

## Course Outline

Judge Chitwood and Mr. Swindell will address a wide range of topics in the first hour of the program – there will be a break at the mid-point for lunch. Following lunch, Judge Chitwood and Mr. Swindell will be joined by Mr. Warburton and Mr. Hall for an in-depth panel on GAL practice in the Juvenile Court.

- I. First Hour: J&DR Practice for the Uninitiated and Others
  - A. What do we mean by “Uninitiated”? Questions asked to see how ready you are for real J&DR Court practice. (20 minutes)
    - i. Have you been through at least 2 removal (foster care) cases resulting in:
      1. termination of parental rights?
      2. returning the child home?
      3. placement with relative or other
    - ii. Do you know what ICWA is?
    - iii. Do you know what ICPC is?
    - iv. Can you understand a permanency planning order?
    - v. Do you understand the different protective orders:
      1. Family abuse protective order (PO)?
      2. Child protective order
      3. Next friend PO?
    - vi. Do you know the options in a delinquency case?
    - vii. Are you prepared to take that adult felony to a jury trial?
    - viii. DCSE Cases:
      1. Do you know their standard practice?
      2. Do you know what a purge is?
      3. How do civil and criminal show causes differ?
    - ix. Do you know how to run child support guidelines?
    - x. Do you know the JDR Court’s scheduling practices?
      1. What happens at the PTC?
      2. What will the judge order?
      3. Will he allow evidence?
      4. Will he set support?
    - xi. How well do you know your Judge
      1. Does he talk to children in custody matters?
      2. If so, in chambers and with whom present?

3. Does he prepare child support guidelines or expect you to do it?
  4. Does he have a standard custody order?
  5. Who grants continuances-Judge or clerk?
  6. Do you know the Discovery-practices in your Circuit, with your judge?
  - xii. GAL's:
    1. How their job is different than that for a Court-Appointed Counsel?
    2. Contemplating work as a GAL: can you meet the required standards?
    3. Do you know their reporting practices in your court?
  - xiii. Motions to Amend. do you know you must show
    1. A material change in circumstances
    2. The best interests of the child?
  - xiv. Parent vs. non-Parent, custody and visitation- Do you know the caselaw?
- B. The Mentor Court Program (5 Mintues)
- i. Purpose of the program
  - ii. Scope of the program: how many courts are involved and for how long?
  - iii. Substance of the program
- C. Filling in some of the Blanks. Complexities of J&DR over-simplified (15 Minutes)
- i. Child Dependency Cases:
    1. Child Protective Orders
    2. Removal (Foster Care)
    3. Safety Plans' role in these cases
  - ii. Indian Child Welfare Act (ICWA)
    1. Children of Indian Tribes may be under tribal jurisdiction
    2. Collect information of Native American ancestry early, pass on to DSS
  - iii. ICPC
    1. What is it, when does it apply, and what does it require?
    2. What is its real; significance in practice?
  - iv. Other protective orders:
    1. Family abuse?
    2. Next friend PO?

- v. Custody and Visitation
  - 1. Initial Filing: Who, When, Why and How?
  - 2. Motion to Amend: How does it differ?
  - 3. Pre-trial Conference
- vi. Child Support Cases
- vii. Criminal Practice
  - 1. J&DR Specific A&B of a Family Member, Child Abuse & Neglect
  - 2. Any other crime with child or family member as victim
  - 3. Preliminary Hearings for Felonies
- viii. Delinquency Practice
  - 1. Terminology, apparent differences, and real differences
  - 2. Diversity of outcomes
- D. Particular J&DR Practices: Local Forms, Rules, & Practices (5 Minutes)
  - i. Local Forms
    - 1. Examples
    - 2. Practice Tips
  - ii. Local Rules
  - iii. Local Policies
  - iv. Local Practices
  - v. Closed Hearings the norm
- E. Practice Tips From the Bench – Only Some Unique to J&DR (15 Minutes)
  - i. Don't dabble. If, for example, you have never done a foster care case, don't jump in and try to do one only. It is too complicated.
  - ii. Limit the number of courts you serve and the number of hearings you schedule in one day. Some courts run precisely on time, and some are consistently behind. Even the best courts have emergencies or cases that blow up the docket.
  - iii. If you know your allotted time is insufficient, do something ahead of time! Ask for more time or a continuance. Don't simply show up.
  - iv. Do not say you are retained unless you are! There is no middle ground. You have been paid or you have not.
  - v. Do the basics:
    - 1. Review the pleadings and the docket.
    - 2. Subpoena your witnesses-and check service.
    - 3. Interview your witnesses before they testify.
    - 4. Review the damn file. In a criminal case, you must see who the witnesses are, read the bail checklist, read the affidavit, and anything else in the file.

5. Always move to exclude witnesses.
  - vi. Be on time! 30 minutes early is on time.
  - vii. If you will be late, contact the Court.
  - viii. Be reliable. Your reputation is everything.
  - ix. Have a good relationship with your judge and use the judge as a resource.
    1. Go see the judge, ask for generic advice.
    2. Be candid. Tell the judge the problems you see. Every judge wants to improve.
    3. Have bench/bar meetings. Where have the local bars gone?
    4. Use the judge's mid-term evaluation to offer constructive criticism. Anonymous potshots may feel good, but the point is to improve the judge's performance. Every judge reads the comments in the evaluation.
  - x. Discovery-practices vary so widely that this is hard to have general rules. The 27<sup>th</sup> has almost no discovery while it is standard practice in some jurisdictions. Use discovery if:
    1. It actually has some value and is not simply a rote practice.
    2. Don't clog the courts with motions to compel and requests for more time to comply.
    3. Certifications- always keep your CAC certification and GAL certification for children current.
  - xi. GAL Work-come back after lunch
  - xii. Be good to the clerks!! They work hard, and they are your lifeline.
    1. Be sure they can contact you immediately.
    2. Take tough cases when the clerks are struggling to find someone.
    3. Encourage your secretaries to be kind to the clerks.
- II. 2<sup>nd</sup> Hour: GAL Panel, Care and Feeding of the Guardian ad Litem for Children
- A. Panel Introduction (A-C 5 minutes)
  - B. GAL Best Practices from the J&DR Judge:
    - i. Based off the Document of that Name from Pulaski J&DR
    - ii. Mostly ignoring that document's timesheet discussion
    - iii. Specifically addressing 's local practice and forms for GAL's
  - C. Judge's Introduction:
    - i. Value to Judges
    - ii. Increased Scrutiny



- iii. The following are meant to be guideposts in those competing demands.
- D. Long Trips for Home Visits (5 Minutes)
- i. First, is the trip necessary? Is the suitability of the home at issue?
  - ii. The threshold requiring permission will be 200 miles roundtrip.
  - iii. The method to request permission is the Court form, requiring notice to all parties.
  - iv. This limit does not apply to foster care cases where an in-person visit is almost always required.
- E. Drug Screens (5 Minutes)
- i. The GAL cannot administer or pay for drug screens
  - ii. The GAL can request that a party voluntarily take drug screens- at the party's expense and from an independent source.
  - iii. If a party refuses, the GAL can file a motion, give notice, and set for hearing.
- F. Unannounced Visits (F-G 5 Minutes)
- i. Unannounced visits can be very helpful, but they are not required.
  - ii. Multiple unannounced visits may be too costly.
- G. CASA
- i. The court expects full cooperation with CASA.
  - ii. When possible, GALs and CASA should combine trips to minimize costs.
- H. Excessive Work (H-I 5 Minutes)
- i. thorough investigation is required, however
  - ii. may not be necessary to personally visit every witness, expert, provider
  - iii. may not be necessary to subpoena all medical records.
  - iv. investigation can end when GAL satisfied and has met his ethical obligations.
- I. Reporting requirements
- i. The GAL will, of course, be expected to give a full report in each case and detail his efforts on behalf of the child.
  - ii. In addition, the GAL shall turn in the Report and Certification of the GAL and GAL Checklist when he submits his timesheet. This requirement applies to custody, visitation, foster care, child protective orders, and CHINS.
  - iii. Written reports are appreciated but not required.
- J. Sharing Recommendations (5 Minutes)

- i. GAL should share with counsel and unrepresented parties before trial
  - ii. save court time and expense and decrease acrimony.
  - iii. allow enough time for counsel to confer and negotiate
  - iv. GAL occasionally needs to hear testimony before final recommendation.
- K. Preference of the Child (K-L 5 Minutes)
- i. If the preference of the child is a significant issue, the GAL should meet with the child on "neutral ground." This practice will help reduce the risk of coaching and allow the child to speak freely.
- L. Presence of the Child at Custody/Visitation Hearings
- i. Judges throughout the State, view this question differently.
  - ii. Know your judge's position:
    - 1. Does the child really need to attend?
    - 2. Can you state the child's position?
    - 3. Can the parties stipulate what the child will say?
  - iii. If the child attends how will he participate:
    - 1. testify in open court?
    - 2. meet w/judge and with who present?
    - 3. Will child be subject to cross-examination?
    - 4. Where will the child wait while the parties are in the courtroom?
    - 5. Does your courthouse have a private place for the child to wait?
    - 6. Who will wait with the child?
    - 7. How long will the child have to wait, and how much school will be missed?
    - 8. Is this court normally on schedule
- M. Questions to and among the panel (10 Minutes)
- i. With a GAL and Court Appointed Counsel both in a delinquency case, what is the division of labor?
  - ii. How does a GAL with *pro se* litigants approach things differently than with other counsel?
  - iii. Especially a MTA?
  - iv. How do various courts use the DC 540?
  - v. What are the most common failures for GAL's?
- N. Panel initiates other questions and moderator solicits questions from audience (15 Minutes)

## **INTRODUCTION TO THE JUVENILE AND DOMESTIC RELATIONS COURTS OF VIRGINIA**

### **Juvenile and Domestic Relations District Court**

There is a juvenile and domestic relations district court in each Virginia city and county. In Virginia, a juvenile is any person under 18 years of age. The juvenile and domestic relations district court hears all matters involving juveniles such as criminal or traffic matters. Juvenile delinquency cases are cases involving a minor under the age of 18 who has been accused of committing an offense that would be considered criminal if committed by an adult. Other juvenile offenses may be referred to as status offenses. Status offenses are those acts that are unlawful only because they are committed by a minor.

In addition, this court handles other matters involving the family such as custody, support and visitation. The court also hears family abuse cases, cases where adults have been accused of child abuse or neglect, and criminal cases where the defendant and alleged victim are family or household members.

### **I. General Information**

The juvenile and domestic relations district (JDR) courts in Virginia are primarily governed by the statutes found in Chapter 11 of Title 16.1 of the Code of Virginia (Virginia Code sections 16.1-226 through 16.1-361). These statutes set forth information about the kinds of cases that are heard by the JDR courts, how those cases should proceed, and what authority is given to the judges of the JDR courts when they decide cases. This pamphlet provides a brief summary of that information and is not intended to provide legal advice or formal interpretation of law. If you need legal advice, you should contact an attorney.

The JDR courts are district courts, which in Virginia means they are not courts of record and there are no jury trials. All cases are heard and decided by the judge. Parties to a case can appeal the final decisions of the JDR court to the circuit court, which is a court of record and may involve a jury trial.

The JDR courts handle cases involving:

- children accused of delinquent acts, traffic infractions, or status offenses;
- children in need of services or supervision;
- children who have been subjected to abuse or neglect, or abandoned;
- children whose custody, visitation, support, or parentage is before the court;
- children for whom relief of custody or termination of parental rights is sought;
- children in foster care and former foster youth in the Fostering Futures Program;
- children seeking emancipation or work permits;
- children whose eligibility for federal or state benefits requires certain findings by the court;
- family or household members who have been subjected to or accused of abuse;
- adults accused of child abuse or neglect, or of offenses against a family or household member;
- spouses seeking support after separation;
- enforcement of support orders;
- court-ordered rehabilitation services;
- court consent for certain medical and mental health treatments; and
- court-ordered blood testing of minors.

### **Definitions**

In Virginia, the terms listed below are generally defined as follows:

**Child:** Any person under the age of eighteen.

**Delinquent Act:** An act that has been designated as a crime or is a violation of a court order.

**Delinquent Child:** A child who commits a delinquent act.

**Child in Need of Services:** A child whose behavior, conduct, or condition presents or results in a serious threat to the child's well-being or physical safety of another person.

**Child in Need of Supervision:** A child who is subject to mandatory school attendance but is habitually absent from school without a valid excuse; remains away from his family or guardian; or escapes or remains away from a residential care facility ordered by the court.

**Abused and Neglected Child:**

- A child whose parent or caregiver creates or inflicts a physical or mental injury upon the child.
- A child whose parent or caregiver threatens to create or inflict a physical or mental injury upon the child.
- A child whose parent or caregiver creates a risk of physical or mental injury to be inflicted on the child.
- A child whose parent or caregiver refuses to provide for the child's health and well-being.
- A child whose parent or caretaker abandons the child.
- A child whose parent or caretaker commits or allows to be committed any sexual act on the child in violation of law.
- A child who is without parental care caused by the unreasonable absence or the mental or physical incapacity of the child's parent or caretaker.
- A child whose parent or caretaker leaves the child alone with an unrelated person who the parent or caretaker knows has been convicted as a violent sexual predator.
- A child who has been identified as a victim of sex trafficking.

**Adjudication:** The court's decision of the case following the presentation of evidence. For example, the case is adjudicated when the judge decides whether a child is guilty of a delinquent act or whether a child was abused or neglected.

**Disposition:** The court's decision as to what should happen to the parties following adjudication. For example, a delinquent child's "sentence" or whether a child removed from his or her parents should remain in foster care.

### **Court Clerk**

Each JDR court has a clerk's office that processes all case papers, keeps court records, and provides information to the people involved in a case (to the extent permitted by law). Anyone wishing to make a witness appear at a court hearing may request the issuance of a subpoena (a document used to require a person to come to the court hearing) at the court clerk's office. While court personnel are not permitted to offer legal assistance, they can provide general procedural information. Because of confidentiality laws, the clerk's office can provide only limited information about a case to those people involved with the case.

### **Court Service Unit**

Associated with the JDR court is a court service unit, which serves the court and facilitates the supervision, rehabilitation and treatment as needed by those who come before the court. The court service unit's essential functions include:

- **Intake.** Reviews all complaints against juveniles and determines whether there are enough facts to involve the court. If so, the intake officer may either proceed informally without filing a petition or may authorize the filing of a petition to bring the matter before the judge. The intake officer may also place the child in secure detention if the offense requires such security prior to a detention hearing by a JDR court judge. Intake does not handle criminal charges against adults; such cases may be started by contacting law enforcement or by asking for a warrant from a magistrate. In addition, the court service unit provides intake services for all initial petitions filed in the JDR court, including those for custody and visitation.
- **Investigation.** Conducts all background studies required by the judge in accordance with regulations issued by the Virginia Board of Juvenile Justice. Some of these studies include an examination of a child's family,

social and educational history. Such studies may be used by the court as a factor in determining the appropriate disposition and by the probation staff in forming a services and supervision plan.

- **Probation.** Provides community supervision and case management for delinquent children placed on probation.
- **Parole.** Supervises and provides community-based case management services to children in direct state care and those recently released from state institutional care.
- **Residential Care.** Supervises children being held in detention, shelter care, and post dispositional probation facilities. In most localities, the staff of these facilities are employees of the localities served by the court who work cooperatively with the staff of the local court service unit.

Court personnel, including court clerks and deputy clerks, and court service unit personnel, are not lawyers and are not permitted or allowed to offer legal advice. Legal questions should be directed to your attorney.

## Other Agencies

Local departments of family or social services are frequently involved in certain types of cases. They perform the initial investigation in child abuse and neglect and relief of custody cases. Children may be committed to such agencies when they are removed from home. Other agencies may be ordered by the judge to provide such services to the child and his or her family as the judge deems appropriate.

## Lawyers

The following persons have the right to be represented by a lawyer in the JDR court:

- a child alleged to be delinquent;
- a child alleged to be in need of services;
- a child alleged to be in need of supervision;
- a child alleged to be abused or neglected;
- a child who is the subject of an entrustment agreement, a request for relief of custody, or a parentage controversy;



- an adult before the court on criminal charges;
- an adult faced with loss of their parental rights;
- an adult whose child is alleged to have been abused or neglected; or
- any other person whom the court decides requires a lawyer's services.

The court will appoint a *guardian ad litem* to represent children (i) who are alleged to be abandoned, abused, neglected, or otherwise dependent; (ii) who are subject of an entrustment agreement (in which the parents voluntarily transfer care and custody of their child to an agency); (iii) who are placed in the care and custody of a local agency; (iv) who are subject of a court proceeding to terminate their parents' residual parental rights; and (v) whose parents desire to be relieved of care and custody of the child. Guardians ad litem are lawyers who undergo special training and certification to represent the best interests of children involved in these types of cases. More information about guardians ad litem for children can be found on Virginia's Judicial System website at: [www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html](http://www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html).

Adults and children involved in some cases may waive (give up the right to) representation by an attorney. Children and their parents must knowingly waive representation in writing. The judge must agree that this waiver is consistent with the interests of the child. If the child is charged with an offense that would be a felony if committed by an adult (a crime punishable by more than 12 months in jail), then the child must consult with an attorney and both must sign a waiver to be filed with court records of the case. The court must find that this waiver is made freely and voluntarily.

Any party who wants to hire a lawyer and has reasonably been unable to do so must file a motion asking the court for a continuance (a temporary delay of the hearing) before the court date. This must be done before the judge hears evidence in the case.

## **Petitions, Summons, Subpoenas, and Warrants**

A petition is a legal document containing the written statement that brings the case into court. The petition contains facts concerning the case and requests a hearing to determine the truth of these facts and to take whatever action is appropriate and permitted by law.

A summons is a legal document requiring a person to appear in court at the date and time stated on the summons. The petition is delivered with the summons to people who are required to be in court as parties in the case. No petition is required when a child is arrested and released on a summons written by an arresting officer.

A subpoena is a legal document delivered to witnesses who are required to be in court, telling them when and where they are required to appear. A subpoena duces tecum is a legal document delivered to persons to provide documents or written records to the requesting party in a pending court matter.

