

RHODE ISLAND FAMILY COURT

ADMINISTRATIVE ORDER 2006 – 2

Guardian ad litem Standards for Domestic Cases

Pursuant to Rhode Island General Laws §15-5-16.2 © the following Standards are adopted to ensure the highest degree of advocacy, professionalism and integrity in a system that provides quality services of guardians *ad litem* for children involved in domestic relations cases. A guardian *ad litem* who is appointed by the Family Court will be a credentialed professional who will work to protect and promote the best interests of children whose families are involved in litigation.

**RHODE ISLAND FAMILY COURT
GUARDIAN *AD LITEM* STANDARDS
FOR DOMESTIC CASES**

Prefatory Comments

These standards are designed to improve the services provided by Guardians *ad litem* to the Court and to ensure that Guardians diligently work to protect and promote the best interests of the children. Interpretation of these standards are to be governed and interpreted by application of the principles that a Guardian is an officer of the Court whose actions are primarily subject to and governed by the Court. In tailoring her or his role to the particular circumstances of a case and needs of a child but, in general, a Guardian shall:

- represent consistently the best interests of the child and advocate on behalf of the child's best interests;
- understand and uphold the law as it pertains to the Guardian's appointment; maintain the highest standards of professionalism, cultural sensitivity and ethics;
- within the scope of authority defined by statute or Court order, plan, carry out, document and complete thorough, appropriate and fair investigations in a timely fashion;
- work effectively with other professionals involved in the assessment or treatment of the child and/or parties to a child's case;
- make appropriate and well-reasoned and defensible recommendations regarding the best interests of the child;
- communicate effectively with the Court.

I. FUNCTION OF THE GUARDIAN AD LITEM

- A. The Guardian *ad litem* who is also an attorney should not combine the roles of counsel and guardian. The roles of a Guardian *ad litem* and a lawyer for the child are different and must be clearly distinguished. The Guardian shall explain his or her role to the parties and the child(ren), if appropriate. A lawyer Guardian *ad litem* is not the lawyer for the child and, therefore, advocates the best interests of the child rather than merely representing the child's preferences.

II. QUALIFICATIONS

- A. **In General.** The following credentials are criteria for being listed on the Family Court Guardian *ad litem* Roster:

1. Credentials.

- a. A current, valid license to practice law in the State of Rhode Island; or
- b. A current, valid license to practice as a Licensed Clinical Social Worker, a Licensed Marriage or Family Therapist, a Licensed Psychologist or Psychiatrist in the State of Rhode Island, or a qualified professional in a related field; and
- c. Certification by the Bureau of Criminal Identification that the Applicant is free of criminal convictions. The Chief Judge shall review and rule on every applicant who has criminal convictions.
- d. Proof of professional liability insurance coverage in the amount of One Hundred Thousand Dollars (\$100,000.00) in effect for the term of qualification.

- B. Credentials shall be reviewed and approved by the Admissions Committee, which shall be comprised of five (5) members who are attorneys, psychologists, psychiatrists, social workers or qualified professionals in a related field appointed by the Chief Judge.

1. The members of the Admissions Committee shall not be active as Guardians *ad litem* during their tenure on said committee.
2. The Committee shall adopt Rules of Procedure.

C. Conflict of Interest

1. No person shall serve as a Guardian *ad litem* who is a party litigant in a pending, contested matter affecting areas of fact or law similar to issues that may be raised in the matter to which the person may be appointed as Guardian *ad litem*.
2. The Guardian *ad litem* shall not serve if the Guardian *ad litem* has or had any professional, financial or therapeutic relationship with either of the parties or any material witness in the matter.
3. The Guardian *ad litem*, who has prior acquaintance with a party, shall not accept appointment as Guardian *ad litem* unless, after disclosure of such fact is made by the Guardian *ad litem*, the parties in the matter before the Court agree to such appointment in writing.
4. A Guardian *ad litem* shall not enter into a business transaction with a child or represented person or party or material witness in any matter or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a child or represented person during the period of his or her appointment as Guardian *ad litem*.
5. If a Guardian *ad litem* determines that there is a conflict of interest requiring withdrawal, the Guardian should continue to perform as the Guardian *ad litem* and seek

permission from the Court to withdraw. The Guardian should request appointment of a successor Guardian *ad litem* without revealing the details of the conflict, unless the Guardian determines that it is in the child(ren)'s best interests to do so.

If a Guardian *ad litem* is also appointed for siblings, there may be a conflict that could require that the Guardian to seek Court clarification relative to the conflict.

