

Rule 22. Guardian Ad Litem

22.01 Definitions

As used in this rule:

1. "Guardian ad litem" means an individual appointed to assist a court in its determination of a child's best interest.
2. "Child" means either of the
 - a. A person under 18 years of age;
 - b. A person who is older than eighteen years of age who is deemed a child until the person attains twenty-one years of age under R.C.2151.011(B)(6) or 2152.02(C);
 - c. A child under R.C. 3109.04 or a disabled child under R.C. 3119.86 who falls under the jurisdiction of a juvenile court.
3. "Attorney for the child" means an attorney appointed to act as legal counsel for a child and as an advocate for the wishes of the child.
4. "Allocation of parental rights and responsibilities" means those cases where legal custody, parenting time, companionship, or visitation rights are at issue under R.C. 3109.04 and 3109.051.
5. "Abuse, neglect, and dependency" means those cases arising from a complaint filed under R.C. 2151.27 involving a child who is alleged to be abused (R.C. 2151.031), neglected (R.C. 2151.03), or dependent (R.C. 2151.04).
6. "Delinquency and unruly" means those cases arising from a complaint filed under R.C. 2151.27 and 2152.021 involving a child who is alleged to be delinquent (R.C. 2152.02) and unruly (R.C. 2151.022).

22.02 Applicability

This rule shall apply in all cases involving the allocation of parental rights and responsibilities; abuse, neglect, and dependency; and juvenile delinquency and unruly cases where the Court appoints a guardian ad litem to protect and to act in the best interest of a child.

22.03 Appointment of Guardian Ad Litem

A. Mandatory appointments in abuse, neglect, dependency, unruly, and delinquent cases

The Court shall appoint a guardian ad litem in abuse, neglect, dependency, unruly, and delinquency cases as required by rule or statute.

B. Separate appointments in abuse, neglect, dependency, unruly, and delinquency cases and cases of conflict

1. A court shall appoint a separate attorney to represent a child in abuse, neglect, dependency, unruly, and delinquency cases in which the wishes of the child differ from the recommendations of the guardian ad litem.

2. If an attorney who has been appointed to serve as both guardian ad litem and attorney for the child or any other party believes that a conflict exists in the dual appointment, the attorney or party shall immediately notify the court in writing with notice to the parties or affected agencies and request a separate appointment of a guardian ad litem and attorney for the child. The court shall make such additional appointment or appointments, or order or orders to remedy the conflict. The court may also make such appointment or appointments on its own motion.

C. Discretionary appointments in allocation of parental rights and responsibilities, unruly, and delinquency cases

Unless a mandatory appointment is required by rule or statute, a court may make a discretionary appointment of a guardian ad litem in the allocation of parental rights and responsibilities, unruly, and delinquency cases. In making a discretionary appointment, a court should consider all of the circumstances of the case, including but not limited to all of the following factors:

1. Allegations of abuse and neglect of the child;
2. Consideration of extraordinary remedies, such as supervised visitation, terminating or suspending parenting time, or awarding custody or visitation to a non-parent;
3. Relocation that could substantially reduce the time of a child with a parent or sibling;
4. The wishes and concerns of the child;
5. Harm to the child from drug or alcohol abuse by the party;
6. Past or present child abduction or risk of future abduction;
7. Past or present family violence;
8. Past or present mental health issues of the child or a party;
9. Special physical, educational, or mental health needs of the child that require investigation or advocacy;
10. A high level of conflict;
11. Inappropriate adult influence or manipulation;
12. Interference with custody or parenting time;
13. A need for more information relevant to the best interests of the child;
14. A need to minimize the harm to the child from family separation or litigation;
15. Any other relevant factor.

D. Qualifications

1. A guardian ad litem may be an attorney, a qualified volunteer, or a court appointed special advocate (CASA).
2. An applicant seeking to serve as a guardian ad litem shall successfully complete a minimum of 12 hours of pre-service education as prescribed in Sup.R. 48.04.
3. Upon completion of the required pre-service education, an applicant seeking to serve as a guardian ad litem shall submit to the Court the Application for the Guardian Ad Litem Appointment List and complete the background process of the Court.

4. The application shall provide the following documents in addition to the application:
 - a. A resume stating the applicant's education, foreign language proficiency, experience, and expertise demonstrating the applicant's ability to successfully perform the duties and responsibilities of a guardian ad litem;
 - b. A copy of the applicant's criminal background check;
 - c. The applicant's Background Disclosure Statement;
 - d. For an attorney guardian ad litem, a copy of the malpractice insurance declaration page indicating current malpractice coverage;
 - e. For CASA guardians ad litem, proof of completion of the required education to become a CASA.