A warrant is a legal document accusing a person of committing crimes, requiring that the person be arrested, be brought before a magistrate for a pretrial release (bail) hearing, and be required to appear in court to answer the accusations.

## **When Called to Court**

All persons required to appear before the JDR court should arrive at the time and place stated on the petition, summons, bail form, or subpoena. It is important that everyone involved in a case be ready when the case is called into the courtroom. The court does not have child care services; therefore, the only children who should be brought to court are those children involved in the case or whose presence has been requested or required by the court, an attorney, or a probation officer.

## **Privacy and Confidentiality**

JDR courts differ from other courts in their duty to protect the confidentiality and privacy of children and their families who have legal matters before the court. The general public is excluded from all JDR court hearings, unless the judge authorizes a person to be present. Exceptions include cases where the

child is 14 years of age or older at the time of the offense and is alleged to have committed an offense that would be a felony if committed by an adult, and cases involving adults charged with a crime. However, the judge may close any proceeding to the public for good cause shown.

Records of juvenile cases, both delinquency (where a child is charged with an offense) and civil (custody, visitation, support, and child dependency), are confidential and cannot be inspected by the general public. Exceptions include cases where a child 14 years of age or older at the time of the offense is found delinquent for an act that would be a felony if committed by an adult, and cases where an adult is charged with a crime; records of these cases are open to inspection by the general public. However, a judge may seal (make confidential) a case or record within a case.

## **II. Juvenile Delinquency and CHINS Cases; Juvenile Traffic Cases; Adult Criminal Cases**

### **Detention**

A child may be taken into immediate custody if one of the following applies:

- A judge, clerk at judge's direction, or intake officer issues a detention order requiring the child to be taken into custody.
- A child is alleged to be a child in need of services or supervision and there is clear and substantial danger to the child's life or health, or this is necessary for the child's appearance before the court.
- A child commits a crime that is witnessed by a police officer or a crime that would be a felony if committed by an adult.
- A child commits a misdemeanor offense involving shoplifting, assault and battery, or carrying a weapon on school property.
- A child has escaped from lawful incarceration or a court ordered residential home, facility, or placement by a child welfare agency.
- A child is believed to be in need of inpatient mental health treatment.

If not immediately released by an intake officer or magistrate, the child may be held in custody (detention) until he or she can be brought before the judge for a detention hearing. The child's detention hearing should be held

the next day the court sits within the city or county but no longer than 72 hours after the child was taken into custody. Prior notice of the detention hearing must be given to the child's parent or guardian, and to the child if over 12 years of age. A detention hearing is not a trial but is a hearing to determine whether the child should remain in detention.

The child has the right to be represented by a lawyer at the detention hearing, the right to remain silent regarding the charge in the petition, and the right to be informed of the contents of the petition. An attorney will be appointed to the child before the detention hearing if the child's parent or guardian has not hired one.

The judge decides whether to hold the child in secure detention or release the child to a parent, guardian or persons having custody of the child, or to shelter care. Shelter care is defined as the temporary care of children in a physically unrestricted environment. Shelter care facilities may not be available in some jurisdictions.

If the judge releases the child from detention, the judge may set bail and/or certain rules and conditions to be followed by the child until the date of the trial.

The judge may order the child be held in detention if the judge believes that there is probable cause the child committed the alleged act and:

- the child is charged with violation of probation or parole; or
- the child is charged with a class 1 misdemeanor or an offense that would be a felony if committed by an adult and (i) is a threat to his or herself or others or the property of others, or (ii) has threatened not to come to court or has failed to appear to court within the past 12 months.

While the child is in a detention home or shelter placement, parents or guardians wishing to visit may do so only during permitted visiting hours. Parents or guardians should find out in advance of a visit: the hours of visitation, the documentation needed, dress code, the number of visitors allowed at one time, and any restrictions concerning who is allowed to visit.

## **Adjudicatory Hearing (Trial)**

The actual trial in juvenile delinquency cases is called the adjudicatory hearing. It is at the adjudicatory hearing that the judge determines whether the facts as stated in the petition or warrant are true. The judge may continue (temporarily postpone) a case to allow all parties time to obtain a lawyer or for any other reason necessary to have a fair trial. A child accused of a crime has the following rights at the adjudicatory hearing:

- the right to be represented by a lawyer to the extent provided by law;
- the right to have witnesses appear on his or her behalf;
- the right to subpoena (to require) witnesses to appear;
- the right to confront and cross-examine (question) witnesses testifying against him or her; and
- the right against self-incrimination (to answer questions or make statements tending to show guilt and have them used against him or her).

During the adjudicatory hearing in delinquency cases, all charges must be proven beyond a reasonable doubt. If the judge finds the child delinquent, the case is usually continued to another day for the judge to make a disposition decision (sentencing). The disposition decision is not always made immediately because the judge may require information about all aspects of the child's background, including prior offenses and personal history, before determining what corrective measures to take with the child. Dispositions in traffic cases, however, are usually made immediately at the end of the adjudicatory hearing.

## **Disposition**

The court may order various dispositions for delinquency convictions. If the child is placed on probation under the supervision of the probation officer, the child and the child's parent(s) or legal guardian must cooperate with the probation officer and rules of probation. The family and guardians of the child may be ordered by the court to participate in various programs or services. Parents or guardians violating this court order may be subject to fines and/or jail. Children violating the terms of probation may also be subject to a new charge and new punishments.

## **Certification or Transfer to Circuit Court for Trial as an Adult**

A case involving a child meeting the minimum age requirements who is accused of a felony may be certified or transferred to circuit court where the child would be tried as an adult. In such instance, all future hearings, and the trial, will be conducted in circuit court. A hearing to determine whether to transfer the case cannot occur unless the child's parent or the child's attorney is notified of the transfer hearing.

### **Transfer to Circuit Court**

A case involving a child 14 years or older at the time of the alleged felony offense(s) may be transferred to the circuit court to be tried as an adult. Some felony charges require that a judge make the decision whether to hear the case in JDR court or circuit court. The Commonwealth's Attorney must provide written notice requesting the transfer of the child's felony case(s) to circuit court to the child's attorney or to the child and one parent or legal guardian. A judge will hold a hearing to determine whether probable cause exists regarding the offense(s) charged and whether transfer of the case to circuit court is appropriate. Some factors the judge may consider when determining whether the case should be heard in circuit court include: the child's previous court involvement, competency, school record information, age, and emotional maturity.

Statements made by the child during the transfer hearing may not be used as evidence of the offense at a later court hearing and trial, but such statements may be used if the child testifies during the trial.

Both the Commonwealth's Attorney and child may appeal a transfer decision within 10 days of the transfer hearing. Any child convicted in circuit court will be treated as an adult in all future criminal cases.

### **Certification to Circuit Court**

If a child was 16 years or older and charged with a violent felony, the Commonwealth's Attorney may request that the charge be certified to circuit court for trial. Prior to the preliminary hearing to certify the charge to circuit court, written notice to the child's attorney or to the child and one parent or legal guardian must be provided. In a preliminary hearing, the judge only determines whether there is probable cause to believe that the child



committed the alleged crime. A list of serious felony charges that may be certified to circuit court can be found in Virginia Code section 16.1-269.1C. If the judge finds probable cause that the child committed the crime(s) alleged, the child's case will be tried in circuit court.

The crimes of capital murder, first or second degree murder, or aggravated malicious wounding are automatically certified to the circuit court if the child is 16 years or older at the time of the offense and the judge has found probable cause that the juvenile committed the offense(s) charged. No request by the Commonwealth's Attorney is needed.

### **Traffic Cases**

Cases involving children accused of traffic violations are heard in the JDR court. Certain violations may be prepaid *if* prepayment is permitted by the chief judge of that court *and* if the child wishes to plead guilty and not contest the charge. The traffic summons should be examined to see if the arresting officer has marked that trial may be waived (given up) to permit prepayment. If prepayment is permitted, the Pretrial Waiver and Prepayment Instructions found on the summons may be followed. Payments of fines and costs may be made after the case is heard in court using the Virginia Judiciary Online Payment System, which may be accessed at [www.vacourts.gov/caseinfo/tickets.html](http://www.vacourts.gov/caseinfo/tickets.html).

### **Adult Criminal Cases**

Adult criminal cases in the JDR court are tried under the same standards and procedures that are applied in misdemeanor (criminal offenses that are not felonies) cases heard in the general district court, where most other adult misdemeanors are tried. Adult criminal cases heard by the JDR court generally involve offenses committed against children or family or household members.

Adults charged with committing felonies against children or family or household members are brought into the JDR court after arrest for a preliminary hearing. This hearing is held to determine if there is probable cause to believe that the accused adult committed the felony. If probable cause is found, the case is transferred to circuit court; otherwise the case is dismissed.



## **Expungement (Destruction of Court Records)**

Generally, court records of proceedings concerning a child will be destroyed on January 2 of each year if the child has reached the age of 19 years and 5 years have elapsed since the date of the last hearing before the court. Traffic records will be destroyed when the child is 29 years old. If the child was found guilty of a delinquent act, which would be a felony if committed by an adult, the records will be retained.

## **III. Custody and Support**

### **Custody**

Disputes about the custody or visitation of a child are usually heard in the JDR court. Child custody cases between parents may also be heard by the circuit court if the case is part of a divorce matter between the parents. In such cases, the court will enter an order with provisions for custody and visitation necessary to protect the best interests of the child.

Once a court enters an order of custody and visitation in a case, the custody and visitation arrangement cannot be changed without further order of the court. Any party may seek enforcement of the court order if another party fails to follow the court order.

Sometimes, the JDR court may appoint a lawyer to serve as the child's guardian ad litem in a custody and visitation case. This appointment may be made if the parties are not represented by an attorney or if the judge determines that the child's best interests would not otherwise be represented.

### **Support**

Under Virginia law, parents or spouses who fail in their obligations to support and maintain their dependents may be required by the court or the Division of Child Support Enforcement (DCSE) to provide such support.

A person seeking support can either request DCSE to open a support case or file a petition with the JDR court to seek child or spousal support. To request DCSE to open a case, you can contact the DCSE by calling toll-free 1-800-468-8894 or visit the DCSE website at <https://mychildsupport.dss.virginia.gov>. To file your own support petition with the JDR court, you

can speak with a local court service unit intake officer at the JDR court. The local court service unit intake officer will be able to explain the available options to seek support.

In the JDR courts, either a civil support case or a criminal desertion/non-support case may be filed. In a civil case, any spouse or parent found by the court to owe a duty to provide support and maintenance may be ordered to make periodic payments in a manner prescribed by the court and may be required to post a performance bond. In criminal cases, any spouse or parent found by the court to have failed in his/her duty to provide support and maintenance is guilty of a misdemeanor and is subject to a fine of up to \$500 and up to 12 months in jail. Persons failing to make support payments may lose their professional or occupational license or their driver's license. In place of or in addition to paying a fine and/or being sent to jail, a judge may order the spouse or parent to make certain periodic payments in a manner prescribed by the court. The judge may then release the negligent spouse or parent on the condition that he/she comply with all conditions of the court's order.

Any person subject to such an order who continues to fail to provide support in the manner ordered by the court may be jailed or be required to post a bond. The court may (and in some cases must) require that support payments be deducted from the earnings of the spouse or parent who fails to pay support. Persons summoned to court who fail to appear may also be charged with contempt of court and subject to immediate arrest; in such case, the support hearing would continue in his or her absence.

#### **IV. Child Dependency (Foster Care)**

"Child dependency" cases arise where the child, due to abuse, neglect, or other circumstances, can no longer remain safely in their home with their parent(s) or guardian(s) and therefore must depend on the local department of family or social services for his or her safety and care. Child dependency cases may include the following situations:

- The child is removed by a local department of family or social services due to child abuse or neglect. These cases are typically initiated by the

local agency's filing of a petition for an emergency or preliminary removal order, or a preliminary child protective order.

- A parent voluntarily places a child in the custody of the local department of family or social services under a special agreement between the parent and the agency called an "entrustment agreement."
- A parent voluntarily places a child in the physical custody of the local department of social or family services, but the parent retains legal custody. This type of arrangement is often used for placement in a residential treatment facility for mental health or substance abuse treatment.
- A parent files a petition for relief of custody.
- A court finds that a child is a Child in Need of Services and transfers custody of the child to the local department of family or social services. A child found to be a child in need of supervision or delinquent may also be removed from his or her parents or guardians and placed in the custody of a local department of family or social services.

Once a child has been removed from the home and placed in the custody of a local department of family or social services, the case proceeds as a foster care case in the JDR court. A more detailed description of these proceedings can be found in the Handbook for Parents and Guardians in Child Dependency Cases, available online at: [www.vacourts.gov/courtadmin/aoc/cip/resources/handbook\\_for\\_parents\\_and\\_guardians.pdf](http://www.vacourts.gov/courtadmin/aoc/cip/resources/handbook_for_parents_and_guardians.pdf). In child dependency cases, the JDR court will appoint lawyers for the parents or guardians, a guardian ad litem for the children, and, in many localities, a Court-Appointed Special Advocate ("CASA"), who is a specially-trained volunteer who gathers information about the case and prepares a report for submission to the court

## **V. Appeals**

Parties to a civil case and the defendant in a criminal or delinquency case heard in JDR court have a right to appeal the case to the circuit court. Certain rules and deadlines apply to appeals of JDR court decisions. If you do not understand the appeal process, you should consult an attorney. The court can provide only limited information about the appeal process.

## A Newbies Introduction to Representing Juvenile Clients

### **1. INTRODUCTION**

- ▶ **How This Guide Can Help You**
- ▶ **The Basics**

### **1. PRE-TRIAL PROCESS (PRE-ADJUDICATORY) | 5**

- ▶ **Entering the Juvenile Justice System**
- ▶ **Intake**

### **3. TRIAL – FOR GUILT OR INNOCENCE (ADJUDICATORY) | 10**

- ▶ **Detention Hearing**
- ▶ **Step-by-Step Process**
  - Preparing for your court date
  - Getting to the courthouse
  - At the courthouse before your hearing
  - Appointment of Counsel Hearing (First Appearance Hearing)
  - Adjudication Hearing (Trial)

### **4. SENTENCING (DISPOSITIONAL)**

- ▶ **Dispositional Hearing (Sentencing)**
- ▶ **After Court**
  - Appeal
  - Probation
  - Court Costs and Fines

### **5. EXITING THE JUVENILE JUSTICE SYSTEM)**

### **6. ADDITIONAL INFORMATION**

- ▶ **Other Possible Information**
- ▶ **Confidentiality**
- ▶ **Record**

**Transfer Hearing**

### **7 . GLOSSARY**

## **INTRODUCTION TO THE JUVENILE COURT PROCESS: A Guide for Attorneys to Guide their Clients and Families**

### **HOW THIS GUIDE CAN HELP YOU**

This outline presents a basic overview of the Juvenile Justice System in Virginia. It is presented for the benefit of the practitioner who has only

limited dealings with the J&DR Courts. Portions of the outline are written in the “second person” to reflect how an attorney might explain the juvenile court process to a client and his/her family.

While many attorneys concentrate their practice on Juvenile and Domestic Relations Matters, any attorney is likely to find that at some point they will be interacting with the Juvenile Court in a matter involving a youth exclusively. While much of what occurs in the J&DR court will be familiar to the general practice attorney, there are differences in both procedure and language that may confuse the practitioner who is not a regular in juvenile court cases.

### It's Not all Kid Stuff

Remember that its Juvenile **AND** Domestic Relations Court. There's a lot more that goes on in J&DR than dealing with youths in need of services and facing criminal trial.

## **THE BASICS**

### **1. What is a juvenile?**

In Virginia, a juvenile is any person less than 18 years old.

### **2. What is the juvenile justice system?**

The juvenile justice system is the part of the larger justice system for people under the age of 18. It has its own laws and procedures about how juveniles should be treated.

### **3. How do the words of the juvenile justice system differ from the language of the adult system?**

<b><u>JUVENILE JUSTICE SYSTEM</u></b>	<b><u>ADULT JUSTICE SYSTEM</u></b>
Offense	Crime
Take into custody	Arrest
Petition	Warrant
Adjudication Hearing	Trial
Found delinquent	Found guilty
Disposition	Sentencing
Not delinquent	Not guilty
Detention	Jail

### **Juveniles: *Have the following rights***

- The right to remain silent. You are not required to talk to the police.
- The right to have a lawyer represent you in Court (if you cannot afford a lawyer, one can be appointed for you)
- The right to be present at all court hearings that deal with your case
- The right to call witnesses to testify for you
- The right to have a lawyer question witnesses who testify against you
- The right to be given written notice of court charges against you
- The right to have a public hearing
- The right not to be locked up with adults
- The right to appeal the judge's decision to a higher court.

### **Parents/Guardians: *Have the following rights and responsibilities***

- The responsibility to be present at all hearings
- The right to hire a lawyer for the child (if your child cannot afford a lawyer, one can be appointed)
- The responsibility to remember that your child is the focus of court involvement.

## **PRE-TRIAL (PRE-ADJUDICATORY)**

### **ENTERING THE JUVENILE JUSTICE SYSTEM**

Once a juvenile is suspected of committing an **offense** (breaking a law), there are several ways to enter the juvenile justice system:

**I. Arrest:** if a police officer thinks you committed a crime, you can be taken into custody and charged with an offense.

▶ An arrest may occur as the result of a stop or a stop and frisk: when a police officer temporarily detains an individual and may pat down (frisk) their outer clothing. In this case:

- The police officer must have reasonable suspicion that an individual is armed and dangerous, or has just committed or is about to commit an illegal act.

- The police officer is not required to identify a specific crime they think is being committed, but a stop and frisk requires a lawful stop based on the officer having a reasonable suspicion.
- Remember to be calm and polite.
- The police officer may frisk you if there is reason to believe you possess a weapon or other illegal item.

**2. Petition:** when someone (complainant) thinks you did something illegal or thinks you may be in need of help, he/she can file a petition with the Intake Officer of the Court Service Unit.

