

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

The Board of Trustees of the Legal Aid Society has approved the following criteria as the official standards and practices for attorneys in Orange County who are appointed to serve as GALs in Domestic Relations Division cases. The purpose of this document is to provide specific direction and minimum duties for GALs to ensure that they perform their function within the parameters of the statute.

## **QUALIFICATIONS:**

In order to serve as a guardian ad litem in a domestic relations case, one must either complete a training program designed by the Legal Aid Society or at least 50% of one's practice must be devoted to domestic relations matters.

## **APPOINTMENT CRITERIA:**

You will be appointed as a GAL, on a pro bono basis, in one of two situations:

(1) Both parties are indigent and there are verified allegations of child abuse or neglect as defined in F.S. 39.01 that the Court has determined are well-founded **OR**

(2) Both parties are indigent and there are serious allegations of parental unfitness that threaten the well-being of the child(ren).

## **ACCEPTANCE OF APPOINTMENT:**

Upon receiving the Order Appointing Guardian ad Litem, you **must** sign the Oath of Acceptance and file it with the Domestic Relations Clerk's office **immediately at 425 North Orange Avenue, 3<sup>rd</sup> Floor, Orlando FL 32801** and provide all parties and the Legal Aid Society with a copy of the Order.

## **MANDATORY INVESTIGATIVE PROCEDURES:**

The guardian ad litem **must** review the pleadings filed in the case. This may be done by checking out the court file, or by contacting the parties/their counsel and asking that they provide you with information concerning the allegations, legal issues and provide you with whatever documents are necessary.

The guardian ad litem **must** speak with both parties and, where represented, with each parties' attorney.

## **CONTACT WITH THE CHILD(REN):**

The guardian ad litem **must have at least one face to face meeting with the child**, preferably once in the home of each parent. The statute requires that before

meeting with the child, the guardian ad litem must notify **both** parents of when and where this meeting will take place.

If the child resides outside the state of Florida or lives at a distance greater than one hour's drive for the guardian ad litem, then the guardian ad litem shall, at a minimum, make contact with the child by telephone.

If the child is of such an age that verbal communication with the guardian ad litem is not possible, the guardian ad litem shall nevertheless visit the child in the presence of both parents in order to observe and report to the court on the child's interaction with each parent, and whether each parent acted appropriately with the child.

When you speak with the child remind them that you cannot guarantee that everything they tell you will remain confidential. They should be aware that you will make every effort to protect what they tell you but that it may be necessary to share the information with the Judge, which would likely then require disclosure to their parents.

### **RECOMMENDED PROCEDURES:**

In addition to the above, it is recommended that, where applicable, the guardian ad litem also:

- a. visit the home of each parent unless either or both parties stipulate that the home environment is not at issue.
- b. speak with the child's school teacher(s), day care provider, doctor, and psychologist. These are usually valuable sources of unbiased information to which the Court may give the utmost consideration. It is suggested that prior to meeting with these individuals, you first send them a copy of your Order of Appointment along with a letter asking that they call you (or you will call them) to set up an appointment to discuss the particular child/family. You should send a copy of this letter to the parties.
- c. ask each party to provide you with the names of five (5) people with personal knowledge of the parties and the allegations who you can interview. You should go over with the party each of the names given to you and ask what each person can tell you. If you determine that information is not relevant, advise the party that you will not be talking to that person and explain why you arrived at that decision. You should do this because it is common for a GAL's report to be challenged by a party because that party thinks that the GAL did not conduct a full and complete investigation, i.e. GAL did not contact all the people that were recommended to them to contact.

### **LEGAL CONSIDERATIONS:**

The Guardian ad Litem **must attend all scheduled hearings** at which any action may be taken that will affect the welfare of the child(ren). The GAL may address the court and make written or oral recommendations to the Court that are in the child's best interests.

The Guardian ad Litem **must file a written report** with the Court, with copies served on all parties, **at least 20 days prior to the hearing at which it will be presented,** unless the Court waives that time limit. The report may include recommendations and a

statement of the wishes of the child. In those instances where the child has specifically expressed a preference to you regarding any custody or visitation issue, we recommend that you include a section in your report to the court, whether oral or written, that reflects the child's stated wishes. However, because your recommendations are based upon what is in the child's best interests, they may ultimately differ from the child's stated wishes.

If the parties propose a **stipulation or agreement** that affects the welfare of the child, whether incidental, temporary or permanent, the GAL **must** submit his or her recommendations to the court **within 10 days** after the date such stipulation or agreement is served on the GAL.

### **FLORIDA STATUTE 61.401:**

**In all cases, the guardian ad litem shall act as next friend of the child, investigator or evaluator, not as attorney or advocate.** The court in its discretion may also appoint legal counsel for a child to act as attorney or advocate; however, **the guardian and the legal counsel shall not be the same person.** The guardian ad litem shall be a party to any judicial proceeding from the date of the appointment until the date of discharge.

**Section 61.403** delineates the powers and authority of the Guardian ad Litem. It does not make special allowances for GALs who are also attorneys. It only allows for GALs to initiate court action **"through counsel"**. **Section 61.403 (6)** specifically states that a Guardian ad litem, **acting through counsel**, may file such pleadings, motions or petitions, as the GAL deems appropriate or necessary in furtherance of the guardian's function. While you must be provided with copies of all pleadings, notices and other documents filed in the action and must be provided notice of all hearings and depositions affecting the child, the statute states that you are only entitled to **participate in those proceedings "through counsel" (F.S. 61.403(6)).**

### **SUGGESTIONS:**

If there is some action that you would like the court to take on behalf of the child, **contact one or both of the parties' attorneys and discuss the situation.** You may find that they have a similar interest in achieving that result. If so, one of them may agree to file the necessary pleading to bring the matter to the court's attention and you can support that action with your recommendation.

If that fails, you could **prepare a written, Interim Report of Guardian ad Litem** for the court detailing your findings and concerns and what you believe the court or the parties need to do to rectify this problem. **Make sure you send the original report with a cover letter directly to the Judge to ensure that he sees it and so that action may be taken. If the report is sent to the Clerk's office, it may simply be filed and the Judge will never see it. Make sure you copy both parties and/or their attorneys with any correspondence and report sent to the judge.**

It is helpful to remember that, unlike juvenile dependency cases, we are not usually dealing with parents who are unfit. In the vast majority of cases the parties are

presumed fit and there is simply an issue as to which party would best serve as the primary residential parent.

Always make sure you are discharged as GAL in the final order. If the Final Judgment does not provide for your discharge, file a separate Motion requesting same and copy Legal Aid with the Order of Discharge.