E. Maintaining Appointment

1. To remain on the Court's appointment list, the guardian ad litem shall submit annually by January 1st both of the following:
 - a. The Annual Compliance Statement certifying qualifications and that the guardian ad litem is unaware of any circumstances that would disqualify the guardian ad litem from serving;
 - b. Certificates of completion that the required annual six hours of continuing education required by Sup.R. 48.05 has been satisfied.
2. The Court will review its list of guardians ad litem annually to determine if all persons on the list are in compliance with the education requirements of the Supreme Court of Ohio. The Court will also conduct an annual review of the performance of each guardian ad litem on assigned cases during the preceding calendar year.
3. If the Court determines an individual is no longer qualified to serve as a guardian ad litem, the individual will be removed from the list of approved guardians ad litem and shall not be eligible for any new appointments until the individual has cured the issue resulting in disqualification. The Court shall retain discretion to continue a current guardian ad litem appointment pursuant to Sup.R. 48.05(B).

22.04 Procedure for Appointment

A. Motion

Upon motion of the Court or either party, the Court may appoint a guardian ad litem to protect the best interest of the child and shall appoint a guardian ad litem when required under R.C. 2151.281 and 3109.04.

1. The Court shall appoint a guardian ad litem from the Court's public list of approved guardians ad litem so the workload is equitably distributed taking into consideration the complexity of the issues, the parties, the children involved in the case, and the experience, expertise, and demeanor of available guardians ad litem. The

distribution of appointments shall be made in an objectively rational, fair, neutral, and nondiscriminatory manner.

2. If a party to the case objects to the appointment of a particular guardian ad litem, the party shall file a motion supported by an affidavit that states the objection with specificity. The Court shall make a ruling.
3. Whenever appropriate, the same guardian ad litem shall be reappointed for a specific child in any subsequent case.
4. In the allocation of parental rights and responsibilities cases, a guardian ad litem shall not be appointed in a dual role as a guardian ad litem and as an attorney for the child.
5. The guardian ad litem shall be considered a party to the proceeding and as such have full access to court records and shall have the right to obtain court records and any agency personnel or records, including physicians and mental health professionals, educational facilities, other professionals, or an individual who may be relevant to the best interest of the child.

22.05. Order of Appointment

When appointing a guardian ad litem under Sup.R. 48, the Court shall enter an Order of Appointment that includes the following statements:

1. Whether it is a sole guardian ad litem appointment or a dual guardian ad litem and attorney appointment;
2. That unless otherwise specified by court rule, the appointment shall remain in effect until discharged by order of the court;
3. That the guardian ad litem shall be given notice of all hearings and proceedings and be provided a copy of all pleadings, motions, notices, and other documents filed in the case;
4. That the guardian ad litem report shall include the following language: "The guardian ad litem report shall be provided to the court, unrepresented parties, and legal counsel. Any other disclosure of the report must be approved in advance by the court. Unauthorized disclosure of the report may be subject to court action, including the penalties for contempt, which include fine and/or incarceration;
5. The rate or amount of compensation for the guardian ad litem in the allocation of parental rights and responsibilities cases;
6. The terms and amount of any installment payments and deposits in the allocation of parental rights and responsibilities cases; and
7. That the guardian ad litem's report shall include the following language:

NOTICE

This report is being provided to the Court, unrepresented parties, parties, and legal counsel of record. If you are an attorney, you may share its contents with your client. However, the Court must approve any other disclosure of the report in advance. Unauthorized disclosure of the

report in any fashion through any means, including but not limited to, copying the report, posting it or any portion of it on social media or other mediums, or disclosing all or portions of the report to any person without prior approval, may be subject to Court action including penalties or contempt, which include incarceration and fines.

1. The Court's expectation for the guardian ad litem to address a specific issue or issues and that the guardian ad litem is relieved of the duties set forth in Sup.R. 48.03(D) that are not applicable to the specific issue or issues; and
2. That in an allocation of parental rights and responsibilities case, the guardian ad litem shall be appointed only to represent the best interest of the child and not also as the attorney for the child.

22.06. Responsibilities of a Guardian Ad Litem

- A. To provide the Court with relevant information and an informed recommendation regarding the child's best interest, a guardian ad litem shall perform the responsibilities stated in this division, unless specifically relieved by the Court in the Order of Appointment.
 1. A guardian ad litem shall represent the best interest of the child for whom the guardian is appointed.
 2. A guardian ad litem shall maintain independence, objectivity, and fairness as well as the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom, and shall have no ex parte communications with the Court regarding the merits of the case.
 3. A guardian ad litem is an officer of the Court and shall act with respect and courtesy to the parties at all times.
 4. A guardian ad litem shall appear and participate in any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.
 5. If the guardian ad litem is an attorney, they may file pleadings, motions, and other documents as appropriate and call, examine, and cross-examine witnesses under the applicable rules of procedure. The attorney guardian ad litem shall be entitled to participate in the hearing in the same manner as counsel.
 6. If the guardian ad litem is not an attorney, the guardian ad litem may request the appointment of counsel to file pleadings, motions, and other documents as appropriate and call, examine, and cross-examine witnesses under the applicable rules of procedure.
 7. When a guardian ad litem determines a conflict exists between the child's best

interest and the child's wishes, the guardian ad litem shall, at the earliest practical time, request in writing that the Court promptly resolve the conflict and enter appropriate orders.