- A complainant could be any person who brings a charge against you, or wants the court to consider you as a child in need of supervision or services (CHINS) or an abused or neglected child.
- Petition is a legal document that brings the case involving a juvenile into court. A petition says that you are one of the following:
- Delinquent: a juvenile who has committed an act which would be a crime if committed by an adult
- Child in need of supervision (CHINSup): one who is truant (does not attend school) or runs away from home
- Child in need of services (CHINS): a juvenile whose behavior, conduct, or condition presents or results in a serious threat to himself or another person. The child is in need of treatment, rehabilitation, or services and is not receiving them.
- The petition shows facts concerning the case and requests a hearing to before a judge to determine the truth of these facts.



**3. . Written summons:** In some cases you will receive a written summons, which shows the charges against you. This most often happens with charges like marijuana or alcohol possession, or traffic violations.

- You must go to court on the day and at the time listed on your summons.
- If you do not appear in court, the judge may issue an order for you to be picked up by the police and held in detention.

## **INTAKE**

**Intake** is a meeting where an intake officer decides whether or not to file charges to

send you to court.

### **Things to know about intake:**

1. Intake is the first appointment with the juvenile justice system during which the referral is reviewed and a decision is made whether to file a petition to send you to court or to divert the case. When a case is diverted, it means you don't have to go to court.
2. You will either have the intake hearing right after you are arrested or you will be sent a letter with a date to attend with your parents/guardians.
3. You, your parent/guardian, the intake officer, and the complainant (the person who brought a charge against you) will be at the intake meeting.
4. You *may* have a lawyer present, but most people do not bring one.
5. You may bring someone for moral support. Some people bring a helpful family member, a mentor, or someone else who is helpful to you and your family. You may not bring another juvenile.
6. How you behave and look at Intake can make a difference! Show respect. Be sure that you and your parent/guardian are on time, dressed appropriately and act politely.
  - a. What you say during the intake meeting cannot be used directly against you in court.

- b. However, if you tell the judge a different version of what happened than you told to the intake officer, then the fact that you told different stories could be used against you to show that you do not give reliable testimony. In other words, it can be used to “impeach” you as a witness, which means that the judge may not believe your testimony.

### **What will happen at an intake meeting?**

- The intake officer will ask the complainant about what happened,
- The intake officer will determine if there’s probable cause, or enough information to decide if your case should go forward.
- The intake officer will decide whether your case will go to court or be diverted.
  - The intake officer will NOT determine if you are guilty or not guilty.

### **What can happen as a result of the Intake meeting?**

#### **1. Dismissal. No charges are filed.**

#### **2. Informal Action/Diversion:**

- ▶ Your case is diverted when the intake officer decides that you don’t need to go to juvenile court for your offense. If this is so, a petition is not filed in the juvenile court.
- ▶ The intake officer will keep a report and give you your diversion plan that you will have to complete.
  - The diversion plan may include community service or a treatment program.
  - If you do not completely follow the assigned diversion plan, your case could be referred back to the juvenile court.

#### **3. Petition is Filed:**

- ▶ The intake officer will determine whether you should be detained (held in a juvenile detention facility) or released to your parents/guardians based on the possibility of risk to yourself, risk to community, or risk of not coming to court if you are not held

- ▶ A first appearance hearing or appointment of counsel hearing will be scheduled (see next section).
- ▶ If a petition is filed against you alleging that you committed an act that would be a crime if committed by an adult, then an intake officer must notify the **superintendent of your school division** *for some offenses* including:
  - a firearm offense, homicide, felony assault and bodily wounding, criminal sexual assault, manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, manufacture, sale or distribution of marijuana, arson, robbery, prohibited criminal street gang activity, recruitment of other juveniles for a criminal street gang activity, or an act of violence by a mob.

## **TRIAL (ADJUDICATORY)**

### DETENTION HEARING

#### **What is a detention hearing?**

1. A **detention hearing** is a court hearing to decide whether the need for further detention if the intake officer determines that you should be held in a juvenile detention facility.
2. **You are required to have a lawyer at a detention hearing. The court can appoint a free lawyer for you.**
3. The hearing will be held in front of a juvenile court judge within 72 hours (3 days) from the time you entered the detention facility to decide if you should stay in detention until your next court hearing.

#### **What are the possible results of the detention hearing?**

1. The judge may allow you to go home (or another supervised place) until your next court hearing-- with or without special rules,
2. The judge may release you to go home and require you to wear an electronic monitoring device that notifies the court if you leave your house,

3. The judge may release you to go home on house arrest with very strict rules,
4. The judge may order you to be held in detention until your next court hearing
5. The judge may decide to hold you in detention if he/she believes that:
  - You present a danger to other people or to the property of other people;
  - You present a danger to yourself;
  - You will not appear for a court hearing; or
  - You have run away from a placement where a judge ordered you to stay.

### **Where would you be held in the detention?**

- Most juveniles are held in a Juvenile Detention Center designated by the Department of Juvenile Justice.
- When a juvenile is housed in a facility where adult inmates are also present, the juvenile must be housed in a segregated area.

### **How long can you be held in detention?**

- If you are held before your adjudication (guilt or innocence) hearing, you can be held for up to 21 days.
- If you are held after your sentencing (adjudication hearing), you can be held for an additional 30 days before your disposition,

## **STEP-BY-STEP PROCESS OF THE TRIAL**

### **I. Preparing for your court date**

- ▶ Planning what to wear:
  - Dress appropriately.
  - *Do NOT wear shorts, tank tops, t-shirts with words or pictures, strapless tops, or loose pants.*
- ▶ Planning what *not* to bring:
  - Do not smoke cigarettes outside the courthouse.
  - Do not chew gum in the courthouse.

- Do not bring a weapon.
- *Leave anything that you do not need in your car or at home.*
  - You will have to go through a metal detector to get inside the courtroom and may be searched.
  - Do not bring your cell phone.

## 2. Getting to the courthouse

- ▶ Make certain you know which courthouse you are going to; in some jurisdictions the juvenile court may be in a separate building from the circuit court and general district court; some jurisdictions have courthouses for more than one locality (for example, the Roanoke County and Salem Courthouses are in Salem).
- ▶ Arrive early to allow time to find parking
  - Not all courthouses have public parking, and even those that do it may be difficult to find a parking space on days when court is being held.
- ▶ You may have to wait for your case to be heard as there may be several trials set for the same time, but you still need to arrive at the courthouse at least 10 minutes before the time that the case is set.

## 3. At the courthouse before your hearing

- ▶ Do not leave the courthouse without permission
  - Sometimes people have to wait for long periods of time for their hearing.
  - You may leave the *courtroom* temporarily, but you may not leave the *courthouse*.
- ▶ It is helpful to be respectful and polite.
- ▶ Sit up, be alert, be attentive, and behave politely inside *and* outside the courthouse.
- ▶ Listen carefully for the Clerk or Bailiff to call your name.

- ▶ When you are called, walk up and stand before the judge. Your body language and what you say can have an impact on how the judge thinks about you.

#### 4. Appointment of Counsel Hearing

- ▶ What is it?
  - This is a short court procedure where the judge will explain the charges filed against you and ask you if you want a lawyer to help you through the court process.
- ▶ Who will be there?
  - You and your parent(s) or guardian(s)
  - Juvenile court judge
  - Bailiff: an uniformed sheriff's deputy who calls out the cases and keeps order in the court
  - Clerk: the clerk sits near the judge, keeps records about your case, and keeps track of the court schedule
  - Probation Officer: a Department of Juvenile Justice employee who works with juveniles on probation to set rules for their behavior and help them to get services to avoid future legal problems.
- ▶ What is the procedure?
  - These are general steps that may happen, but your individual case may be different
  - When the clerk or bailiff calls your name, you, your parents, the complainant, and any witnesses will walk up to the judge.
  - The judge will explain the charges filed against you
  - The judge will then ask if you want a lawyer to help you through the court process

► What are the possible results from the appointment of counsel hearing?

- The judge can appoint a lawyer to represent you if you cannot afford to hire a private lawyer.
- The court appointed lawyer may be a public defender or it could be a private lawyer.
- To figure out whether you qualify for a court-appointed lawyer, the judge will look at your income and property, and not your parent's or other guardian's. If you need an attorney assigned to you, you will fill out paperwork at the clerk's office. They will give you your attorney's contact information, but it may take up to 24 hours for the attorney to receive the information about your case.
- If your case goes to trial and you lose, you may have to pay for the court-appointed lawyer. However, people who are represented by lawyers often have much better results than people who don't have a lawyer.
- You can say that you plan to hire a lawyer or your parents/guardian may hire a lawyer, but you should only do that if you definitely have funds to pay the hundreds or thousands of dollars it will probably cost.
- The juvenile's parents/guardian may hire a lawyer for the juvenile.

**5. Delinquency Adjudication Hearing (Trial)** This is the trial where the judge makes a decision about whether a juvenile is delinquent (guilty) or not.

► What is it?

- A court hearing to decide whether you are delinquent based on the evidence presented.
- If you were not detained after your intake hearing, your adjudication hearing must be held within 120 days of your intake hearing on the charge



- If you were detained after your intake hearing, your adjudication hearing should take place within 21 days of the time you entered detention
  - ▶ What is the procedure?
    - You and any witnesses present will be sworn in – you must tell the truth in court, but you are not required to answer all questions- your attorney will advise you.
    - The Commonwealth’s attorney (the prosecutor) will present evidence against you. If other people know what happened in your case, your lawyer or the prosecutor may ask them to come to court as witnesses
  - ▶ What are the possible results from the trial?
    - The judge finds that you are not delinquent
      - In this case, no further court actions are taken and your case is dismissed
    - The judge may delay making a decision
    - The judge finds you delinquent
      - You will then move onto the sentencing (dispositional) process. Sometimes the judge will make a full decision about your sentence immediately after the adjudication hearing or the judge may ask for a background report.
- 6. CHINS Adjudication Hearing** This is a trial where a judge decides if you are in need of services (your behavior, conduct, or condition presents or results in a serious threat to yourself or another person) or supervision (you are truant or run away from home).

- ▶ What is the procedure?
  - The court will hear from witnesses
- ▶ What are the possible results from the CHINS Adjudication Hearing?
  - The judge finds you are NOT a Child in Need of Services or Supervision
    - The case is dismissed
- ▶ The judge finds you ARE a Child in Need of Services or Supervision
  - The judge may proceed to a final decision in the case.
  - The judge may continue the case to another day and order a background
    - report or a psychological evaluation
  - The judge may order a review of your situation in order to decide whether you
    - may benefit from services and how to pay for it.

## **SENTENCING (DISPOSITIONAL)**

### DISPOSITIONAL HEARING

**Delinquency Cases:** The judge may give you one or more of these sentences, including:

1. Place you on probation
2. Order counseling for you and/or your parents
3. Order your and/or your parents to follow certain conditions
4. Order treatment for drug or alcohol use
5. Set a fine of up to \$500
6. Require you to pay back the victim (restitution)
7. Order you to perform community service
8. Order you to participate in a Restorative Justice process
9. Transfer your custody to a responsible adult or the local social service department
10. Sentence you to detention for up to 6 months
11. Suspend your driver's license

**12. Commit you to the Department of Juvenile Justice to be held in a juvenile Correctional Facility**

- ▶ You may be committed to the Virginia Department of Juvenile Justice, where you will receive 24-hour supervision and a variety of special programs
- ▶ You may be held in a Juvenile Correctional Facility an indefinite or definite period of time (up to your 21st birthday)
  - If you have an indefinite sentence, the Department of Juvenile Justice will assign you a range of months to serve based on your crimes, your record, and other factors.

**CHINS Dispositional Hearing:** The judge may decide one or more of these results:

1. Place the child on probation (only for a Child in Need of Supervision)
2. Suspend or restrict the child's driver's license (only for a Child In Need of Supervision)
3. Order services
4. Permitting you to remain with your parent(s)/guardian(s) subject to conditions
5. Ordering you and your parent(s)/guardian(s) to participate in programs or cooperate in treatment Transfer custody to a relative, a licensed child welfare agency, or a local social service department
6. After Court

**AFTER COURT**

**1. Appeal**

- ▶ You have the right to appeal any adjudication or disposition in a juvenile case to the Circuit Court.
- ▶ If you do this, you will have a new trial in the Circuit Court.
- ▶ You must file the appeal within 10 days of the Juvenile Court hearing.

**2. Probation**

- ▶ If you have been found delinquent or found to be a Child in Need of Supervision, you can be placed on probation.
- ▶ You will be assigned a probation officer who will meet with you and your parent/guardian regularly. The probation officer will set up a

supervision plan that you must follow. He or she will also assign conditions of probation that list rules you must follow in order to avoid getting in more trouble.

- ▶ If you do not comply with the plan, the court could find that you have committed a probation violation. Depending on the severity of the violation, you could face serious consequences, including detention.

**3. Court Costs and Fines:** In some cases you may be ordered to pay court costs or fines.

- ▶ Failure to timely pay automatically results in driver's license suspension unless the debtor is able to enter into a payment plan with the court. Different courts have different payment plan terms.

## **EXITING THE JUVENILE JUSTICE SYSTEM**

### **1. Release from the Juvenile Justice System**

- ▶ You can be released from probation or parole at any time if you complete all of the court's requirements, stay out of trouble, and follow all probation or parole rules.
- ▶ You can remain on probation or parole in the juvenile justice system up until your 21st birthday.

### **2. Parole**

- ▶ When you are released from a Juvenile Correctional Facility, you will be placed on parole, which is much like probation.
- ▶ Your parole officer will meet with you while you are at the facility to plan for your return home.
- ▶ You will have a supervision plan and rules that you will have to follow.
- ▶ You can be sent back to a correctional facility if you do not follow the rules.

## **ADDITIONAL INFORMATION**

### **1. Other Possible Consequences**

- ▶ May not be accepted at your colleges of choice
  - Be disqualified from receiving awards or scholarships
  - Not be able to attain financial aid for college through FAFSA
- ▶ May not be able to enlist in the armed services

- ▶ May lose the opportunity to hold certain jobs

## 2. Confidentiality

- ▶ Some juvenile court records are confidential, which means that they cannot be released to anyone without your permission.
- ▶ However, it is important to know that there are times when information about you is not confidential, such as:
  - Your fingerprints and a DNA sample will be taken and kept if you are 14 or over and convicted of a felony charge
  - If you are 14 or older and charged with or convicted of certain serious offenses, this information will be given to the principal of your school.
  - If you are 14 or older and convicted of a felony, the court records may be open to the public.
  - If you are 14 or older and convicted of a felony, your record will be kept by the Juvenile Court.
  - If you are convicted of a felony as an adult, your juvenile record will be used by the Circuit Court to decide your adult sentence.

## 3. Record

- ▶ In most cases, juveniles' records are automatically destroyed once they turn age 19 or five years have passed since the last hearing in their case. However, records for crimes that would be felonies if committed by an adult remain public. These laws are frequently changed, and certain records are no longer expunged without a court order.
- ▶ If you are found not guilty or if your case is otherwise dismissed, you may ask to have your records of the case destroyed, or "expunged".
  - This request must be granted unless the Commonwealth's Attorney shows a good cause why the records should be retained.
  - Once records have been destroyed, the violation of law shall be treated as if it never occurred.

#### 4. Transfer Hearing

- ▶ If you are 14 years or older at the time of the alleged serious felony offense, the Commonwealth Attorney may ask the Judge to determine whether you will be transferred to the circuit court and tried as an adult. In this case, you will have a hearing before the Juvenile Court Judge.
  - Your parents and your attorney must be notified of the transfer hearing, which will be held in juvenile court.
  - The judge will determine whether probable cause exists and whether transfer is appropriate.
- ▶ For more serious offenses, transfer to circuit court could be automatic if the judge determines at a preliminary hearing that there is probable cause that you committed the offense, and a grand jury agrees.
- ▶ Possible results of a transfer hearing:
  - The judge finds that probable cause exists and that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court.
    - Your case will be tried in circuit court as an adult.
  - The judge finds that probable cause exists and that the juvenile is a proper person to remain within the jurisdiction of the juvenile court.
    - Transfer is denied and your case is handled in the juvenile court.
  - The judge does not find that probable cause exists and the case is dismissed.

#### **GLOSSARY**

– A –

Adjudication hearing – the trial; the court hearing to determine whether the defendant is guilty or innocent.

Adult – In Virginia, a person at least 18 years old.

Allegation – A claim that a law has been broken. A community member, including your parents or guardian can make this statement.

**Appeal** – A request that a case be sent to a higher court for review or rehearing.

**Arrest** – Taking a person into custody for the purpose of charging him or her with an offense or starting court proceedings.

**Attorney (or lawyer)** – a person trained in law and licensed by the state who can advise, represent, or act for persons in court.

– B –

**Bailiff** – The bailiff is a uniformed sheriff's deputy who calls out the cases and keeps order in the court.

– C –

**Charge** – A formal allegation that a person has broken a law or committed an offense.

**Child in Need of Services** – a juvenile whose behavior or condition is a threat to the juvenile's safety and who needs the court to intervene.

**Child in Need of Supervision:** A juvenile who is absent from school without a reason or who runs away from home.

**Circuit court** – Adult court of record. Also the court of appeal for the juvenile court.

**Clerk** – The clerk sits near the judge, keeps records about your case and keeps track of the court schedule.

**Code of Virginia** – The laws of Virginia that are recorded in a set of books often called the code.

**Commitment** – An order by a judge which transfers a juvenile's legal custody to the State Department of Juvenile Justice.

**Commonwealth** – Refers to the state of Virginia.

**Commonwealth's Attorney (also called the Prosecutor)** – This is a lawyer who works for the state and is responsible for presenting the state's evidence against those who are accused of breaking the law.

**Complainant** – The person who brings a charge against the defendant.



**Complaint** – A formal written accusation filed in court charging that you committed a specific offense.

**Counsel** – Another term for a lawyer.

**Court** – A setting in which formal testimony and evidence can be heard before a judge and decisions can be made about cases.

**Court Appointed Counsel** (may be called a Public Defender or Assigned Counsel) – This is a lawyer appointed by the

court to represent a defendant who is unable to afford a private attorney.

**Court Service Unit** – A part of the juvenile court system which includes intake, probation, parole supervision, and other services.

