

LEGAL AID SOCIETY ADOPTS STANDARDS AND PRACTICES FOR GUARDIAN AD LITEM IN ORANGE COUNTY

In an effort to provide greater and more detailed guidance to volunteers with the GAL Program, the Legal Aid Society, through its Executive Director and Board of Trustees, has approved a set of Standards and Practices for GALs serving in juvenile dependency cases. While the Florida Statutes and Juvenile Rules of Procedure contain specific mandates, the Society has added additional guidelines for GALs to follow. These additional guidelines are designed both to ensure that the reports and recommendations provided by the GAL to the Court are based upon a thorough investigation of the petition and to ensure that the child has direct contact with his/her GAL on a regular basis (both pre and post-disposition)

STANDARDS AND PRACTICES FOR SERVING AS THE GUARDIAN AD LITEM IN JUVENILE CASES IN ORANGE COUNTY, FLORIDA

Florida Statute 39.822 mandates the appointment of a Guardian ad Litem (GAL) to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal. The statute **REQUIRES** that:

1. The GAL **SHALL** review all disposition recommendations.
2. The GAL **SHALL** review all changes in placements of their wards.
3. The GAL **MUST** be present at all critical stages of the dependency proceeding

OR

submit a written report of recommendations to the Court.

Written reports must be filed with the court and served on all parties whose whereabouts are known at least 72 hours prior to the hearing.

Rule 8.215, Florida Rules of Juvenile Procedure relates to the Guardian ad Litem. Subsection (c) of that rule states that the duties and responsibilities of the GAL **SHALL** include:

1. To gather information concerning the allegations of the petition and any subsequent matters arising in the case and, unless excused by the Court, to file a written report. This report shall include a summary of the guardian ad litem's findings, a statement of the wishes of the child, and the recommendations of the GAL and shall be provided to all parties and the court at least 72 hours before the hearing for which the report is prepared.
2. To be present at all court hearings unless excused by the court.

3. To represent the interests of the child until the jurisdiction of the court over the child terminates, or until excused by the court.
4. To perform such other duties as are consistent with the scope of the appointment.

The statute and the rule cited above set out the ***minimum*** requirements of the GAL. However, in order to ensure that the child's interests are fully protected, there are other guidelines that the Legal Aid Society, as the administrator of the Guardian ad Litem Program in Orange County, ***requires*** of those GALs serving through their program. These guidelines have been reviewed by the Juvenile Division Judges and approved by the Legal Aid Society's Executive Director and Board of Trustees.

Rule 8.215 (c) (1) requires that the GAL investigate the allegations of the petition and any subsequent matters that arise in the case. This means, that at a ***minimum***, the GAL must:

1. Upon receiving the Order Appointing Guardian ad Litem, you must sign the Oath of Acceptance and file it with the Juvenile Division Clerk's office ***immediately***.
2. The GAL must read the Petition for Dependency.
3. The GAL must contact the assigned DCF (Dept. of Children and Families) caseworker to discuss the allegations of dependency.
4. The GAL must determine the specific location of the child.
5. The GAL must contact the child or the child's custodian.
6. The GAL must contact the parents or their attorneys to discuss the allegations of dependency.
7. The GAL must prepare and serve a Notice of Participation in Discovery. Sample attached.

It is ***recommended*** that, in addition to the above, the GAL also contact, where applicable:

1. The **DCF attorney** assigned to the case.
2. The **Child Protection Team** or other health care provider who may have examined the child in connection with the alleged dependency.
3. The child's **school teacher**.
4. The child's **day care provider**.
5. Any other person or entity that the GAL believes, or has reason to believe possesses any information relevant to the allegations of dependency, including **DCF shelter and foster parents**.

Rule 8.215 (c) (1) further requires that the GAL submit a written report to the court that, among other things, shall include a statement of the wishes of the child. Therefore, unless the court determines that it would pose an undue burden on the GAL, the GAL **SHALL**:

1. Have a face-to-face meeting with the child prior to the adjudicatory and the disposition hearing to ascertain the wishes of the child. If the child is in an **out of state placement or** if the child, while in a placement within the state of Florida, **lives at a distance greater than a one hour drive** for the GAL, then the GAL shall, at a **minimum**, make contact with the child by **telephone** to ascertain the child's wishes.