8. A guardian ad litem shall meet the qualifications for guardians ad litem for each county where the guardian ad litem serves and shall promptly advise each court of any grounds for disqualification or unavailability to serve.
9. A guardian ad litem shall be responsible for providing the Court with a statement indicating compliance with all initial and continuing education requirements. The compliance statement shall include information detailing the date, location, and number of credit hours received for any relevant education.
10. A guardian ad litem shall immediately identify themselves as a guardian ad litem when contacting individuals in the course of a particular case and shall inform these individuals about the guardian ad litem's role and that documents and information obtained may become part of court proceedings.
11. As an officer of the Court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the Court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of personal identifiers, as defined in Sup.R. 44, or addresses where there are allegations of domestic violence or risk to a party's or a child's safety. A guardian ad litem may recommend that the Court restrict access to the report or a portion of the report, after trial, to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed in accordance with Sup.R. 45. The Court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure of or access to the information that addresses the need to challenge the truth of the information received from the confidential source.
12. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, a guardian ad litem may request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.
13. A guardian ad litem whom the Court or a party pays shall keep accurate records of the time spent, the services rendered, and the expenses incurred in each case; file an itemized statement and accounting with the Court, and provide a copy to each party or other entity responsible for payment. In the allocation of parental rights and responsibilities cases, a guardian ad litem shall provide a monthly statement of fees and expenses to all parties.

22.07 Specific Duties of a Guardian Ad Litem

A guardian ad litem shall become informed about the facts of the case and contact all parties and other relevant persons. A guardian ad litem shall immediately identify himself or herself as a guardian ad litem when contacting individuals and inform the individuals about the role

of the guardian ad litem, including as an attorney if a dual appointment, the scope of appointment, and that documents and information obtained by the guardian ad litem may become part of the Court.

To provide the Court with relevant information and an informed recommendation as to the child's best interest, a guardian ad litem shall do all the following, at a minimum, unless specifically relieved by the Court:

- A. Meet with and interview the child; observe the child with each parent, foster parent, guardian, or physical custodian; and conduct at least one interview with the child where none of these individuals are present;
- B. Visit the child at the child's residence or proposed residence in accordance with the standards established by this court;
- C. Ascertain the wishes and concerns of the child and determine the best interest of the child;
- D. Meet with and interview the parties, the foster parents, guardians, physical custodians, and other significant individuals who may have relevant knowledge regarding the issues of the case;
- E. Review pleadings and other relevant court documents in the case;
- F. Review criminal, civil, educational, mental health, substance abuse assessments and administrative records pertaining to the child and, if appropriate, to the child's family or to other parties in the case;
- G. Interview school personnel, medical and mental health providers, child protective services workers, other relevant individuals who know the child, and relevant Court personnel and obtain copies of relevant records;
- H. Recommend that the Court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the guardian ad litem deems necessary or helpful to the Court;
- I. Perform any other investigation necessary to make an informed recommendation regarding the best interest of the child.

22.08 Reports of a Guardian Ad Litem

- A. A guardian ad litem shall prepare a written final report, including recommendations to the Court, within the times set forth in this division or as otherwise ordered by the Court.
- B. The report shall detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted, and all other relevant information considered in reaching the guardian ad litem's recommendations and in accomplishing the duties required by statute, Court rule, and in the Court's Order of Appointment.
- C. In proceedings involving the allocation of parental rights and responsibilities, a written report shall be submitted to the Court not less than seven days before the final hearing unless the Court extends the due date.

- D. In abuse, neglect, dependency, unruly, and delinquency cases, a written report shall be submitted to the Court not less than seven days prior to any initial dispositional hearing, permanent custody hearing, and any hearing upon a motion requesting a change in disposition. The court may alter the seven-day period as may be necessary for the administration of justice.
- E. The Court shall consider the recommendation of the guardian ad litem in determining the best interest of the child only when the report or a portion of the report has been admitted as an exhibit in the allocation of parental rights and responsibilities, custody, and visitation cases.
- F. Unless the Court and the parties agree, the report of the guardian ad litem shall not be entered into direct evidence absent the guardian ad litem's testimony. The parties may cross-examine the guardian ad litem concerning the contents of the report and the basis for the guardian ad litem's recommendations. The guardian ad litem's report shall not be filed with the Clerk of Courts.
- G. All reports submitted to the Court shall include the following notice:

NOTICE

This report is being provided to the Court, unrepresented parties, parties, and legal counsel of record. If you are an attorney, you may share its contents with your client. However, any other disclosure of the report must be approved in advance by the Court. Unauthorized disclosure of the report in any fashion through any means, including but not limited to, copying the report, posting it or any portion of it on social media or other mediums, or disclosing all or portions of the report to any person without prior approval, may be subject to Court action including penalties or contempt, which include incarceration and fines.