**Crime** – An act in violation of law; also referred to as an offense or delinquency.

– D –

**Delinquent** – An act committed by a juvenile for which an adult could be prosecuted in criminal court.

**Defendant** – the person that is accused of committing an offense.

**Defense Attorney** – The lawyer who represents the defendant in court.

**Department of Juvenile Justice**- A branch of the state government that is responsible for community and correctional services for juvenile delinquents.

**Detention Hearing** – A hearing before a judge to determine whether a juvenile should be placed in detention, continue to be held in detention, or be released until the next court hearing.

**Detention Center** – A secure facility where juveniles are held temporarily; a juvenile jail.

**Disposition** – Sentencing; a court decision on what will happen to a youth who has been found guilty.

**Disposition hearing** – Sentencing hearing. A court hearing to decide the most appropriate action in a case where a juvenile has been found guilty of the charges.

**Divert**—to remove a youth from the juvenile justice system by referring the youth to a non-justice treatment program or simply discontinuing the case.

– F –

**Felony** – A criminal offense which is more serious than a misdemeanor and which can carry more severe penalties.

**Fine** – A penalty requiring payment of a specified sum of money to the court.

**First appearance or appointment of council hearing:** a court hearing where a juvenile is told of his or her right to have a lawyer and that the judge will appoint a lawyer if the juvenile cannot afford one.

**Foster Care** – A formal agreement whereby a judge places custody of juvenile with the local department of social services. Juveniles in foster care live with foster parents or in another placement.

– G –

**Guilty:** A finding by the juvenile court judge that the defendant did commit the offense he or she has been charged with.

**Hearing** – A court proceeding in which charges, evidence, and arguments are heard.

– I –

**Innocent** – A finding by the judge that the defendant did not commit the offense he or she has been charged with.

**Intake** – The first contact with the juvenile justice system in which the referral is reviewed and a decision is made to file a petition for court or divert the case.

**Intake Officers** – Probation officers who review charges brought against a juvenile and decide how to handle each case.

– J –

**Juvenile** - A person younger than age 18 (in Virginia).

**Juvenile Correctional Facility:** A secure setting where sentenced juveniles are confined and receive 24-hour supervision, education, treatment

services, recreational services, and a variety of special programs; a juvenile prison.

**Juvenile Court Judge** – The court official who conducts the hearings for a case and makes the final decision as to what will happen. The judge listens to both sides of the story and makes sure that the people in the courtroom follow the rules. The judge decides if a person is guilty or not guilty of the charges. If a person is found guilty, the judge will decide what kind of sentence he or she will get and how long the sentence will last.

**Juvenile Record** – The official written file containing a court summary and information about a juvenile.

– L –

**Legal Custody** – A legal status assigned by the court which gives a person or an agency the right to decide where and with whom a juvenile should reside as well as the responsibility to provide shelter, protection, medical care, food, and education for the youth.

**Legal Rights** – Rights provided for and protected by law.

– M –

**Minor** – Another term for “Juvenile”.

**Misdemeanor** – An offense which is less serious than a felony and carries lesser penalties.

– O –

**Offense** – An act committed in violation of law.

**Parole** – The court supervision of a juvenile after release from a juvenile correctional facility. Rules are set and must be followed.

**Petition** – A document filed at court intake alleging that a juvenile is delinquent, a child in need of services or supervision (CHINS), or an abused or neglected child.

**Plea** – A defendant’s formal answer (guilty or not guilty) in court to the charges brought against him or her.

**Probable Cause** – Based on the evidence presented, there is reason to believe that the alleged offense occurred.

Probation – The court supervision of a juvenile found guilty of the charges. Rules are set and must be followed.

Probation Officer – A Department of Juvenile Justice employee who works with juveniles on probation to set rules for their behavior and help them to get services to avoid future legal problems.

Probation Violation – A juvenile’s failure to follow the rules of probation, which can result in the juvenile’s return to juvenile court.

– R –

Runaway – A juvenile who has left his or her parent or guardian’s home without their consent and has not returned within a reasonable period of time.

– S –

Summons – A document requiring a person to appear in court at a specified time to testify.

– T –

Transfer Hearing – A hearing to determine whether a youth’s case should be handled by the juvenile court system or transferred to the circuit court to be tried as an adult. This occurs in some very serious cases.

Truant – A juvenile between the ages of 6 and 17 who has unexcused absences from school.

– W –

Witness – A person who has personal knowledge important to a case and who can be called to court to give the judge this information.

## **PART TWO: The role of the Guardian Ad Litem in the Juvenile Court**

### **About**

Guardian ad litem (GAL) means “guardian for the suit.” A guardian ad litem in Virginia is an attorney appointed by a judge to assist the court in determining the circumstances of a matter before the court. It is the responsibility of the guardian ad litem to provide independent recommendations to the court about the client’s best interests, which can be different from advocating for what the client wants, and to bring balance to the decision-making process. The GAL may conduct interviews and investigations, make reports to the court, and participate in court hearings or mediation sessions.

The Office of the Executive Secretary, Supreme Court of Virginia, maintains lists of attorneys who are qualified guardians ad litem. There are two separate guardian ad litem programs: one for children and one for incapacitated persons. The children’s program qualifies attorneys for appointment as guardians ad litem for children in juvenile and domestic relations district courts and circuit courts. The incapacitated persons program qualifies attorneys for appointment as guardians ad litem for incapacitated persons (adults) pursuant to Chapter 20 of Title 64.2 in guardianship and conservatorship proceedings in the circuit courts.

### **FREQUENTLY ASKED QUESTIONS**

#### **GUARDIANS AD LITEM FOR CHILDREN PROGRAM**

##### **1. What are the basic requirements to become qualified as a guardian *ad litem* for children?**

- Be an active member in good standing of the Virginia State Bar.
- Complete the seven hour required course, “Representation of Children as a Guardian *Ad Litem*,” offered by Virginia CLE. *There are no substitutions for this course.*
- Demonstrate familiarity with the court system and a general background in juvenile law by completing one of the following:

- Participate as an attorney, or as a third-year law student under Part 6, § IV, Para. 15, of the Rules of the Supreme Court of Virginia, in four cases in the juvenile and domestic relations district court involving children, excluding traffic cases; or
- Associate with one qualified guardian *ad litem* in two cases in the juvenile court involving children, excluding traffic cases.
- Demonstrate proficiency in the representation of children by submitting a Nomination Certificate signed by one juvenile court judge before whom you have appeared, or by the qualified guardian *ad litem* whom you have assisted in two cases in the juvenile court.
- Send a letter to the Office of the Executive Secretary of the Supreme Court of Virginia requesting qualification and including the judicial districts in which you would like to accept appointments as a guardian *ad litem*.

## **2. How long do I have to complete the basic requirements for qualification as a guardian *ad litem* for children?**

All initial qualification requirements must be completed within the two-year period immediately prior to the date you request qualification as a guardian *ad litem*.

## **3. What documentation does the Supreme Court of Virginia require for initial qualification as a guardian *ad litem* for children?**

- A **letter** requesting qualification, and which states the judicial districts in which you would like to accept appointments as a guardian *ad litem*.
- **Written certification of your familiarity with the court system and general background in juvenile law** as required by Standard I.B.4.c of the Standards to Govern the Appointment of Guardians *Ad Litem* for Children.
- **Nomination Certificate**
  - If complying with the provision of participating in four cases in the juvenile and domestic relations district court involving children, excluding traffic cases, a **Nomination Certificate**

**signed by one juvenile court judge before whom you appeared.**

- If complying with the provision of assisting one qualified guardian *ad litem* in two cases involving children in the juvenile and domestic relations district court, a **Nomination Certificate signed by the qualified guardian *ad litem* whom you assisted OR a Nomination Certificate signed by a juvenile court judge before whom you appeared.**

**Certification of Attendance form** for the Virginia CLE course, "Representation of Children as a Guardian *Ad Litem*."

#### **4. For what period of time is my initial qualification valid?**

Initial qualification is valid for a period of two years.

#### **5. How do I maintain my qualification as a guardian *ad litem* for children?**

- Complete six hours of approved continuing education every two years on topics related to the representation of children as a guardian *ad litem*.
- Certify attendance using the secure online Guardian Ad Litem Information System (GALIS) by logging in to the Virginia State Bar's Member Portal using your Virginia State Bar ID Number and Password; or
- File a certification of attendance form with the Office of the Executive Secretary of the Supreme Court of Virginia for each approved course.

#### **6. How will I know if a course has been approved for continuing education credit?**

A list of courses approved for continuing education credit for guardians *ad litem* is available online at: [www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html](http://www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html), in the "Continuing Education Courses GALs for Children" link.

If you are seeking information about a course that is not included on the list, please call 804-786-9543. If the course has not previously been submitted for credit approval, you will be asked to submit information



outlined in Standard IV of the Standards to Govern the Appointment of Guardians *Ad Litem* for Children.

**7. May continuing education hours be carried over to the next qualification period?**

No. To remain on the list of qualified guardians *ad litem*, 6 hours of continuing education credit must be completed within your two-year qualification period and reported to the Office of the Executive Secretary of the Supreme Court of Virginia by your qualification end date (i.e., If your qualification period is between January 1, 2022 and December 31, 2023, you must complete 6 hours of continuing education by December 31, 2023.). Failure to do so will result in your name being removed from the list of qualified guardians *ad litem*.

**8. May I take the initial course, "Representation of Children as a Guardian Ad Litem," before I learn the results of my Bar Exam?**

Yes, but you may not complete Standards I.2.a or I.2.b, or request qualification as a guardian *ad litem*, before you are licensed.

**9. May I take the initial course, "Representation of Children as a Guardian Ad Litem," and use it towards the 6-hour continuing education requirement?**

Yes. However, continuing education credit for repeating this initial course is approved only once within a 6-year period. After initial qualification, you may take the course for continuing education credit within your two-year qualification period, and then not again for 6 years. *Thus, this initial course may not be completed every two years to fulfill the biennial continuing education requirement.*

**10. How may I be reinstated if my name is removed from the list of qualified guardians *ad litem*?**

You may be removed from the list of qualified guardians *ad litem* if (i) you submit a written request to be removed, (ii) you fail to meet the biennial continuing education requirement, or (iii) your license to practice law in Virginia is suspended or revoked by the Virginia State Bar. You may again

be included on the list of attorneys eligible for appointment as a guardian *ad litem* by submitting to the Office of the Executive Secretary:

1. Within one year of being removed from the list, certification of attendance indicating completion of the required six hours of approved continuing education and that such continuing education was completed within the past two years.
2. If more than one year passes since removal from the list, certification of attendance indicating completion of seven hours of approved continuing education and that such continuing education was completed within the past two years.
3. If more than five years pass since removal from the list, complete the initial qualification process as outlined in Standard I of the Standards to Govern the Appointment of Guardians *Ad litem* for Children.

## **Standards to Govern the Appointment of Guardians Ad Litem Pursuant to § 16.1-266, Code of Virginia**

### **Introduction**

The Judicial Council of Virginia has adopted standards to govern the appointment of attorneys as guardians ad litem for certain children. This action has been taken to comply with an enactment by the 1994 Session of the General Assembly that these standards for appointment be in effect as of January 1, 1995. For the dates of amendments to these Standards adopted by the Judicial Council of Virginia and their associated effective dates, see the concluding page of this document.

A copy of these standards as adopted by the Judicial Council follows. "Representation of Children as a Guardian Ad Litem," the continuing legal education program which complies with standard B.1 is administered by Virginia CLE. You may call Virginia CLE at 1-800-979-8253 to indicate your interest in attending such a program and to learn about the program schedule.

There are other requirements in these standards of which you should take note. In order to be included on the list of qualified guardians ad litem, which is periodically distributed to the courts, you must file with the Office of the Executive Secretary, Supreme Court of Virginia, a letter and certain certificates as specified in Standard I.B.4. The required certificates will be made available to you at the continuing legal education program referenced above.

The goal of these standards is to foster vigorous, effective, and competent representation of children's interest and welfare. On behalf of the Judicial Council of Virginia, the Office of the Executive Secretary, Supreme Court of Virginia, looks forward to your participation in the training program and to receiving the information necessary to qualify you as a guardian ad litem for children.

## **The Standards**

The Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, hereby sets forth the following standards to govern the appointment of attorneys as guardians ad litem pursuant to § 16.1-266, Code of Virginia.

### **I. Initial Qualification Requirements**

In accordance with the provisions of § 16.1-266.1, to qualify for appointment as guardian ad litem pursuant to § 16.1-266, a person shall:

- A. Be an active member in good standing of the Virginia State Bar.
- B. Within the two-year period immediately prior to the date requesting initial qualification as a guardian ad litem, comply with the following provisions:
  1. Complete the seven-hour MCLE approved continuing legal education program "Representation of Children as a Guardian ad Litem," which encompasses the following topics:
    - a. Overview of the Juvenile and Domestic Relations District Court Law
    - b. Roles, responsibilities and duties of guardian ad litem representation
    - c. Laws governing child abuse and neglect, foster care case review, termination of parental rights and entrustments
    - d. Role of social services agencies in handling abuse and neglect cases
    - e. Developmental needs of children
    - f. Characteristics of abusive and neglectful families and of children who are victims; physical, medical and mental health aspects of child abuse and neglect
    - g. Communication with children; children as witnesses; use of closed circuit television
    - h. Cultural awareness

The applicant attorney completing this program must attend the live course or a video replay of the live course, as offered by Virginia CLE. Certification of attendance at this course shall be submitted to the Office of the Executive Secretary, Supreme Court of Virginia, on the required form in accordance with Standard I.B.4.e hereof.

2. Demonstrate familiarity with the court system and a general background in juvenile law by completion of one of the following:

- a. Participation as an attorney, or as a third-year law student under Part 6, § IV, Para. 15, of the Rules of the Supreme Court of Virginia, in four cases in the juvenile and domestic relations district court involving children, excluding traffic cases; or
- b. Provision of assistance to one qualified guardian ad litem, who is an active member in good standing of the Virginia State Bar, in two cases involving children in the juvenile and domestic relations district court.

The attorney seeking qualification shall provide the case types and approximate time frames of the attorney's participation in the cases referenced, as well as the juvenile and domestic relations district court(s) in which the attorney appeared.

*COMMENT:*

*Standard B.2.a*

*The requirement to "participate" in four cases in the juvenile court either as an attorney or qualified third-year law student may be met by serving either as lead counsel or co-counsel.*

*Standard B.2.b*

*The requirement to "assist" one qualified guardian ad litem in two cases in the juvenile court may be met by the applicant attorney associating with the qualified guardian ad litem who serves as a mentor for those two cases. The purpose of this association is to afford the applicant the opportunity to learn from the qualified guardian ad litem how to effectively handle these cases. In addition, such an association provides the mentor guardian ad litem an opportunity to effectively measure the applicant's progress in handling these cases.*

3. Demonstrate proficiency in the representation of children by submission of a required Nomination Certificate:

(i) From one juvenile and domestic relations district court judge before whom the attorney has appeared in cases listed in B.2.a or B.2.b, or

(ii) From a qualified guardian ad litem whom the applicant has assisted in two cases pursuant to B.2.b.

4. File with the Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Richmond, Virginia, 23219, a letter which:

a. Requests qualification as a guardian ad litem.

b. States the judicial districts in which the attorney wishes to accept appointments as a guardian ad litem.

c. Includes the applicant's written certification of compliance with paragraph B.2.a. or B.2.b. Case information which identifies the parties is not required nor to be provided.

d. If not previously submitted, includes a certificate of nomination as required by paragraph B.3.

e. If not previously submitted, includes the required form certifying attendance at the MCLE continuing legal education program specified in Standard I.B.1.

Upon successful completion of the requirements outlined in Standard I, the Office of the Executive Secretary, Supreme Court of Virginia, will provide the applicant attorney a date of qualification for purposes of completing the biennial continuing education requirements outlined in Standard II. Qualification dates are January 1, April 1, July 1 or October 1 of each year.

The names of applicants who meet these requirements will be included on a list of attorneys qualified as guardians ad litem published online by the Office of the Executive Secretary, Supreme Court of Virginia and distributed electronically to the juvenile and domestic relations district courts of the Commonwealth.

## **II. Continuing Education Requirements**

To maintain good standing as a qualified guardian ad litem, an attorney shall comply with the continuing education requirements set out hereafter.

A. Complete six hours of approved continuing education, biennially, on any topic related to the representation of children as a guardian ad litem. Continuing education credit for repeating the initial program, "Representation of Children as a Guardian Ad Litem" will be approved

once within a six-year period. A maximum of six hours will be approved within a six-year period for programs designed especially for attorneys specializing in adoption.

B. To receive credit for completing the biennial continuing education requirement, submit to the Office of the Executive Secretary, Supreme Court of Virginia, the required Certificate of Attendance form certifying attendance at the required program hours. Electronic submission is preferred, but the certification may be submitted by mail or facsimile.

*COMMENT:*

*Standard II.A*

*The continuing education requirement of six hours every two years may be successfully fulfilled by attendance at a qualified MCLE approved program or any other non-MCLE approved program which assists an attorney in better representing children as a guardian ad litem, including interdisciplinary programs with other professions that also focus on serving children and families.*

*Examples of such programs include: training for Court Appointed Special Advocates (CASA); programs on domestic violence; programs on the Psychiatric Treatment of Minors Act; mental health programs on the effect of abuse, neglect, termination of parental rights or divorce on a child; presentations on accessing school services or understanding school records and programs on special education; and programs on the availability of community resources, such as social services, financial assistance and youth centers.*



### **III. Removal from the List of Qualified Guardians Ad Litem for Children**

A. An attorney shall be removed from the list of qualified guardians ad litem under the following circumstances:

1. Receipt of a written request from the attorney that the attorney's name be removed from the list of qualified guardians ad litem.
2. Failure to complete the biennial continuing education requirements outlined in Standard II above.
3. Suspension or revocation by the Virginia State Bar of the attorney's license to practice law in the Commonwealth. Removal under this circumstance will occur upon the Executive Secretary receiving notice of such license suspension or revocation. If an attorney's name is removed from the list of qualified guardians ad litem because of a license suspension and the attorney would like to again accept appointments as a guardian ad litem, the attorney must contact the Office of the Executive Secretary at the end of the license suspension term, request reinstatement in writing, and complete the continuing education required by Standard III.B.

