has met the minimum standards for guardian ad litem training, evaluation and approved by the court to serve as guardian ad litem.

### **Recommendation Seventeen (17)**

R.C. 3109.04 should be amended to include a provision which mandates the payment of guardian ad litem fees for indigent children in domestic relations cases through county public defender offices, joint county public defender offices, or county selected or appointed counsel systems (R.C. 120.13, 120.23, 120.33).

### **Recommendation Eighteen (18)**

The Ohio Supreme Court is encouraged to grant, upon proper verification, one (1) hour of CLE credit per calendar year to an attorney who accepts and completes a pro bono appointment as guardian ad litem.

*Committee Comments: The committee wanted to encourage, but not require pro bono appointments. Some communities have found it difficult to recruit enough GALs. The committee believed that a mandatory pro bono requirement would reduce the number of attorneys willing to accept the appointments in some communities.*

### **Recommendation Nineteen (19)**

Individual courts are encouraged to develop and support volunteer guardian ad litem programs.

### **Recommendation Twenty (20)**

Compensation of the guardian ad litem should conform to the following requirements:

- (a) Attorneys who are appointed as guardians ad litem for a children should be paid at least at the median customary, hourly rate for attorneys in that jurisdiction.
- (b) Guardians ad litem who are not attorneys may be paid at a rate lower than that paid to attorneys.
- (c) A deposit should be required of any party who requests the appointment of a guardian ad litem. The deposit should be an amount otherwise set by the court for good cause

shown; or, an amount as agreed to by the parties and the guardian ad litem and approved by the court.

- (d) Deposits required by this Recommendation may be waived by the court for indigent parties.

*Committee Comments: The committee eliminated the \$1000 cap on GAL fees. It was thought that the cap would limit some communities' level of GAL services, while not increasing compensation in some communities where GALs are compensated at a low rate.*

## **MONITORING AND ENFORCEMENT**

### **Recommendation Twenty One (21)**

Each court shall create and maintain a file for every person applying to serve as a guardian ad litem with that court. This file shall contain all material and information required by the applicable Rules of Superintendence of the Ohio Supreme Court for the selection of guardians ad litem.

### **Recommendation Twenty Two (22)**

Each court shall maintain a list of approved guardians ad litem. Each court shall review its list of guardians ad litem on an annual basis for the purpose of determining that all persons whose names are contained on the list are in compliance with the training and education requirements of the Ohio Supreme Court. Each court shall also conduct, on an annual basis, a review of every guardian ad litem's performance on assigned cases during the preceding calendar year.

### **Recommendation Twenty Three (23)**

Each court shall maintain a file for every approved guardian ad litem. The guardian ad litem shall be responsible for providing the court with a statement indicating compliance with all initial and continuing educational and training requirements. The compliance statement shall include information detailing the date, location, contents and credit hours of any relevant training or education received by the guardian ad litem.

### **Recommendation Twenty Four (24)**

Each court shall publicly designate a staff person to receive comments regarding the performance of guardians ad litem practicing before that court. This person shall immediately forward any complaints to the court or appropriate professional licensing body for review and appropriate action. Any dispositions by the court of any such complaints shall be done in a prompt manner. The court shall maintain a written record in a guardian ad litem's file regarding the nature and disposition of any complaint received.

GAL Recommendation Conversion Table

<b>GAL Taskforce Recommendation</b>	<b>Recommendation as reported out of the Advisory Committee on Children, Families and the Courts</b>
Recommendation 1	Recommendation 1
Recommendation 2	Recommendation 2
Recommendation 3	Recommendation 3
Recommendation 4	Recommendation 4
Recommendation 4	Recommendation 4
Recommendation 5	Recommendation 5
Recommendation 6	Recommendation 6
Recommendation 7	Recommendation 7
Recommendation 7	Recommendation 7
Recommendation 8	Recommendation 8
Recommendation 9	Recommendation 9
Recommendation 10	Recommendation 10
Recommendation 11	Eliminated/Consolidated
Recommendation 12	Recommendation 11
Recommendation 13	Recommendation 12
Recommendation 14	Recommendation 13
Recommendation 15	Eliminated/Consolidated
Recommendation 16	Recommendation 14
Recommendation 17	Recommendation 15
Recommendation 18	Recommendation 16
Recommendation 19	Recommendation 17
Recommendation 20	Recommendation 18
Recommendation 21	Recommendation 19
Recommendation 22	Recommendation 20
Recommendation 23	Recommendation 21
Recommendation 24	Recommendation 22
Recommendation 25	Recommendation 23
Recommendation 26	Recommendation 24