If the child is of such an age that verbal communication with the GAL is not possible, the GAL shall nevertheless **visit the child's placement** to observe and report to the court on the child's physical and mental well-being but to also observe the home setting and interview the custodians so that a report can be made to the court concerning the adequacy, safety and suitability of the custodian and the placement in general.

Rule 8.215 (c) (1) requires that the GAL's report include not only a statement of the wishes of the child but also a statement of the recommendations of the GAL. If the child's wishes and the GAL's recommendations conflict, the GAL shall only be required to advise the court of the child's wishes in his/her report. The GAL is under no further obligation to advocate for the appointment of an attorney ad litem to represent the child's wishes.

If the GAL represents several children in a family and a conflict arises that affects the GAL's ability to represent the best interests of each child individually, then the GAL shall follow the conflict guidelines attorneys would normally follow in client-related cases, or, in the alternative/in addition, seek the court's guidance.

In addition to the written report required for the disposition hearing, **the GAL shall also file a written report for the first judicial review hearing. Written reports for subsequent review hearings are recommended but not required.** The judges also require written reports for any motion that is submitted regarding a requested **change of placement** for the child. The GAL shall include in that report the wishes of the child and the recommendation of the GAL regarding the proposed change of placement.

Rule 8.215 (2) requires the GAL to be present at all court hearings unless excused by the court. If the GAL finds that he/she cannot be present for a scheduled hearing, the GAL should contact the judge's office to inquire whether that judge has a particular procedure for such instances. Perhaps a written report in lieu of a personal appearance would be satisfactory. Alternatively, the judge may require the GAL to do a Motion for Continuance. Or, the judge may permit the GAL to allow another lawyer from the GAL's office to attend the hearing in the GAL's place. In the latter instance, you should only send an attorney colleague who has full working knowledge of the case and your authority to make recommendations to the court. In any instance, if you cannot attend a scheduled hearing, you must contact the judge's office to determine the appropriate action to take.

As to **ongoing contact** with the child(ren), the GAL shall, at a **minimum**, have a **face-to-face meeting with the child prior to any scheduled hearing** unless the court finds that it would be unduly burdensome to the GAL to do so or the geographical limitations discussed above preclude that. In between hearings, the GAL shall, at a **minimum**, maintain **quarterly telephone contact with the child** and the child's custodian, including the child's foster parents (where applicable).

While it is recommended that the GAL participate in DCF staffings and in the meetings in which Case Plans and Permanent Placement Plans are developed, it is **mandatory** that the GAL review and sign off on such documents.

GALs shall anticipate the need for and potential of **Termination of Parental Rights** and shall acquaint themselves with that portion of Chapter 39 dealing with Termination of Parental Rights. If the GAL determines that a Petition for Termination of Parental Rights is warranted, the GAL shall so notify DCF and if appropriate action is not taken, then the GAL is obligated to pursue the action on behalf of the child.

The standards and practices referenced above deal directly with the requirements established by the Florida Statutes and Rules of Juvenile Procedure and the additional requirements of the Legal Aid Society. Speaking more generally about the role of the GAL, you should also follow the guidelines as recommended by the National CASA (Court Appointed Special Advocate) Association:

1. Act as an independent gatherer of information whose task it is to review all relevant records and interview the child, parents, social workers, teachers, and other persons to ascertain the facts and circumstances of the child's situation.
2. Ascertain the interests of the child taking into consideration the child's age, maturity, culture and ethnicity consistent with providing the child with a safe home taking into account the need for family preservation and permanency planning..
3. Seek cooperative solutions to the child's situation within the scope of the child's interest and welfare.
4. Provide written reports of findings and recommendations to the court to assure that all the relevant facts are before the court and ensure that appropriate motions are filed seeking child-centered relief.
5. Appear at all hearings to represent the child's interests, providing testimony or ensuring that appropriate witnesses are called and examined.
6. Explain the court proceedings and the role of the GAL to the child, when appropriate, in language and terms that the child can understand.
7. Ask that clear and specific orders be entered for the evaluation, assessment, services, placement, and treatment of the child and family.
8. Monitor implementation of service plans and dispositional orders to determine whether services ordered by the court are actually provided in a timely manner, and are accomplishing their desired goal. Monitor the progress of a case through the court process and advocate for timely hearings.
9. Inform the court promptly if services are not being made available to the child and/or family, if the family fails to take advantage of such services, if services are not achieving their purpose, and bring to the court's attention any violation of orders, new developments or changes in the child's circumstances.
10. Advocate for the child's interests in mental health, educational, and other community systems.