B. An attorney removed from the list of qualified guardians ad litem pursuant to Standard III.A.1, Standard III.A.2 or Standard III.A.3, as it relates to a license suspension, must submit the following to the Office of the Executive Secretary to again be included on the list of attorneys eligible for appointment as a guardian ad litem in the Commonwealth:

1. Within one year of being removed from the list, certification of attendance indicating the attorney completed the required six hours of approved continuing education and that such continuing education was completed within the past two years.
2. If more than one year passes since removal from the list, certification of attendance indicating the attorney completed seven hours of approved continuing education and that such continuing education was completed within the past two years.

3. If more than five years pass since removal from the list, the attorney shall complete the initial qualification process as outlined in Standard I above.

Upon successful completion of the requirements of Standard III.B.1 or Standard III.B.2, the Office of the Executive Secretary, Supreme Court of Virginia, will provide the attorney a date of qualification for purposes of completing the biennial continuing education requirements outlined in Standard II. Qualification dates are January 1, April 1, July 1 or October 1 of each year.

#### **IV. Extensions of Time**

The Office of the Executive Secretary may grant extensions to the time period within which an attorney must complete the requirements to become qualified as a guardian ad litem for children to attorneys who complete their continuing legal education requirement during a period of declared judicial emergency upon a reasonable request.

#### **V. Approval of Continuing Education Programs for Guardians Ad Litem for Children**

The Office of the Executive Secretary, Supreme Court of Virginia, approves programs for continuing education credit for guardians ad litem. Programs may be submitted by a sponsoring group/organization ("program sponsor") or by a member of the Virginia State Bar. Programs submitted to the Office of the Executive Secretary may or may not carry MCLE credit, which is provided by the Virginia State Bar.

A. To request approval of a program for guardian ad litem continuing education credit, submit to the Office of the Executive Secretary, Supreme Court of Virginia, 100 N. 9th Street, 3rd floor, Richmond, Virginia 23219, the following information:

1. Name of the sponsoring group/organization.
2. Program date(s) and location(s).
3. Detailed program agenda with session times clearly identified.
4. Identification of the program session(s) for which GAL credit is being sought.

5. Presenter biographies.

6. Substantive written materials.

B. Program sponsors should submit the information referenced in Standard IV.A at least ten business days prior to the first scheduled presentation. Programs approved for continuing education credit will receive a Certification of Attendance form for the dates and locations

identified. Copies of this Certification of Attendance should be made available to program participants at the time the program is held.

Continuing education program approval is valid for one year from the date of approval. However, if a previously approved program is to be held on a date different from the date(s) identified in the initial request for continuing education approval, the program sponsor shall notify the Office of the Executive Secretary, Supreme Court of Virginia, of the additional program date(s) and provide a copy of any substantive change in program materials.

C. Members of the Virginia State Bar who wish to request credit approval for an upcoming program that the attorney is planning to attend, should submit the information referenced in Standard IV.A at least ten business days prior to the scheduled presentation, or as soon as possible after the program has been presented. Programs approved for continuing education credit will receive a Certification of Attendance form to be completed by the attorney requesting program approval.

**Time Line and Related Forms  
Juvenile and Domestic Relations District Courts—Child Dependency Cases**

STAGE 1 PRE-DISPOSITION TO DISPOSITION								
COURT EVENT	Abuse or Neglect and At-Risk of Abuse or Neglect  Ex Parte Hearing for: Preliminary Child Protective Order or Emergency Removal Order	Hearing for: Preliminary Child Protective Order (PPO) or Preliminary Removal Order	Adjudication	Disposition	Entrustment Agreement  Disposition	Relief of Custody  Disposition	Child in Need of Services/Supervision, Status Offense, or Delinquency  Disposition (if the above-referenced petition results in the child entering foster care)	Initial Foster Care Review  Disposition
STATUTES	§§ 16.1-253; 16.1-251	§§ 16.1-253; 16.1-252	§§ 16.1-253 F; 16.1-252 G	§ 16.1-278.2	§§ 16.1-277.01; 16.1-278.2	§§ 16.1-277.02; 16.1-278.2; 16.1-278.3	§§ 16.1-278.4, 5, 6, or 8	§ 16.1-281
TIMING	Upon filing of Petition (DC-511).	Within 5 business days: After Issuance of ex parte PPO. After physical removal of the child.	Within 30 days of the preliminary hearing, if no adjudication at time of preliminary hearing.	Within 60 days of preliminary hearing.	Within 45 days (75 days for Order of Publication) of filing of petition to approve an entrustment agreement.	Within 60 days of initial hearing on petition for relief of custody.		At time of disposition on underlying petition, or within 60 days of child's placement into foster care if custody is transferred for 1st time at disposition.
FORMS	DC-511; DC-620; DC-514; DC-526; DC-527	DC-527; DC-528; DC-508	DC-527; DC-561	DC-540; DC-553; DC-532	DC-511; DC-620; DC-514; DC-540; DC-553; DC-534; Entrustment Agreement (DSS Form)	DC-511; DC-620; DC-514; DC-540; DC-553; DC-534	DC-562; DC-620	DC-552; DC-540; DC-553; Foster Care Plan (DSS Form)
REQUIRED STATE AND TITLE IV-E FINDINGS	<ul style="list-style-type: none"> <li>Continued placement in the home would be contrary to the welfare of the child. This finding must be in the first court order placing the child in foster care, even temporarily, or the child's entire stay in foster care will be ineligible for federal financial participation. Language in § 16.1-251 that a "child would be subject to an imminent threat to life or health" satisfies this requirement in federal law.</li> <li>Reasonable efforts to prevent removal. This finding must be obtained by the local agency within 60 days of the child's physical removal from the home.</li> </ul>							
STAGE 2 FOSTER CARE REVIEW								
COURT EVENT	Foster Care Review							
STATUTES	§ 16.1-282							
TIMING	Within 4 months of dispositional hearing at which the initial foster care plan was reviewed.							
FORMS	DC-552; DC-554; DC-620; DC-540; DC-555; Foster Care Plan (DSS Form)							
REQUIRED STATE AND TITLE IV-E FINDINGS	<p>The reasonable efforts finding must correspond with the goal approved in the order.</p> <ul style="list-style-type: none"> <li>If the foster care plan goal is return home: Reasonable efforts to reunite the child with his parents, guardian or other person standing in loco parents to the child.</li> <li>If the foster care plan goal is relative placement, adoption, or permanent foster care: Reasonable efforts to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.</li> <li>If the foster care plan goal is another planned permanent living arrangement (APPLA): Reasonable efforts to place the child in a timely manner in accordance with the foster care plan and to monitor the child's status in another planned permanent living arrangement. <a href="#">OR</a> reasonable efforts to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.</li> </ul>							
STAGE 3 PERMANENCY PLANNING								
COURT EVENT	Initial Permanency Planning If interim plan is approved, comply with provisions of § 16.1-282.1 B.				Termination of Parental Rights If no termination of parental rights at initial permanency planning hearing.	Second Permanency Planning		
STATUTES	§§ 16.1-282.1; 16.1-281 B; 16.1-283				§§ 16.1-283; 16.1-277.01	§ 16.1-282.1		
TIMING	Within 5 months of foster care review, or within 30 days of finding reasonable efforts to reunite are not required. Petition for termination of parental rights may be filed after filing of plan documenting termination of parental rights is in child's best interest.				Upon Filing of petition After filing of plan documenting termination of parental rights is in child's best interest.	Within 6 months of initial permanency planning hearing.		
FORMS	DC-552; DC-556; DC-511; DC-620; DC-540; DC-557; DC-531; Foster Care Plan (DSS Form); If the petition seeks to place the child in permanent foster care, DC-558; Permanent Foster Care Placement Agreement (DSS Form)				DC-511; DC-531; DC-534; Entrustment Agreement (DSS Form)	See initial permanency planning.		
REQUIRED STATE AND TITLE IV-E FINDINGS	<p>The reasonable efforts finding must correspond with the goal approved in the order.</p> <ul style="list-style-type: none"> <li>If the foster care plan goal is return home: Reasonable efforts to reunite the child with his parents, guardian or other person standing in loco parents to the child.</li> <li>If the foster care plan goal is relative placement, adoption, permanent foster care, or another planned permanent living arrangement (APPLA): Reasonable efforts to achieve the permanent goal identified in the foster care plan.</li> </ul> <p>When a child has been in foster care for 15 of the most recent 22 months, federal and state law require that a petition for termination of parental rights be filed <u>and</u> that an exception to filing a petition for termination of parental rights be documented in the child's foster care plan. 42 U.S.C. § 675(5)(E); Va. Code § 63.2-910.2.</p>							
STAGE 4 POST PERMANENCY PLANNING								
COURT EVENT	Review of Foster Care If legal custody remains with public or private agency after a permanent goal is ordered.					Adoption Progress Report Filed until final order of adoption; hearing on motion of a party or the court.		
STATUTES	§§ 16.1-282.1 A1; 16.1-282.2					§§ 16.1-277.01 E; 16.1-277.02 D; 16.1-278.3 E; 16.1-283		
TIMING	Within 6 months of approving APPLA; or within 12 months of a hearing held pursuant to § 16.1-281, § 16.1-282, or § 16.1-282.1 at which an order is entered: terminating parental rights, directing the filing of a petition for termination of parental rights, placing the child in permanent foster care, or directing the board or agency to provide the child who is age 16 or over and for whom the plan is independent living with services to transition from foster care. Adoption Progress Report is reviewed if plan is adoption.					Filed every 6 months from date of final order terminating parental rights.		
FORMS	DC-552; DC-554; DC-620; DC-540; DC-555; Foster Care Plan (DSS Form); Adoption Progress Report (DSS Form)					Adoption Progress Report (DSS Form)		
REQUIRED STATE AND TITLE IV-E FINDINGS	<p>The reasonable efforts finding must correspond with the goal approved in the order.</p> <ul style="list-style-type: none"> <li>If the foster care plan goal is permanent foster care or adoption: Reasonable efforts to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.</li> <li>If the foster care plan goal is another planned permanent living arrangement (APPLA): Reasonable efforts to place the child in a timely manner in accordance with the foster care plan and to monitor the child's status in another planned permanent living arrangement. <a href="#">OR</a> reasonable efforts to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.</li> </ul>							
DISTRICT COURT FORMS	DC-531 ORDER FOR INVOLUNTARY TERMINATION OF RESIDUAL PARENTAL RIGHTS	DC-553 DISPOSITIONAL ORDER FOR UNDERLYING PETITION, FOSTER CARE PLAN	DC-561 ADJUDICATORY ORDER FOR ABUSE OR NEGLECT CASES	DC-562 ORDER FOR CUSTODY TRANSFER TO AGENCY	DC-593 SUPPLEMENTAL SHEET (DC-553, DC-555, and DC-557)	DC-5062 QRTF PLACEMENT SUPPLEMENTAL ORDER (DC-553, DC-555, and DC-557)		
DC-508 ACKNOWLEDGEMENT OF NEXT HEARING DATE	DC-532 CHILD PROTECTIVE ORDER-ABUSE AND NEGLECT	DC-554 PETITION FOR FOSTER CARE REVIEW HEARING	DC-562 ORDER FOR CUSTODY TRANSFER TO AGENCY	DC-593 SUPPLEMENTAL SHEET (DC-553, DC-555, and DC-557)	DC-5062 QRTF PLACEMENT SUPPLEMENTAL ORDER (DC-553, DC-555, and DC-557)			
DC-511 PETITION	DC-534 ORDER FOR VOLUNTARY TERMINATION OF RESIDUAL PARENTAL RIGHTS	DC-555 FOSTER CARE REVIEW ORDER	DC-620 AFFIDAVIT (UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT)	DC-581 NOTICE OF APPEAL-JUVENILE CIVIL CASES	DC-581 NOTICE OF APPEAL-JUVENILE CIVIL CASES			
DC-514 ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM	DC-540 GUARDIAN AD LITEM CERTIFICATION	DC-556 PETITION FOR PERMANENCY PLANNING HEARING	DC-5060 PETITION FOR FOSTER CARE PLACEMENT HEARING — QUALIFIED RESIDENTIAL TREATMENT PROGRAM (QRTP)	CC-1345 NOTICE OF APPEAL FROM TRIAL COURT				
DC-526 EMERGENCY REMOVAL ORDER	DC-545 PRELIMINARY CHILD PROTECTIVE ORDER	DC-557 PERMANENCY PLANNING ORDER	DC-5061 FOSTER CARE PLACEMENT ORDER — QRTP					
DC-527 PRELIMINARY CHILD PROTECTIVE ORDER-ABUSE AND NEGLECT	DC-546 CHILD PROTECTIVE ORDER	DC-558 PERMANENT FOSTER CARE PLACEMENT ORDER						
DC-528 PRELIMINARY REMOVAL ORDER	DC-552 FOSTER CARE PLAN TRANSMITTAL	DC-559 SUPPLEMENT TO ORDER TRANSFERRING CUSTODY					CIP/OES/SCV—September 2021	

## PRACTICE TIPS



## INQUIRE ABOUT...

**INDIAN CHILD WELFARE ACT (25 U.S.C. § 1901, ET SEQ.).** The Indian Child Welfare Act (ICWA) applies if (1) the proceeding is a child custody proceeding as defined in 25 U.S.C. § 1903(1), and (2) the child is an “Indian child.” An “Indian child” is defined as an unmarried person under the age of 18 who is a member of an Indian tribe or who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. Clarify matters regarding a child’s native heritage at the beginning of each case proceeding to ensure that certain provisions of the law, such as notice to a tribe and active efforts to maintain or reunite an Indian child with his/her family, are properly and timely implemented.

**INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN.** When a local department of social services proposes to place a child in foster care outside of Virginia, the Interstate Compact on the Placement of Children (ICPC) requires that the sending state (i.e. Virginia) request permission from the receiving state to make the placement. Permission must be received **before** making the placement. Following this procedure ensures compliance with the placement laws of the receiving state and provides a determination on the appropriateness of the placement.

If an expedited placement decision be appropriate, ICPC Regulation 7 establishes a process for a sending state to request an expedited decision by a receiving state for the placement of a child with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child’s guardian. Regulation 7 provides for the court to enter an Order for an Expedited Placement Decision in specified circumstances.

Additional information about the ICPC is available through the Virginia Department of Social Services online at [dss.virginia.gov](https://dss.virginia.gov) or the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) at [aahsa.org/AAICPC/default.aspx](https://aahsa.org/AAICPC/default.aspx).

**MILITARY SERVICE CONNECTIONS OF PARTIES AND CHILDREN BEFORE THE COURTS.** Virginia has a high concentration of residents who are active duty service members or military veterans. Knowledge of these connections can be critical to ordering effective services and interventions in juvenile and family law cases.



## REMEMBER TO FILE...

**FORM DC-620, AFFIDAVIT (UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT).** This form should accompany all petitions, motions to amend, and motions for show cause filed with the court.

Virginia Code § 20-146.20 requires that in a child custody proceeding, each party, in its first pleading or in an attached affidavit, provide the child’s present address or whereabouts, the places the child has lived during the past five years, and the names and present addresses of the persons with whom the child lived during that period.

**FORM DC-418, AFFIDAVIT-DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT.** This form should accompany all petitions, motions to amend, and motions for show cause filed with the court.

Virginia Code § 8.01-15.2 requires that **before** the court enters a **judgment by default** against a respondent who does not make an appearance, the plaintiff must file an affidavit with the court:

1. Stating whether or not the respondent is in military service and showing the necessary facts to support the affidavit; or
2. Stating that the plaintiff is unable to determine whether or not the respondent is in military service.

To obtain information about the active duty status of military personnel, please visit the Servicemembers Civil Relief Act (SCRA) website at [scra.dmdc.osd.mil/scra/#/home](https://scra.dmdc.osd.mil/scra/#/home).

**FORM DC-40, LIST OF ALLOWANCES.** To receive payment for services and allowable expenses, guardians ad litem (GALs) and parent’s counsel submit to the court an itemized statement of the dates, times and tasks performed representing the child(ren) or parents by using form DC-40, LIST OF ALLOWANCES. The DC-40 is submitted following the completion of each discrete stage of the foster care time line when the court enters an appealable order. The DC-40 should be processed within 30 days of the local court certifying the amount for payment and submitting it to the Office of the Executive Secretary of the Supreme Court of Virginia. The *Court-Appointed Procedures and Guidance Manual*, available at [yaccourts.gov/legal/html](https://yaccourts.gov/legal/html), includes additional information about the payment of GALs.



## NOTE THE FOLLOWING ABOUT...

**APPEALS INVOLVING CHILDREN IN FOSTER CARE.**

Virginia Code § 16.1-242.1 indicates that the juvenile and domestic relations district court retains jurisdiction to hear petitions for foster care review and permanency planning while prior orders are pending appeal before the circuit court, the Virginia Court of Appeals or the Supreme Court of Virginia.

If the appeal is of a termination of parental rights case pursuant to § 16.1-283, the circuit court is to hold a hearing on the merits of the case within 90 days of the perfecting of the appeal. An appeal of the case to the Court of Appeals is to take precedence on the Court’s docket. See § 16.1-296 D.

**APPEALABLE ORDERS.** Appealable orders include:

- DC-532, CHILD PROTECTIVE ORDER-ABUSE AND NEGLECT
- DC-553, DISPOSITIONAL ORDER FOR UNDERLYING PETITION, FOSTER CARE PLAN
- DC-555, FOSTER CARE REVIEW ORDER
- DC-557, PERMANENCY PLANNING ORDER
- DC-531, ORDER FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS
- DC-5061, FOSTER CARE PLACEMENT ORDER, QUALIFIED RESIDENTIAL TREATMENT PROGRAM

**APPOINTMENTS OF GUARDIANS AD LITEM AND PARENT’S COUNSEL.** It is recommended that guardians ad litem (GALs) and parent’s counsel be appointed at the time a child dependency petition is filed. This allows the most time for the GAL and attorney(s) to contact their clients before the preliminary hearing and prepare to represent them in the proceeding. If at any stage a parent chooses to retain counsel, the parent’s court-appointed counsel can submit a DC-40, LIST OF ALLOWANCES, for time expended on the case.