III. TRAINING, CONTINUING EDUCATION and MONITORING GUARDIANS AD LITEM

A. In General

1. No person shall be appointed as Guardian *ad litem* without first completing the Family Court specialized training program. Thereafter, to continue to be appointed as a Guardian *ad litem*, a person shall complete specialized training annually. Completion of the training shall be evidenced by an affidavit filed with the Family Court by June 30 of each year. The Chief Judge may accept, in lieu of the initial specialized training, equivalent training as Guardian *ad litem* prior to the effective date of the adoption of these standards.

B. Program

1. Guardian Training Program.

Attendance at a Guardian training program with a curriculum of at least eight (8) hours that has been approved by the Chief Judge satisfies this requirement. The curriculum must include specified learning outcomes and activities designed to meet these outcomes and must cover the following: the role of the guardian *ad litem*; the mechanics of appointment; interview techniques; child development; special issues in custody and divorce; report writing; and presentation in Court.

2. Continuing Education Requirements.

Unless these requirements are waived by the Chief Judge, the Guardian shall attend and complete any continuing professional education events or seminars designated as mandatory by the Chief Judge. In addition, in each twelve (12) month period after the Guardian originally qualifies, a Guardian must annually participate in a total of at least six (6) hours of continuing professional education programs applicable to one or more of the following: the role of the guardian *ad litem*; the mechanics of appointment; interview techniques; child development; special issues in custody and divorce; report writing; legal issues; statutes, cases and processes; and presentation in Court.

Completion of the specified training hours shall be demonstrated by filing a statement by an affidavit approved by the Chief Judge on or before June 30 of each year thereafter.

3. On going evaluations, reports, oversight and monitoring.

A Guardian is subject to ongoing oversight. The Chief Judge may initiate a review of a Guardian based upon his or her own motion, a review of the Guardian's reports, complaints received about the Guardian, an observation of performance by a Judge or any combination of these sources. Nothing in these rules limits a Judge's right to regulate a Guardian or remove a Guardian from his or her role in a particular proceeding.

IV. DUTIES AND RESPONSIBILITIES

- A. **Performance of Court's Charge.** The Court shall assure that the Guardian *ad litem* maintains independent representation of the best interests of the child. The Court shall

require the Guardian *ad litem* to perform the Guardian *ad litem* duties faithfully and, upon failure to do so, shall discharge the Guardian *ad litem* and appoint another, if appropriate.

B. Protection of Child

1. The Guardian *ad litem* in a pending case shall protect the interests of the child who is a witness in any judicial proceeding related to the case in which the Guardian *ad litem* has been appointed. The Guardian *ad litem* shall explain, when appropriate, the Court proceedings and process to the child.
2. The Guardian *ad litem* may file a request for review and/or for Court orders to protect the child or obtain temporary relief, determine visitation, and limit repeated or unnecessary interviews or evaluations, or other relief, pursuant to a Request for Review form that is attached to these Standards.

C. Communication with Child

1. The Guardian *ad litem* will assure the child that the child's opinions and feelings will be made known to the Court even when not consistent with the recommendations of the Guardian *ad litem*.
2. Children old enough to communicate should be interviewed. The Guardian *ad litem* has the right to interview the child alone. The Guardian *ad litem*'s interview should take into account prior investigations or evaluations.
3. Communications made to a Guardian, including those made to a Guardian by a child, are not privileged and may or may not be disclosed to the parties, the Court or to professionals providing services to the child or the family based on the Guardian's evaluation of the best interests of the child. A Court may review a Guardian's decision not to disclose information after an *in camera* examination of the information in question. If the Guardian is an attorney, she or he acts in his/her capacity as a Guardian, rather than as an attorney, and information he or she receives is not subject to the attorney-client privilege.

D. Responsibilities to Court / Core Obligations of a Guardian Ad litem

1. Exercises Independent Judgment.

A Guardian *ad litem* acts as an officer of the Court. Accordingly, a Guardian *ad litem* shall be guided by the best interests of the child and shall exercise the Guardian's independent judgment on behalf of the child(ren) in all relevant matters. A Guardian is not required to engage in all of the activities listed in the Order of Appointment, but is expected to tailor the Guardian's activities to the individual circumstances of each child and each case, being guided in all instances by the Guardian's evaluation of the best interests of the child(ren).