22.09 Guardian Ad Litem Fee Determinations in Allocation of Parental Rights and Responsibilities Cases

- A. The court shall make a determination of the ability of any party to pay a deposit for the fees and expenses to the guardian ad litem and may reconsider that determination at any time prior to conclusion of the case. In making this determination, the court shall consider all of the following:
 - a. The income, assets, liabilities, and financial circumstances of the parties, as demonstrated by an affidavit, testimony to the court, or evidence of qualification for any means-tested public assistance;
 - b. The complexity of the issues;
 - c. The anticipated expenses, including the travel of the guardian ad litem;
- B. The Court shall inform the parties of the amount of the deposit and the compensation rate before the Order of Appointment issues.
- C. At any time prior to the conclusion of a case, a guardian ad litem may submit a motion for payment along with a proposed entry directing the clerk to release the funds. A guardian ad litem shall submit a motion for payment upon conclusion of the duties. Any

motion shall itemize the duties performed, time expended, and costs and expenses incurred pursuant to Sup.R. 48.03(H)(1). In all cases, the guardian ad litem shall also provide a proposed entry directing the clerk to release the funds for payment of the bill.

- D. In determining the allocation of guardian ad litem fees and expenses, the court shall consider any relevant factor, including any of the following:
 - a. The rate or amount of compensation of the guardian ad litem;
 - b. The sources of compensation of the guardian ad litem, including the parties, any specialized funds allocated for payment of the guardian ad litem or pro bono contribution of services by the guardian ad litem;
 - c. The income, assets, liabilities, and financial circumstances of the parties, as demonstrated using an affidavit, testimony to the court, or evidence of qualification for any means-tested public assistance;
 - d. The conduct of any party resulting in the increase of the guardian ad litem fees and expenses without just cause;
 - e. The terms and amount of any installment payment.
- E. Unless a party requests a hearing or the court within fourteen days after a motion for payment is filed, a court shall issue an order regarding payment of guardian ad litem fees and expenses approving or denying any portion of the requested fees and expenses and allocating payment to one or more of the parties as appropriate.
- F. The Court may require direct payments from the litigants to the guardian ad litem. The guardian ad litem shall submit monthly billing to counsel and self-represented litigants.
- G. Guardian ad litem services exceeding the initial deposit may require additional compensation. Any request for fees in excess of the amount authorized in the Order of Appointment or as authorized by the state shall include a motion for extraordinary fees and a proposed judgment entry. The Court, without an oral hearing, may order subsequent deposits or payments.
- H. The Court shall not delay or dismiss a proceeding solely because of a party's failure to pay the Court-ordered guardian ad litem fees and expenses.

Rule 22.10 Conflicts of Interest

- A. A guardian ad litem shall avoid any actual or apparent conflict of interest arising from any relationship or activity including, but not limited to, those of employment or business or from professional or personal contacts with parties or others involved in the case. A guardian ad litem shall avoid self-dealing or associations from which the guardian ad litem might benefit, directly or indirectly, except for compensation for services as a guardian ad litem.
- B. Upon becoming aware of any actual or apparent conflict of interest, a guardian ad litem shall immediately take action to resolve the conflict; shall advise the Court and the parties of the action taken and may resign from the matter with leave of Court; or shall seek Court direction as necessary.

- C. Because a conflict of interest may arise at any time, a guardian ad litem has an ongoing duty to comply with this division.

Rule 22.11 Guardian ad Litem Evaluations and Complaints

- A. A party or their counsel may file a complaint or written comments regarding the guardian ad litem within three months from the termination of the appointment. The complaint or written comments shall be submitted to the Court Administrator, and include all of the following:
 - a. The case caption and case number;
 - b. The name of the guardian ad litem;
 - c. The name and contact information for the person making the complaint;
 - d. The nature of any alleged misconduct or violation;
 - e. The date the alleged misconduct or violation occurred
- B. The Court Administrator shall provide a copy of the complaint or written comments to the guardian ad litem;
- C. The guardian ad litem has fourteen days from the date of the receipt of the complaint or written comments to respond in writing to the Court Administrator.
- D. The Court Administrator shall conduct an investigation into the allegations and shall issue a response within thirty days from the date of the receipt of the complaint or written comments.
- E. The Court Administrator shall submit the complaint or written comments, the response of the guardian ad litem, and a report of the investigation to the Judge for consideration and appropriate action.
- F. The Court will maintain a written record in the guardian ad litem's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the guardian ad litem of the disposition.