When accepting an appointment as a GAL or parent’s counsel, the attorney should ensure his availability for subsequent hearing dates, particularly those that may be held within the first 60 to 180 days. Relatively accurate estimates of subsequent hearing dates can be made using the time line on the reverse of this document.

Note: Parents should complete district court forms DC-606, FINANCIAL STATEMENT FOR ASSESSMENT OF GUARDIAN AD LITEM COSTS, and DC-333, FINANCIAL STATEMENT-ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES. The former is reviewed by the court to determine responsibility for the GAL’s fee. The latter is reviewed by the court to determine eligibility for court-appointed parents’ counsel.



## SUPPORT QUALITY CASE PROCESSING BY...

**KNOWING THE TIME LINE.** State and federal law require child dependency hearings be held within specified time frames, which are outlined in the time line on the reverse of this document. These time frames are essential to ensuring that permanency is achieved for the child as quickly as possible. Thus, it is important that paperwork be filed with the court and that hearings be scheduled in a timely manner.

When scheduling hearings, note the following:

1. Hearings are to be held **within** the specified time frames. Nothing prohibits the scheduling of a hearing earlier than the time line provides.
2. Disapproval of a foster care plan **does not extend** the date of the next required foster care plan review hearing on the time line (i.e. foster care reviews, initial permanency planning or second permanency planning). If a foster care plan is disapproved:
  - a. A subsequent hearing to review a new foster care plan should be held within 30 days of the hearing at which the foster care plan was disapproved.
  - b. The next event on the time line should be scheduled to occur from the date of the originally scheduled hearing at which the foster care plan was disapproved, not from the date of any subsequent hearing(s) to review and approve the foster care plan.
3. Requests to continue a hearing should only be made and granted when there is an emergency or extraordinary circumstance. To avoid hearings being held outside of the required time frames, schedule them earlier than the time line provides to allow time for a necessary continuance.

**ENSURING THAT REQUIRED STATE AND FEDERAL FINDINGS ARE MADE.** In addition to time frames, state and federal law require that certain findings be made to support a child’s entry into and continued placement in foster care. Not making the proper findings can impact whether the child’s foster care placement is eligible for reimbursement through Title IV-E — the federal funding program that assists states with providing safe and stable out-of-home care to children in foster care pending permanent placement (such as returning the child home, placing the child with a relative, or adoption). The time line on the reverse of this document provides the findings necessary at each stage of the child dependency case process.

In 2018, the Family First Prevention Services Act (Public Law 115-123) expanded the availability of federal Title IV-E funds

to pay for certain services to prevent placements of children in foster care and restricted federal financial participation for children in foster care who are placed in congregate/group home settings. Congregate/group home placements eligible for Title IV-E reimbursement are:

- Settings for teen moms receiving prenatal, postpartum, or parenting supports
- Supervised setting for youth 18 or older (Fostering Futures)
- “High quality residential services” for youth who are victims of human trafficking
- Juvenile justice
- Qualified Residential Treatment Programs (Q RTP) (defined in Va. Code § 16.1-228)

Court orders must be entered timely, accurately, and completely. For purposes of compliance with federal law, including funding, timeliness depends on the date the order is signed, not the date of the hearing.

It is important to review court orders to ensure that the proper findings have been made. Nunc pro tunc orders will not resolve problems with timeliness or documentation.

**USING THE DISTRICT COURT FORMS.** It is recommended that only district court forms designed for use in child dependency proceedings be completed in these matters. These orders contain the language necessary to ensure that required state and federal findings are made.

These forms are available to the court through the Juvenile Case Management System (JCMS).

Attorneys may access these forms online through the Members Area of the Virginia State Bar’s website ([vsb.org](https://vsb.org)). Forms provided on this site are updated on a regular basis, can be filed out online, and may be printed for submission to the court.

**REVIEWING COURT DOCUMENTATION FOR ACCURACY.** Documents filed with or submitted for entry by the court should be reviewed for accuracy. For example, always assure that the child’s name, date of birth, and other information such as the court case number, are properly completed.



# Mentoring Guidelines for Guardians Ad Litem

## Preparing Attorneys to Become Qualified for Appointment

### Introduction

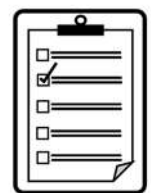
The STANDARDS TO GOVERN THE APPOINTMENT OF GUARDIANS AD LITEM FOR CHILDREN PURSUANT TO § 16.1-266, CODE OF VIRGINIA establish that attorneys who seek to become qualified as a guardian ad litem must, among other requirements, “demonstrate familiarity with the court system and a general background in juvenile law.” To fulfill this requirement under Standard I.B.2.b., a prospective guardian ad litem may provide assistance to a qualified guardian ad litem in two cases involving children in the juvenile and domestic relations district court. By assisting a qualified guardian ad litem who has agreed to serve as a mentor, the prospective guardian ad litem has an opportunity to learn how to effectively handle cases in this role. It is recommended that mentors will have served as qualified guardians ad litem for children for at least five years.

These guidelines provide a framework for the mentoring process by setting expectations for what will be covered and what the attorney will learn assisting a qualified guardian ad litem in cases involving children. The guidelines focus on custody, visitation, and child dependency cases (e.g., abuse or neglect, entrustment, foster care, termination of parental rights), but may be adapted to other case types approved by the court. Under the standard, the attorney seeking qualification “associates” with a qualified guardian ad litem. A minimum six-month period of association is recommended to thoroughly cover the guidelines.

### Prerequisites for Prospective Guardian Ad Litem

As a foundation for providing assistance to a guardian ad litem in cases, the attorney is encouraged to complete the initial guardian ad litem qualification course, *Representation of Children as a Guardian Ad Litem*.

A qualified guardian ad litem may be identified from the Directory of Qualified GALs for Children available at [www.vacourts.gov](http://www.vacourts.gov). The juvenile and domestic relations district court clerk may have a list of experienced guardians ad litem who are regularly appointed to represent children in that court. Local bar associations may also maintain a list of members who are qualified and willing to serve as mentors for prospective guardians ad litem.



### Mentoring Guidelines

To gain familiarity with the court system and a general background in juvenile law, an attorney may provide assistance to a qualified guardian ad litem in two cases. These guidelines offer a suggested framework for this practical component of guardian ad litem education by outlining points of discussion, preparation and experience in custody, visitation, and child dependency cases (e.g., abuse or neglect, entrustment, foster care, termination of parental rights). Note that the items outlined may not be directly applicable in the two specific cases, but may be covered by examples from the mentor’s experience serving as a qualified guardian ad litem for children.



## Initiation of Mentorship

For the qualified guardian ad litem: Secure permission from counsel of record and self-represented parties for the attorney to be present and involved in the case.

*Note: The court appointed guardian ad litem in a case represents the child and agrees to help prepare an attorney to become qualified by mentoring; the attorney seeking qualification learns by providing assistance to the guardian ad litem but does not represent the child.*

## Recommendations by Case Type

### Custody & Visitation Cases



#### I. Attend...

- Settlement conferences.
- The trial (all hearings).
- Meetings with the child. These meetings should be separate from the parents and include advising the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the guardian ad litem, the court process and the possible consequences of the legal action.
- Meetings with the parties, within ethical bounds. If appropriate, hold meetings with each parent and the child(ren) together and complete at least one home visit with each party.
- Meetings with at least one counsel for the parties. Meetings may be in-person or by conference call. At least one meeting should include disclosure or discussion of the recommendations of the qualified guardian ad litem.
- Meetings with the child's teacher. These meetings may be in-person or by conference call.
- Witness interviews. If it is not possible for the prospective guardian ad litem to attend witness interviews, review a list of witnesses that need to be interviewed or subpoenaed, and why.



#### II. Review...

- School records.
- Medical records.
- Local child welfare agency (e.g., Department of Social Services, Department of Human Services, Department of Family Services) records.
- The report of the Court Appointed Special Advocate (CASA).
- Police reports.
- The questionnaire sent out by the guardian ad litem and the responses received.
- Parental capacity evaluations.
- Counselor's records.



#### III. Discuss...

- The different standards for parent v. parent custody and visitation, and third party custody and visitation.



## Child Dependency Cases



### I. Attend...

- The following hearings:
  1. A preliminary (5-day) hearing.
  2. An adjudicatory hearing.
  3. A disposition hearing.
  4. A foster care review hearing, a permanency planning hearing, or a termination of parental rights hearing.

*Note: Because the above-referenced hearings take place over a course of months, the hearings attended by the prospective guardian ad litem do not need to relate to the same case.*

- Meetings with the child. These meetings should be separate from the parties and interested persons and include advising the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the guardian ad litem, the court process and the possible consequences of the legal action. If at all possible, meetings should take place at the child's foster home or residential placement.
- Meetings with the local child welfare agency (e.g., Department of Social Services, Department of Human Services, Department of Family Services) worker assigned to the child's case.
- Meetings with the parties, within ethical bounds, and their counsel.
- Meetings with the child's foster parent(s).
- Meetings with the Court Appointed Special Advocate (CASA).

*Note: The meetings referenced above may be in-person or by conference call.*
- Witness interviews. If it is not possible for the prospective guardian ad litem to attend witness interviews, review a list of witnesses that need to be interviewed or subpoenaed, and why.
- A family partnership meeting or team decision making meeting.
- A supervised visit.



### II. Review...

- Child dependency court orders (e.g., DC-526, EMERGENCY REMOVAL ORDER, DC-528, PRELIMINARY REMOVAL ORDER, DC-561, ADJUDICATORY ORDER FOR ABUSE OR NEGLECT CASES, DC-553, DISPOSITIONAL ORDER FOR UNDERLYING PETITION, FOSTER CARE PLAN, DC-555, FOSTER CARE REVIEW ORDER, DC-557, PERMANENCY PLANNING ORDER, and DC-531, INVOLUNTARY TERMINATION OF PARENTAL RIGHTS ORDER).
- Local child welfare agency (e.g., Department of Social Services, Department of Human Services, Department of Family Services) records.
- School records.
- The child's medical records. Review any medical conditions the child has been diagnosed with and the medications the child is taking.
- The parties' medical records. These records may be available to the guardian ad litem through releases, or provided by counsel or the parties.
- Counselor's records.
- Court records.

- Police reports.
- The report of the CASA.
- Entrustment agreements.



**Discuss...**

- Prior to each hearing referenced above, review with the prospective guardian ad litem the purpose of the hearing and possible outcomes.

**Custody, Visitation, and Child Dependency Cases**



**Discuss...**

- The manner in which guardians ad litem receive appointments, how paperwork is disseminated, and who to call when questions arise.
- The guardian ad litem’s recommendations, the process by which the recommendations were reached (e.g., relevant legal and factual issues considered), and the manner in which recommendations may be communicated to the court.
- Billing requirements, including proper completion of the DC-40, LIST OF ALLOWANCES, and billing detail.
- Guardian ad litem travel, including permissions required by the court and obtaining guidance from the court related to billing and reimbursement of expenses.
- Discovery. For circuit court proceedings, review depositions or discovery requests.
- Witness subpoenas and subpoenas duces tecum.

**Conclusion of Mentorship**

For either participant: Arrange a brief meeting with the clerks of the courts in which the attorney intends to practice. The clerk in each locality is a valuable source of information about local procedures, services, and the court culture. Written materials to support practice may be available. Open communication with guardians ad litem is preferred and encouraged by most clerks, who sometimes receive communications and concerns from parties for the attention of the guardian ad litem in advance of court hearings.

For either participant: Introduce the prospective guardian ad litem to the judge or judges of the courts in which the attorney intends to practice.

For the qualified guardian ad litem: Upon satisfactory demonstration of familiarity with the court system and a general background in juvenile law by the attorney who has provided assistance in the cases, use the NOMINATION FORM - QUALIFIED GUARDIAN AD LITEM to indicate that the requirements of the standard have been met and whether these guidelines were followed.



For the prospective guardian ad litem: Return case specific documents or notes to the guardian ad litem. You may retain notes on the role and practices of a guardian ad litem for future reference.

For the prospective guardian ad litem: Submit the completed, signed nomination form to the Office of the Executive Secretary, Supreme Court of Virginia. Additional requirements for initial qualification are listed in the STANDARDS TO GOVERN THE APPOINTMENT OF GUARDIANS AD LITEM FOR CHILDREN PURSUANT TO § 16.1-266 available on the Virginia Judicial System’s [Guardian Ad Litem for Children](#) page.

# Advocacy in Motion

A GUIDE TO IMPLEMENTING THE  
*Standards to Govern the Performance  
of Guardians Ad Litem for Children*



COURT IMPROVEMENT PROGRAM  
Office of the Executive Secretary  
Supreme Court of Virginia



# Advocacy in Motion

A GUIDE TO IMPLEMENTING THE  
*Standards to Govern the Performance  
of Guardians Ad Litem for Children*

## COURT IMPROVEMENT PROGRAM

Office of the Executive Secretary  
Supreme Court of Virginia

100 N. 9th Street, 3rd Floor  
Richmond, VA 23219  
804.786.6455  
[www.vacourts.gov](http://www.vacourts.gov)

## KARL R. HADE

Executive Secretary

## SANDRA L. KARISON

Director  
Court Improvement Program

## LORI A. BATTIN

Editor  
Court Improvement Program

This Guide was prepared under a grant from the U.S. Department of Health and Human Services (HHS). The practice tips provided herein were developed to facilitate implementation of the *Standards to Govern the Performance of Guardians Ad Litem for Children* and have not been reviewed or approved by the Supreme Court of Virginia or HHS. This information is in the public domain. Readers may copy portions of the text. Please credit the source of any copied text to the Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia.

November 2018



## Acknowledgements

The Court Improvement Program would like to thank the following individuals for their review of and contributions to this Guide.

Hon. Deborah V. Bryan, Judge, Virginia Beach J&DR District Court

Hon. Stephen W. Rideout, Judge (ret.), Alexandria J&DR District Court

Hon. Frank W. Somerville, Judge, Culpeper J&DR District Court

Hon. Thomas P. Sotelo, Judge, Fairfax J&DR District Court

Leslie A.T. Haley, Esq., ParkHaley L.L.C. (formerly Assistant Ethics Counsel, Virginia State Bar)

Design by the  
Office of Graphic Communications  
Virginia Department of General Services



“The role and responsibility of the GAL is to represent, as an attorney, the child’s best interests before the court. The GAL is a full and active participant in the proceedings who independently investigates, assesses and advocates for the child’s best interests.”

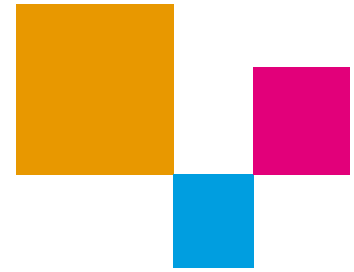
– Introductory Comment, *Standards to Govern the Performance of Guardians Ad Litem for Children*



## Table of Contents

Purpose.....	6
Appointment of Guardians <i>Ad Litem</i> .....	7
Duration of Guardian <i>Ad Litem</i> Appointment .....	8
Duties and Authority of Guardians <i>Ad Litem</i> .....	8
The Standards to Govern the Performance of Guardians <i>Ad Litem</i> for Children	
About the <i>Performance Standards</i> .....	10
Introductory Comment .....	10
Standard A – Meet face-to-face and interview the child .....	14
Standard B – Conduct an independent investigation in order to ascertain the facts of the case .....	18
Standard C – Advise the child, in terms the child can understand, of the nature of all proceedings, the child’s rights, the role and responsibilities of the GAL, the court process and the possible consequences of the legal action .....	22
Standard D – Participate, as appropriate, in pre-trial conferences, mediation and negotiations .....	24
Standard E – Ensure the child’s attendance at all proceedings where the child’s attendance would be appropriate and/or mandated .....	26
Standard F – Appear in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child’s interests .....	28
Standard G – Prepare the child to testify, when necessary and appropriate, in accord with the child’s interest and welfare.....	32





Standard H – Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation .....	34
Standard I – Communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence.....	36
Standard J – File appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case.....	38
Standard K – Advise the child, in terms the child can understand, of the court’s decision and its consequences for the child and others in the child’s life .....	40
Ethical Considerations for Attorneys Serving as Guardians <i>Ad Litem</i> .....	42
Court of Appeals of Virginia Rulings Related to Guardian <i>Ad Litem</i> Representation .....	48
Requalification Requirements for Guardians <i>Ad Litem</i> .....	50
Continuing Education Courses for Guardians <i>Ad Litem</i> .....	52
Compensation of Guardians <i>Ad Litem</i> .....	52
Compensation of Experts.....	53
On-Line Resources for Guardians <i>Ad Litem</i> .....	54
District Court Form DC-540, GUARDIAN <i>AD LITEM</i> DISCLOSURE.....	56
District Court Form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN <i>AD LITEM</i> .....	58
Endnote .....	60



## Purpose

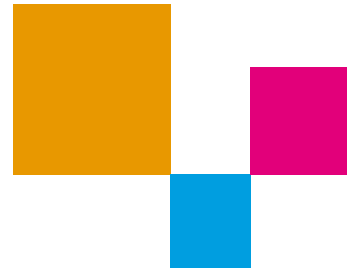
The *Standards to Govern the Performance of Guardians Ad Litem for Children* (“*Performance Standards*”) adopted by the Judicial Council of Virginia are designed to address case types in which the trial courts appoint guardians *ad litem* for children (GAL), and to provide for a comprehensive approach to best practices for child representation. The purpose of this Guide is to present attorneys serving as a GAL with practice tips to assist them with keeping advocacy in motion. The effective and efficient implementation of the *Performance Standards* helps ensure that the best interests of the child are appropriately represented. The practice tips are not required procedures for GALs.