2. A Guardian should anticipate being asked to accept at least one *pro bono* or reduced fee referral from the judicial system per calendar year, and should do so to the extent consistent with the Guardian's other professional, personal and other public interest service. A Guardian *ad litem* may choose the counties where he/she will accept cases.
3. The Guardian *ad litem* shall monitor implementation of plans and Court orders pertaining to the child to determine whether services ordered by the Court are being provided in a timely manner.

E. Encourage Settlement

1. As a general rule, the Guardian *ad litem* should encourage settlement and should not undermine settlement efforts by the parties.

Where the Guardian reasonably believes that the Court would not approve a settlement if it were aware of certain facts, or if the Guardian believes that the proposed settlement is not in the child's best interest, the Guardian should bring those facts to the Court's attention.

F. Appearance at Court Proceedings

1. The Guardian *ad litem* shall appear at all Court proceedings that concern issues affecting the best interests of the child, unless excused by the Court.
2. A Guardian *ad litem*, who is an attorney, may file motions, present evidence and examine witnesses, including but not limited to psychiatric, psychological, medical or other expert witnesses, when appropriate to ensure that the Court is fully apprised of those factors relevant to its determination of the best interests of the child.
3. A Guardian *ad litem* who is not an attorney may apply to the Court for leave to hire an attorney to file motions, present evidence and examine witnesses, including but not limited to psychiatric, psychological, medical and other expert witnesses, when appropriate to ensure that the Court is fully apprised of those factors relevant to its determination of the best interests of the child.

G. Investigation/Development of Facts

1. The Guardian *ad litem* shall conduct an independent investigation. The Guardian *ad litem* shall observe and/or meet with the child. The Guardian *ad litem* may conduct interviews with other relevant persons and review such documents as the Guardian *ad litem* deems appropriate. Parties and counsel shall fully cooperate with the Guardian *ad litem* as the investigation is conducted.

H. Public Statements

A Guardian *ad litem* shall make no public statements relating to pending cases.

V. POWERS

A. Participation in Litigation

The Guardian *ad litem* shall have the right to and should actively participate and be included in all aspects of the case. The Guardian *ad litem* should receive copies of discovery documents and all motions and orders related to the child. The Guardian *ad litem* should actively participate in settlement negotiations and, where appropriate, make specific recommendations to the Court and/or the parties that are designed to resolve disputes and bring closure to the issues for which he/she has been appointed.

- B.** The Guardian *ad litem* may file a request for review and/or for Court orders to protect the child or obtain temporary relief, determine visitation, and limit repeated or unnecessary interviews or evaluations, or other relief, pursuant to a Request for Review form that is attached to these Standards.

VI. FEES

1. At the time of appointment of the Guardian *ad litem*, the Court shall enter an order providing for the payment of the Guardian *ad litem*'s fee and the apportionment of responsibility for said fee between the parties. Prior to the commencement of his/her

duties, the Guardian *ad litem* shall advise counsel for the parties, in writing, of his/her hourly rate for the performance of Guardian *ad litem* services. The Court shall have continuing jurisdiction over payment of the Guardian *ad litem*.

2. The Guardian *ad litem* shall seek prior Court approval before incurring extraordinary expenses.

VII. REPORT

A. In General

No copies of the Guardian *ad litem* Report shall be disseminated to the Clients, unless approved and ordered by the Court. Where a written report is necessary, unless otherwise specified by the Court, the report of the Guardian *ad litem* shall be sealed, but shall be available to the Court, counsel and, upon approval by the Court, reviewable by the parties. The report shall be marked as a full exhibit in the Court file, subject to cross-examination.

B. Testimony

The Guardian *ad litem* may be called as a witness in the proceeding by either party or at the request of the Court.

VIII. TERMINATION OF APPOINTMENT

1. The Guardian *ad litem* serves at the pleasure of the Court. The Guardian *ad litem's* appointment may be terminated by the Court at any time.
2. Once a Guardian *ad litem* has appeared in a matter, the Guardian *ad litem's* continued representation may not be terminated by the parties without the Court's permission. A Guardian *ad litem* is considered as having appeared once he or she has been appointed or approved by the Court to represent a child or another person, and has entered an appearance.
3. An order deciding the merits of the complaint on which the Guardian *ad litem* is appointed automatically terminates the appointment of the Guardian *ad litem*, unless specific orders mandate the continued service of the Guardian *ad litem*.
4. The Guardian *ad litem's* appointment may be terminated for good cause shown, or upon the Guardian *ad litem's* request.
5. Prior to discharge, the Guardian *ad litem* should present a final bill for fees and services rendered as yet unpaid.

DATE

3/5/02

JEREMIAH S. JEREMIAH, JR.
CHIEF JUDGE