

# STANDARDS AND PRACTICES FOR SERVING AS THE GUARDIAN AD LITEM IN CRIMINAL 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 criminal cases in either the circuit or county courts. 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 criminal 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 cases involving criminal matters.

## **APPOINTMENT CRITERIA:**

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

- (1) a minor is a victim of or witness to child abuse or neglect **OR**
- (2) a minor is a victim of a sexual offense or a witness to a sexual offense committed against another minor **OR**
- (3) a minor is involved in a criminal proceeding either as a victim or witness.

## **ACCEPTANCE OF APPOINTMENT:**

Upon receiving the **ORIGINAL** Order Appointing Guardian ad Litem, you **must** sign the Oath of Acceptance and file it **immediately** with the Clerk of the Court, Criminal Division, Circuit or County, depending upon your particular case. 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.

The **County/Criminal Clerk's office** is currently located at the Orange County Courthouse, 425 North Orange Avenue, 2<sup>nd</sup> Floor, Room 250, Orlando, Florida 32801, telephone number 407-836-2066.

The **Circuit/Criminal Clerk's office** is at the same address and telephone number, also on the 2<sup>nd</sup> Floor, Room 210. The Clerk will make a copy of the file for you at that time.

File **"Guardian ad Litem's Directions to Clerk and Notice To Parties To Serve Same With All Notice's, Pleadings, etc."** (*Attachment 1*) with the Clerk of the Court, Criminal Division, with copies to all parties. A sample of this pleading is attached hereto. This will help to ensure that you are properly noticed and copied with all documents, notices, pleadings and the like filed in this case. Rather than relying on the Clerk's office to provide you with notices, you may need to take an affirmative posture with both attorneys by checking with them at regular intervals concerning important dates and events.

File a **"Demand For Production Of Criminal Discovery"** (*Attachment 2*) with the Clerk of the Court, Criminal Division, with copies to all parties. A sample of this pleading is attached hereto.

The guardian ad litem **must** speak with the Assistant State Attorney assigned to the case as well as to the attorney representing the defendant. You should caution each party about making any statements to you or offering any evidence to you that may result in disclosure to the Court.

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

The guardian ad litem **must have at least one face-to-face meeting with the child**, preferably in the child's home. In setting up that meeting, the GAL must contact the child's parent(s) or guardian and inform them of the appointment, describe what the function of the GAL is and request that they contact you with a convenient date and time for you to meet the child. (*Attachment 3*)

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.

It is very likely that the child has been questioned numerous times about the facts of the alleged crime by various individuals involved in the criminal process . Please be aware that there is a local **Administrative Order** (*Attachment 4*) regarding limitations on interviews of children as well as **Florida Statute 914.16** (*Attachment 5*) which also addresses the issue of limiting interviews with children. Therefore, when meeting with the child, it may not be necessary to discuss the facts of the case again, unless either the child wants to talk with you about it or it has some bearing on the recommendations you will make to the Court.

When you do speak with the child remind them that:

1. 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.
2. Emphasize to the child that the importance of them telling the truth about what happened.

3. Be extremely careful if you are going to talk to the child about the facts of the case that you do not contaminate the child through suggestion, implication, assumption or conjecture.

**Remember**, it is not your role to ascertain what happened, it is your role to help the minor through the judicial process and help them understand the process.

During your visit with the child, you will need to speak with any family members or others who may have knowledge about the alleged crime. Use extreme caution if the child is still residing with the defendant. You cannot question the defendant without the permission of his/her attorney. It is very important to advise anyone you speak with, whether it be the defendant, family members or any witness you may talk with, that you are the child's representative, not their attorney. That your conversation with them is not confidential and that anything they tell you may end up being revealed to the Court and the parties in the action. *Your role is to represent the child's best interest and as such you are gathering information for the Court's use.*

#### **RECOMMENDED PROCEDURES:**

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

- a. tour the home where the child lives to determine that the environment is safe for the child.
- b. where indicated by the allegations of the case, 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. petition the Court, pursuant to Florida Statute 914.17 [1] (*Attachment 5*) for any medical or psychological examinations you feel may be indicated by the facts of the case or the result of your investigation.
- d. contact the Judge's office directly to obtain instructions concerning procedural matters such as the necessity of filing a written report, etc.

## **LEGAL CONSIDERATIONS:**

### **DEPOSITIONS:**

It is preferable that you attend the child's deposition. However, if you have consulted with the child and/or the child's parents and it is felt that your presence is not necessary, or, if you have determined that the child's interests will otherwise be protected, as for example, through the attendance of the Victim Advocate (note: they are not usually assigned on misdemeanor cases) at the deposition, then you may not want to attend the deposition

Review **F.R.Cr.P. 3.220 (h)(4)** which requires that the deposition of any child under the age of 16 be videotaped. Additionally, **Rule 3.220 (h)(7)** provides that the Defendant may not be present for any deposition unless a showing of good cause is made and his or her presence is granted by order of the Court. Also, you should attempt to prepare the child for the deposition by explaining to him/her where it will take place (usually the State Attorney's office), who may be present, what kinds of questions will be asked, that he/she will be sworn in and must tell the truth to all questions asked, etc.

### **HEARINGS:**

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). ***Attend the pre-trial conference or the plea conference if one is scheduled by the Court.*** This may be your first opportunity to meet both the prosecution and defense.

You should be notified if the case goes to trial. However, you may not be able to count on that so you should keep in touch, preferably with the defense attorney, but you could also call the prosecutor or the Clerk's office, to determine the status of the case. If the case goes to **trial**, you must attend with the minor to assist him/her and the family in explaining the proceedings and allaying any fears they may have. When the case is called, make the Court aware of your presence. If the child is present, be sure to spend the majority of your time with him or her and answer any questions. The GAL may address the court and make written or oral recommendations to the Court that are in the child's best interests. You should give strong consideration to remaining with the child until a verdict is reached should the child need to ask you questions or need an explanation about the meaning or impact of that verdict on the child's life or the family situation.

The statute does not require that the Guardian ad Litem file a written report. However, it may be helpful to the Judge and the parties for you to do so. You must copy each party with your report as well. The report should reflect all facts and information you gathered during your investigation and may include your recommendations and a statement of the wishes of the child. In those instances where the child has specifically expressed a preference to you regarding a particular 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.

You will also want to advise the court of whether the child is competent to testify, and if so, what discussions were had and if you believe the minor understands the legal process and appreciates the nature of the proceedings.

### **FLORIDA STATUTE 914.17:**

**The guardian ad litem shall have full access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the minor at all proceedings, and may request additional examinations by medical doctors, psychiatrists, or psychologists.**

**It is the duty of the GAL to perform the following services:**

- 1. To explain, in language understandable to the minor, all legal proceedings in which the minor shall be involved.**
- 2. To act, as a friend of the court, to advise the judge, whenever appropriate, of the minor's ability to understand and cooperate with any court proceeding; and**
- 3. To assist the minor and the minor's family in coping with the emotional effects of the crime and subsequent criminal proceedings in which the minor is involved.**

### **SUGGESTIONS:**

The fact that this young child has been the victim of or witness to a crime and has had to experience the criminal justice system may warrant some follow-up on your part to determine how the child has been doing since the conclusion of the case. You have likely played an important role during this difficult time and your continuing concern may be of great importance and comfort to the child and family.

After you have determined that there is no further action for you to take, file a motion with the court asking that you be discharged as GAL. Please provide Legal Aid with a copy of the Order of Discharge so we may adjust our records accordingly.