In addition to the practice tips provided, this Guide includes ethical considerations attorneys should be aware of when serving as a GAL. It also provides a description of when a GAL should or may be appointed by the juvenile and domestic relations district court or circuit court; the duration of the GAL’s appointment; the duties and authority of the GAL as provided in Rule 8:6 of the *Rules of the Supreme Court of Virginia*, the DISTRICT COURT FORM DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, and the selected judicial opinion, *Stanley v. Fairfax County Department of Social Services*. Information on how attorneys maintain their GAL qualification, as well as information about GAL compensation and the compensation of experts, is also included.

Finally, in an effort to assist GALs with reporting and courts with evaluating guardian ad litem compliance with the *Performance Standards*, district court form DC-540, GUARDIAN AD LITEM DISCLOSURE, has been developed to facilitate review and any adjustment of the cost of guardian ad litem services. (See § 16.1-267.) The use of this form is left to the

discretion of the J&DR district court. It is recommended that GALs contact the courts in which they serve and inquire about any requirement to use this form for reporting compliance with the *Performance Standards*.





## Appointment of Guardians *Ad Litem*

The appointment of a guardian *ad litem* (GAL) by a juvenile and domestic relations district court is mandatory in certain cases and permissive in others. Virginia Code § 16.1-266 provides that a juvenile and domestic relations district court shall appoint a GAL in any case involving a child who is:

- alleged to be abused or neglected.
- the subject of an entrustment agreement.
- the subject of a petition seeking termination of residual parental rights.
- the subject of a proceeding where the parent(s) seeks to be relieved of the child's care or custody.

A juvenile and domestic relations district court shall also appoint a GAL in cases involving a child who is:

- the subject of a foster care plan review or a hearing to review the child's status in foster care. § 16.1-281.
- seeking emancipation. § 16.1-332.
- the subject of a proceeding by parents seeking to commit an objecting minor, 14 years of age or older, to a psychiatric facility. § 16.1-339.
- the subject of a petition for involuntary commitment. § 16.1-341.

The court may appoint a GAL in other cases, which in the discretion of the court require a GAL (§ 16.1-266). These include certain custody cases where parents or persons claiming a right to custody are represented by counsel (§ 16.1-266), as well as those cases in which a petition is filed by a juvenile seeking judicial authorization for a physician to perform an abortion (§ 16.1-241).

The circuit court may appoint a GAL for a child in a custody, visitation or support case incident to divorce proceedings. See *Verrocchio v. Verrocchio*, 16 Va. App. 314, 429 S.E. 2d 482 (1993). The circuit court is authorized by § 16.1-266 to appoint a GAL in appeals of cases from the juvenile court (§ 16.1-296 I).



## Duration of Guardian Ad Litem Appointment

Virginia Code § 16.1-268 provides that the attorney appointed as a GAL for a child “shall represent the child...at any such hearing and at all other stages of the proceeding unless relieved or replaced in the manner provided by law.” Standard J of the *Performance Standards* contemplates the GAL continuing representation of the child through the conclusion of any appeal. This is supported through amendments to the Rules of the Supreme Court of Virginia, which provide for GAL participation in the appellate process. (See Rules 5A:1, 5A:19, 5A:24 and 5A:28.) Please note that upon learning of an appeal to the circuit court, it is the responsibility of the attorney appointed to serve as the GAL in the juvenile court to seek a new appointment as the GAL in the matter appealed to the circuit court. Similarly, reappointment as a GAL should be sought in any appeal to the Court of Appeals of Virginia or the Supreme Court of Virginia.

## Duties and Authority of Guardians Ad Litem

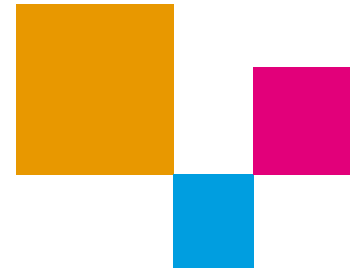
In addition to the *Performance Standards*, the following sources give rise to the duties and authority of the GAL.

- Virginia Supreme Court Rule 8:6 - The Roles of Counsel and of Guardians Ad Litem When Representing Children

Rule 8:6 provides that “When appointed for a child, the guardian ad litem shall **vigorously represent the child, fully protecting the child’s interest and welfare**. The guardian ad litem shall advise the court of the wishes of the child

in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child’s interest and welfare.” [Emphasis added.]





- DISTRICT COURT FORM DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

This Order provides that the GAL is appointed “to protect and represent the interests of [the child] in connection with all proceedings involved in the matter[,]” and orders that the GAL “perform the duties and have access to the parties and documents specified on the reverse and incorporated by referenced into [the] order.” (See page 56 for a full copy of the Order.)

Virginia State Bar Legal Ethics Opinion 1729 (1999) addresses those duties incorporated by reference as follows:

1. Represent the child in accordance with Rule 8:6 of the Rules of the Supreme Court of Virginia.
2. Advise the court relative to the following: (a) the results of the guardian ad litem investigation of the case; (b) the guardian ad litem recommendation as to any testing necessary to make an effective disposition of the case; (c) the guardian ad litem recommendation as to the placement of the child and disposition of the case; (d) the results of the guardian ad litem monitoring of the child’s welfare and of the parties’ compliance with the court’s orders; (e) the guardian ad litem recommendation as to the services to be made available to the child and family or household members.

The Order also authorizes the GAL “to appear at the Family Assessment and Planning Team and at panel review hearings conducted by the local department of social services pursuant to § 63.2-907.”

- Judicial Opinion

*Stanley v. Fairfax County Department of Social Services*, 242 Va. 60, 62, 405 S.E.2d 621 (1991). Provides that a GAL can file “affirmative pleadings necessary to protect the ward’s interest.”

## STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN

Adopted June 23, 2003<sup>1</sup>

These standards apply to all attorneys serving as guardians ad litem for children in child protection<sup>2</sup>, custody and visitation, juvenile delinquency, child in need of supervision, child in need of services, status offense and other appropriate cases, as determined by the court, in juvenile and domestic relations district courts, circuit courts, the Court of Appeals and the Supreme Court of Virginia. These standards augment the policies governing the qualification of attorneys as guardians ad litem.

In fulfilling the duties of a guardian ad litem (GAL), an attorney shall:

- A. meet face-to-face and interview the child,
- B. conduct an independent investigation in order to ascertain the facts of the case,
- C. advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the GAL, the court process and the possible consequences of the legal action,
- D. participate, as appropriate, in pre-trial conferences, mediation and negotiations,
- E. ensure the child's attendance at all proceedings where the child's attendance would be appropriate and/or mandated,
- F. appear in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests,



---

<sup>1</sup> The STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN adopted by the Judicial Council were reviewed by the Supreme Court of Virginia on 7/7/2003 and became effective 9/1/2003. On 5/8/2018, the Judicial Council approved the addition of an unannotated version of the STANDARDS rendered as one sentence, and two paragraphs in the Commentary to clarify the functional distinction between “shall” and “should.”

<sup>2</sup> “Child protection cases” includes cases where a public or private child welfare agency is involved and concern children who are the subject of any of the following petitions: child abuse or neglect; child at-risk for abuse or neglect; approval of an entrustment agreement or for relief of custody; foster care review; permanency planning and termination of parental rights.



- G. prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare,
- H. provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation,
- I. communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence,
- J. file appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case, and
- K. advise the child in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.

## Commentary on STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN

INTRODUCTORY COMMENT: Many of the competencies required to represent children are the same as those required for many other types of litigation. There are skills, abilities and actions expected of attorneys in all cases such as conducting interviews, framing and evaluating pleadings, engaging in discovery techniques, thoroughly preparing for trial, and negotiating on behalf of a client. These skills are of equal importance to other types of civil cases such as labor, tort, contract or family law. The need for practices such as comprehensive client interviews is present in every case. Likewise, attorneys involved in any form of litigation must make choices and determine strategic options. For example, the need to interview non-parties depends on the nature of the case and the litigator's goal. Hence, qualifying phrases like "as appropriate" or "in so far as possible" are found in several standards and commentaries.

Representing children, however, is also different from other forms of litigation. The importance of the dispositional process and the potential for court proceedings to affect the very nature of a family provide the basis for these distinctions. The long-term consequences to the child client make the role of a guardian ad litem (GAL) as crucial at the dispositional stage as at any other phase of the case. These consequences demand full attention to the formulation and articulation of well-supported arguments and appropriate recommendations, as well as critical evaluation of plans proposed by others.



The GAL acts as an attorney and not a witness, which means that he or she should not be cross-examined and, more importantly, should not testify. The GAL should rely primarily on opening statements, presentation of evidence and closing arguments to present the salient information the GAL feels the court needs to make its decisions.

The implicit set of checks and balances operative in non-juvenile cases is generally not likely to work for children. In a civil action involving adults, the successful party knows when a judgment is paid or a court order is implemented. In proceedings involving children this may not be so; the child may be too young to understand or monitor orders, or the legal proceedings may be too complex for the child to understand. Thus, these standards incorporate provisions regarding communication with the child, the implementation of orders and appeals.

Attorneys who serve as GALs are subject to the Rules of Professional Conduct promulgated by the Virginia State Bar as they would be in any other case, except when the special duties of a GAL conflict with such rules. For example, an attorney would follow the general conflict rule (1.7) to determine if there would be a possible conflict of interest if the attorney served as GAL. But unlike the Rules of Professional Conduct as they apply to confidentiality, there may be times when attorneys serving as a GAL must, in furtherance of their role as GAL, disclose information provided by the child to the court. A GAL appointed to represent siblings should be alert to potential conflicts and, when appropriate, request that the court appoint a separate GAL for each child.





The role and responsibility of the GAL is to represent, as an attorney, the child's best interests before the court. The GAL is a full and active participant in the proceedings who independently investigates, assesses and advocates for the child's best interests. Decision-making power resides with the court.

“Shall” is used in the context of a broader, more fundamental, truly binding professional obligation. For example, Performance Standard F provides: “In fulfilling the duties of a [GAL], an attorney shall . . . Appear in Court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.” (Adopted 5/8/2018)

In contrast, “should” typically points to obligations which are expected and not merely aspirational, but could be an obligation which might not apply in all instances or might simply be a recommended path to the satisfaction of a “shall.” For example, as a component of meeting Performance Standard F, “The GAL should prepare, present and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary.” “Should” often functions in the comments as an explanation of how to fulfill mandates. (Adopted 5/8/2018)

## Standards Governing Performance

In fulfilling the duties of a guardian ad litem (GAL), an attorney shall:



## A. Meet face-to-face and interview the child.

**COMMENT:** The first duty of the GAL is to establish a relationship with the child client, as an attorney would with any client. This interview should be conducted face-to-face at a time and place that allows the GAL to observe the child and ascertain: the child's wishes, the safety and adequacy of the child's current placement, and the need for further testing, evaluation or interim judicial relief. Such interviews are best conducted on a date prior to the first court appearance and at a location other than the courthouse. It is important to meet with the child in a private setting, such as the GAL's office, the child's home, school or placement, away from the litigants so that the child can talk openly.

There should be sufficient time between the interview and court appearances for the GAL to fully analyze the information gleaned, take appropriate actions and formulate meaningful arguments and recommendations.

The content and direction of the interview should take into account the child's age, maturity and potential stress created by the circumstances of the case and prior interviews, especially in cases involving allegations of sexual or other abuse. In such cases, GALs should rely upon videotapes of forensic interviews or attend interviews of the child conducted by trained experts rather than conducting their own independent investigation and interviewing the child about the facts of their alleged victimization.

As appropriate, children should be encouraged to articulate their concerns and views. In custody and visitation cases, care should be taken so that the child never feels compelled to state a preference or choose between parents or placements.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the GAL should exercise caution when talking to the child about the circumstances of the offense and advise the child about the limitations on confidentiality that may apply.

Young children present a challenge, but the age and verbal ability of the child do not abrogate the responsibility to meet face-to-face with the child. In meetings with young children, and with children with limited language abilities or those with disabilities, the GAL will rely much more heavily on observation. Conducting such meetings at the child's home or placement allows the GAL to observe the surroundings and the child's interactions with others, as well as to interview the child's caretaker.

If the child expresses wishes that are contrary to the GAL's assessment of the child's interests and welfare, the GAL is obligated to inform the court of these wishes. If appropriate, the GAL should request that an attorney be appointed to serve as counsel for the child. If the child is uncooperative or appears to have been influenced by a parent or custodian, the GAL should inform the court of these circumstances.

- Prior to interviewing the child, speak with professionals (e.g., teacher(s) or other school officials, school guidance counselor, daycare provider(s), doctors, mental health or other health professional(s)), as appropriate, who have worked with the child. This provides the opportunity to learn about the personality and presentation of the child and any emotional, mental or physical limitations that might impact the interview process. If necessary, ask those professionals to assist with the interview.
- For younger children, be willing to get down on their level and build a rapport with them. Pose questions in a non-threatening manner, using concrete terminology and focused, open-ended questions that will allow the child to tell his/her story. For example, it may be appropriate for the GAL to:
  - Keep in his/her office, a basket of toys, drawing/coloring paper, coloring pens/pencils, or games to use with the child.
  - Keep in his/her office, child-appropriate drinks and foods (e.g., animal crackers, juice boxes). (Note: Before giving food to a child, always seek permission of the parent/caretaker.)
  - Create an area in his/her office that provides space to get down on the floor with the child to play and talk. It may be helpful for the GAL to avoid uncomfortable environments for the child, which may prevent open communication (e.g., the hallway at the courthouse), as well as barriers between himself/herself and the child (e.g., a desk).
  - Ask questions that begin with who, what, where, when, why, and how. Avoid suggesting answers in questions. As the attention span of younger children is less than older children, avoid long interviews. Have multiple meetings with the child of smaller duration in multiple settings (e.g., the GAL's office, the child's school, the child's therapist's office, the child's home).
  - Reaffirm to the child where the parent/caretaker will be waiting when taking the younger child to the interview room.
  - Orient the young child to the office environment by showing the young child and parent/caretaker around and, where appropriate, making introductions. This may help the child feel more comfortable.

- For older children, be tolerant of pauses and silences. A child may sometimes come to a complete stop in narration just before expressing deep feelings or revealing important facts. Consider communicating to the older child that he/she will not be required to hand over his/her “loyalty card” for a parent/caretaker.
- Be willing to allow questions to go unanswered. Do not force the older child to answer. Likewise, because the child “said so” does not necessarily make it so. Similar to the younger child, use open-ended questions that will require the child to give particularized facts that can be investigated and validated by collateral sources. It may also be appropriate for the GAL to:
  - Meet with the child in his/her office, the child’s school, the child’s therapist’s office, or the community (e.g., with the parent’s/caretaker’s permission, take the child to eat at a local restaurant).
  - Advise the older child of when the child and GAL will meet again. If any representations are made to the child, follow-through. If it is necessary to miss a meeting, let the child know beforehand. Doing so will build trust.
  - Avoid the appearance of drawing a judgment based upon an older child’s answer. Listen as opposed to speaking. Be genuine.
- Be aware of any speech, cognitive or emotional limitations/ challenges that may limit the child’s ability to communicate and, when necessary, speak in simple sentences, even if the child is a teen.
- Never forego the interview process, even if a child is unable to communicate verbally. Conduct the meeting at the child’s home, other placement, daycare facility, therapist’s office, or in the community to observe the child’s surroundings and interaction with others. As previously suggested, ask professionals to assist with the interview to ensure a proper determination of the child’s wishes and the child’s best interests.
- Interview the child at various stages of the court process, not only prior to court appearances. This will provide an opportunity, as indicated in Standard C, to monitor the child’s welfare and the parties’ compliance with court orders.
- Follow the requirements provided by Standard C and Standard K when communicating with the child.



“Young children present a challenge, but the age and verbal ability of the child do not abrogate the responsibility to meet face-to-face with the child. In meetings with young children, and with children with limited language abilities or those with disabilities, the GAL will rely much more heavily on observation. Conducting such meetings at the child’s home or placement allows the GAL to observe the surroundings and the child’s interactions with others, as well as to interview the child’s caretaker.”

– Comment, Standard A





## B. Conduct an independent investigation in order to ascertain the facts of the case.

**COMMENT:** The GAL shall review any and all relevant records, which may include court, social service, medical, mental health, and school records. The GAL should attach a copy of the Supreme Court of Virginia's Form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, to any written request for records since it delineates the statutory authority for access to records.

The GAL shall interview the parties to the dispute and any other persons with relevant knowledge of the child and the facts that gave rise to the allegations. Such other persons would include, for example, the child's parents, current caretaker including foster parents, an assigned Court-Appointed Special Advocate (CASA) worker, social worker, child care provider, clergy, neighbors, relatives, school personnel, and health and mental health providers. When the child is young, there is a greater need to seek independent sources of information and obtain verification of salient facts. Such interviews are best conducted on a date prior to the court appearances and at a location other than the courthouse.

GALs should communicate their role and responsibilities clearly to the parents and/or other party's attorneys including the GAL's legal status in the proceeding and responsibility to participate fully to protect the child's interests and express the child's wishes.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the GAL should contact the child's defense attorney.

There should be sufficient time between the interview and court appearances for the GAL to fully analyze the information gleaned, take appropriate actions such as issuing subpoenas, filing motions for temporary or protective relief or appointment of an independent expert to evaluate the child, and formulate a meaningful strategy.

If the home environment is at issue, the GAL should visit the child's home and any proposed alternative placement.

GALs should independently evaluate all allegations of child abuse or neglect, or of risk to the child's safety or welfare, including but not limited to physical or mental abuse, sexual abuse, lack of supervision, educational neglect, and exposure of the child to domestic violence or substance abuse, regardless of whether such abuse or neglect or risk is identified in the parties' pleadings.



- Consider developing processes, procedures, and protocols that evidence neutrality and that will be employed in each and every case upon appointment. Be open-minded and willing to adapt these processes, procedures and protocols to the needs of a particular case. For example:
  - Create a form introductory letter that may be sent to all parties involved in the case. Include contact information, a description of the GAL's role in the process, and a request that each party be in contact with the GAL to schedule a meeting. It may also be helpful to include a copy of district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, received from the court.
  - If a party is represented by counsel, contact the attorney and determine the type of access that will be allowed to his/her client (e.g., open-ended communication without a need to contact counsel, communication with counsel present, etc.).
  - Create a tickler system for sending follow-up correspondence to individuals who do not make the requested contact.
  - In the initial meeting with the parties, explain what the role of the GAL is and is not, and the processes that will be employed to perform that role.
- Review the court file for the reason(s) a petition was filed with the court, and to determine if previous petitions involving the child client have been filed and whether any adjudications have been made involving the child, any siblings, or any of the parties to the case. The intake summary/statement may contain the identity of witnesses or sources of documentary evidence.
- As part of the independent investigation, review, at a minimum, the following:
  - Initial report of abuse.
  - Initial intake report.
  - Reports by agencies mandated to investigate to gather information.
  - Agency follow-up reports.
  - Police reports.
  - Medical, psychological and/or psychiatric evaluations and home studies.
  - Central registry records of founded child abuse and neglect reports.
  - Photographs, x-rays, and other medical information.
  - School records (including attendance or disciplinary records).

- Present a copy or certified copy of district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, when requesting records from state and local agencies, health care providers, etc., because the agency or provider may require this authorization to release the requested records. If necessary, a subpoena duces tecum may be issued by the attorney, or, upon motion, be issued by the court.
- Interview persons who have a relationship with the child. Such persons may include, but not be limited to, relatives (e.g., the child's parents, grandparents, and siblings), current caregiver (e.g., foster parents), friends, neighbors, social worker, mental health care providers, teachers, coaches, clergy, and CASA. Prior to interviewing the parents, determine if they are represented by legal counsel and obtain any necessary permissions. Be willing to meet with a party in the presence of that party's counsel.
- Do not hesitate to request assistance from experts. The Virginia Code specifically authorizes the court to order psychiatric, psychological and physical evaluations of a child alleged to have been abused, the child's siblings, and the parents or guardian.
- As provided in Standard I, contact the CASA volunteer assigned to the case and coordinate all aspects of the investigation with him/her. CASA can offer significant information and assistance to the GAL, such as interviewing hard-to-reach witnesses. CASA may also be able to supplement information gathered by the GAL. Meeting the child with the CASA may also be appropriate.



“The GAL shall interview the parties to the dispute and any other persons with relevant knowledge of the child and the facts that gave rise to the allegations. .... There should be sufficient time between the interview and court appearances for the GAL to fully analyze the information gleaned, take appropriate actions such as issuing subpoenas, filing motions for temporary or protective relief or appointment of an independent expert to evaluate the child, and formulate a meaningful strategy.”

– Comment, Standard B



- C. Advise the child, in terms the child can understand, of the nature of all proceedings, the child’s rights, the role and responsibilities of the GAL, the court process and the possible consequences of the legal action.

**COMMENT:** The GAL shall make every effort to ensure that the child understands, by using language appropriate to the child’s age and verbal abilities, the nature of the proceedings, the consequences which may result, the possibility of future modifications, the attorney’s responsibilities as a GAL, and how to contact the GAL. If the child has significant emotional problems, the GAL should consult with a mental health specialist or the child’s therapist in order to determine the best manner to present this information.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the GAL should explain how the GAL’s role and responsibilities differ from that of the child’s defense attorney and advise the child about the limitations on confidentiality that may apply.

The GAL must inform the child that there may be circumstances when confidentiality will apply to communication between the child and GAL, and circumstances when it may not. The GAL may use information received from the child to further the child’s best interest. For example, the GAL may learn from the child that a custodian is taking illegal drugs and may use that information to request that the court order drug testing of the custodian.

The GAL should keep the child apprised of any developments in the case and actions of the court or parties involved. The GAL shall maintain meaningful contact with the child throughout the term of the case to monitor the child’s welfare and the parties’ compliance with court orders.

## PRACTICE TIPS

- When speaking with the child, use age appropriate language and communicate in terms he/she can understand. Avoid the use of legal terminology. If necessary, use diagrams and put information on paper to help the child understand possible options and outcomes.
- Explain to the child the GAL's role of representing the child's best interest. To further aid in the child's understanding, consider also explaining to the child the roles of other individuals involved in the case, the role of the judge, and the purpose of the hearing.
- Explain to the child the GAL's responsibility to inform the court of the child's expressed wishes, if such are contrary to the GAL's determination of what is in the child's best interest. Ask if there is anything he/she would like communicated to the court.
- Explain the term "confidentiality" to the child and let the child know that there may be instances in which information provided by the child may not remain confidential.
- Speak with the child before and after court proceedings; before to let the child know what is expected to happen during the proceeding and after to inform the child of (or if the child is present, clarify for the child) any court rulings and service requirements (e.g., visitation with parents or siblings).
- Bear in mind that a child may be aware of an upcoming court proceeding. Waiting until the last minute (e.g., right before court) to speak with the child will not help the GAL's rapport with the child.
- While continuances are possible, they can be very upsetting to a child who is expecting the court to make a final decision at a particular proceeding. Continuances should be avoided, unless granted under extenuating circumstances.
- Provide the child and, if necessary, the child's caregiver, with current contact information (e.g., phone number, e-mail address, mailing address, etc.). Business cards are a great way to provide current contact information, and they can be given out after every meeting. This is essential for children because they often lose or easily misplace things.



## D. Participate, as appropriate, in pre-trial conferences, mediation and negotiations.

**COMMENT:** The GAL should be involved, as appropriate, in all pre-trial conferences and negotiations including phone calls, formal or informal conferences and mediation. Additionally, the GAL should take any action necessary to attempt to resolve the case in the least adversarial manner possible; however, a GAL should clarify, when necessary, that he or she is not acting as a mediator.

The GAL's role in such meetings is to represent and advocate for the best interests of the child. A GAL who participates in mediation is bound by the confidentiality rules governing mediation as found in § 8.01-576.10 of the *Code of Virginia*. As a general rule, the GAL should encourage settlements. In exceptional cases where the GAL reasonably believes that a proposed settlement would be contrary to the welfare of the child, the GAL should first discuss these concerns with the parties and their counsel. If these concerns are not addressed, the GAL should bring the facts that led to the concerns about the settlement to the court's attention by filing a motion to vacate the agreement in accordance with § 8.01-576.12 of the *Code of Virginia*. Any proposed settlement which is deleterious to the child should be opposed despite the agreement of the other parties.

- Be an active, not passive, participant in the child’s case by attending, as appropriate, pre-trial conferences, mediation sessions, and other negotiations or meetings to ensure the child’s best interests are represented. Standard I references other negotiations and meetings involving legal, educational (e.g., school disciplinary and Individualized Education Plan (IEP) meetings and parent-teacher conferences) and therapeutic issues (e.g., Family Assessment and Planning Team (FAPT) and other service coordination meetings) that the GAL may attend, as such are appropriate to the child’s needs and consistent with the direction of the court.
- Participate in Family Partnership Meetings (FPM) arranged by the local department of social services. The Virginia Department of Social Services (VDSS), as part of the Children’s Services System Transformation, implemented FPM as the family engagement model in Virginia. As a party appointed by the court to represent the child’s best interest, the GAL should be invited to the FPM. If the GAL is invited to attend the FPM but is not available, the meeting may go forward, particularly if the date scheduled is convenient to the child’s family. However, the GAL may provide comments prior to the meeting and request that he/she be notified after the meeting of any decisions or plan of action impacting his/her client.

If the GAL is not being invited to these meetings, he/she may speak with the social worker assigned to the child’s case or, if necessary, the social worker’s supervisor.
- Review any settlement and/or mediation agreements developed by the other parties to ensure the provisions are in the child’s best interest. Note any concerns with the agreement to the parties and, if not addressed, inform the court of the concerns.





**E. Ensure the child’s attendance at all proceedings where the child’s attendance would be appropriate and/or mandated.**

**COMMENT:** In so far as possible, the GAL should assure the meaningful participation of the child in all phases of the proceedings which would include attendance at appropriate court hearings.

The GAL should consult the child, caretaker, therapist and any other relevant individuals to determine the appropriateness of the child’s attendance at a hearing. A decision to exclude the child from a hearing should be based on a particularized determination. In making this determination, the GAL should consider the age, maturity and desires of the child; the purpose of the hearing; the advice of those consulted; and the potential risk of trauma to the child evoked by such attendance.

In cases when the child has the right to attend hearings, the GAL should ensure that the child is informed of that right. As appropriate, the child should be provided sufficient information about such hearings to make an informed decision about whether to attend.

- Ensure the child's meaningful participation in court proceedings. Depending upon the child's age, the GAL is the child's voice in court proceedings.
- Advise the child of his/her right to attend court proceedings. In doing so, inform the child of the nature of the court proceedings, as required by Standard C, to allow the child to make an informed decision as to whether he/she wants to attend the court proceeding.
- When determining whether a child should attend a particular proceeding, consider the child's age, maturity, and wishes, as well as information received from persons consulted, such as mental health professionals, and the purpose of the court proceeding.
- If the child attends a court proceeding, considering the child's age and development level, try to prevent the child from having to wait for long periods of time for the proceeding. It may be appropriate to ask the court to take into account the reasons for the child's attendance first and allow the child to leave.
- If the child would like to provide input at court proceedings but is not comfortable attending, recommend that the child write a statement to the court to communicate his/her wishes. If the child cannot miss school to attend court, suggest the proceeding be scheduled at a time that would not interfere with the child's school day.
- If it is believed that the information provided during the proceeding would be traumatic for the child to hear, request that the child be excused from the courtroom during the time the traumatic information is produced, or recommend that the child not attend the court proceeding.
- If the child is called to testify, consider discussing the environment under which the child will testify with counsel and unrepresented parties and offer possible alternatives. For example, meeting with the judge in chambers; meeting with the judge and GAL in the courtroom but not in the presence of the parties and/or counsel; meeting with the judge, GAL and counsel in the courtroom but not in the presence of the parties; or testifying in open court without any accommodations. (See §§ 18.2-67.9, 16.1-252 D, 63.2-1521 and 20-124.2:1 (applicable in circuit court only).)



**F.** Appear in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.

**COMMENT:** As in any case, the GAL is expected to act as an advocate for the client child. This demands attendance at all hearings with the intention of presenting a well formulated position based on the facts. This position should be supported by the GAL's independent investigation, and through the development of a theory and strategy for the case. The GAL should prepare, present and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary. Although the child's position may overlap positions of other parties such as the parents, the GAL should be prepared to participate fully in every hearing and not merely defer to or endorse the positions of other parties. The GAL acts as an advocate and uses every attorney skill appropriate to further a result favorable to the child's best interest. The GAL should never engage in *ex parte* communications with the court or submit written material to the court without promptly delivering a copy to the other parties and their counsel.

- Prior to accepting appointment as a GAL, ensure your availability for subsequent court proceedings. Consider planned vacations, upcoming trials, due dates for appellate briefs, etc. that might interfere with the completion of required duties. Although specific dates may not be available at the time of appointment, consider the time line requirements for child dependency cases, particularly those occurring within the first 80 days, and carefully assess whether to accept the appointment. If there is a potential conflict, advise the court so that a decision can be made about whether another attorney should be appointed to the case.
- Remind the parties and counsel of the GAL's entitlement to notice of all proceedings, as well as a copy of any and all pleadings filed with the court.
- Be prepared for court proceedings. Have a theory and strategy for the case. Present opening remarks, cross-examine witnesses, make objections, present evidence, when appropriate, and present closing remarks. If required by the court, submit, as indicated by Standard H, a written report to the court and provide this report to the parties and counsel at least 5 days prior to the scheduled court date. Provide the court with findings and recommendations resulting from completion of the interview with the child and independent investigation required by *Performance Standards A and B*.
- If a written report is not required, organize a statement to the court as to findings, recommendations, services, etc.
- Be familiar with the statutorily mandated hearings for child dependency cases and with the types of court orders entered in these proceedings. Review any court orders placing the child in foster care to ensure the following:
  - The court has stated the basis for its determination.
  - The court noted that *continued placement in the home would be contrary to the welfare of the child*.
  - The court noted that *reasonable efforts to prevent removal were made*.

Note: If these findings are not included on the first order placing the child into foster care, the child's entire stay in foster care may be ineligible to receive federal financial assistance. The first order placing a child in foster care may be an emergency removal order,

preliminary removal order, or disposition order, if the child has not previously been removed from the home, or enters foster care for a reason other than abuse or neglect.

- Review the foster care review hearing order and permanency planning order to ensure that the court has stated the factual basis for its determination as to whether reasonable efforts to reunite the child with his/her parents were made, or reasonable efforts are not required, or as to whether or not reasonable efforts to finalize a permanent plan were made.

Note: If these findings are not made, the child's stay from the date the findings should have been made, may be ineligible to receive federal financial assistance in foster care maintenance.

- If contrary to the GAL's assessment of the child's best interests, inform the court of the child's expressed wishes.
- Review the Comment provided as a part of Standard H, as it includes items that the GAL's arguments to the court should address.
- Facilitate timely scheduling of all hearings and avoid continuances.



“The GAL should prepare, present and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary. Although the child’s position may overlap positions of other parties such as the parents, the GAL should be prepared to participate fully in every hearing and not merely defer to or endorse the positions of other parties. The GAL acts as an advocate and uses every attorney skill appropriate to further a result favorable to the child’s best interest.”

–Comment, Standard F



## G. Prepare the child to testify, when necessary and appropriate, in accord with the child’s interest and welfare.

**COMMENT:** The GAL should determine whether to call the child as a witness based on consideration of the child’s need or desire to testify, developmental and verbal capabilities of the child and the child’s ability to withstand cross-examination. For some children testifying is therapeutic and empowering, while for others it may be very traumatic. The GAL must determine the possible benefits and repercussions of testifying and the necessity of the child’s direct testimony. The GAL shall consult a mental health specialist or therapist working with the child, if there is one, to assist in evaluating whether testifying will cause trauma to the child. Consideration should also be given to the availability of other evidence or hearsay exceptions that may substitute for direct testimony.

If the child does not wish to testify or would, in the GAL’s opinion, be harmed by being forced to testify, the GAL should seek an agreement of the parties not to call the child as a witness or utilize other remedies such as an order from the court to limit the scope or circumstances of the testimony.

If the child is compelled to testify, the GAL should seek to minimize the adverse consequences by seeking appropriate accommodations as allowed by law, such as testimony taken by closed circuit television in accord with § 63.2-1521 of the *Code of Virginia* or an “in camera” interview of the child in the judge’s chambers. The GAL should prepare the child for “in camera” interviews or testimony by explaining the nature and purpose of the proceeding and the use or disclosure that may be made of the information that the child provides during the proceeding.

In juvenile delinquency, child in need of supervision, child in need of services, and status offense cases, the child’s defense attorney will take responsibility for preparing the child to testify when necessary.



## PRACTICE TIPS

- Consider *should* the child testify, as well as the advantages and disadvantages of the child testifying. For example, does the child want to testify? Would testifying be harmful to the child and, if so, is there other evidence available that would alleviate the need for the child's testimony? Will the child be able to effectively communicate information to the court?
- If the child is required to testify, consider a request to testify by closed-circuit television or in camera with a judge. (See §§ 18.2-67.9, 16.1-252 D, 63.2-1521 and 20-124.2:1 (applicable in circuit court only).)

PREPARE THE CHILD TO TESTIFY





## H. Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.

**COMMENT:** The GAL is obligated to assure that all facts relevant to the case, available dispositional remedies and possible court orders are presented to the court. The GAL's arguments to the court should address every appropriate aspect of the litigation including: analysis of any allegations of abuse, neglect or risk; analysis of factors to be considered in a determination related to custody and visitation; placement of the child; services to be made available to the child and family; dispositional alternatives for the child or parents in juvenile delinquency, child in need of supervision, child in need of services, status offense cases and custody and visitation arrangements; and any other orders the GAL deems to be in the child's interest. Recommendations for placements outside the home should take into consideration the availability and appropriateness of placement with relatives or friends, parental visitation and keeping a sibling group together.

The GAL's arguments should contain, but not be limited to, an analysis of and comment on plans presented by other parties such as the Department of Social Services, court services staff, or as a result of mediation.

In certain circumstances, a summary of the GAL's findings with recommendations and the basis for those recommendations may be presented to the court. Such circumstances include the dispositional phase of a case involving both an adjudicatory and dispositional phase or, at the request of the court, in a custody/visitation case. This summary may be written or oral. If written, copies of the summary should be provided to the other parties and their counsel at least five days prior to the hearing unless otherwise directed by the court.

In foster care placement, permanency planning, foster care review proceedings, and mediated agreements, the GAL should be aware of the proposed plans, should consult with the child about the proposal, and explore any alternatives the GAL believes are more appropriate. If the GAL disagrees with such plans, the court should be advised of this disagreement supported by evidence or information gleaned from the GAL's independent investigation.

- For those jurisdictions where the GAL accepts appointments, know the court's approach and expectations regarding written reports.
- Present a case to the court that includes findings and recommendations and argue those findings and recommendations during the closing argument. GALs are not a rubber stamp for the beliefs and arguments of any party, whether the local department of social services, a parent, a third party, the Commonwealth's Attorney, etc.
- If the child is the subject of a protective order, advise the court of conditions needed to protect the life, health, safety and normal development of the child while remaining in the home.
- Provide recommendations to the parties and/or counsel prior to the hearing date and time. Be willing to defend the recommendations, but also be willing to modify the recommendations, as appropriate, based upon new or revised information acquired during the court proceedings. When appropriate, be willing to admit error.
- If representing siblings, consider separate recommendations for each child.
- Review § 20-124.3, which provides a list of items to consider when determining the best interests of the child in custody or visitation arrangements. Additionally, understand child development issues and develop custody/visitation recommendations based on the age and needs of the child, as well as the circumstances of the family. Consider consulting with professionals, as appropriate, to screen recommendations. Actively filter biases and be willing to challenge personal assumptions. Do not allow personal life experiences to become the lens through which matters related to the child are considered.
- As provided in the Standard, "assure that all facts relevant to the case, available dispositional remedies and possible court orders are presented to the court."



**I. Communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence.**

**COMMENT:** Whenever it is appropriate to the child's needs and consistent with the direction of the court, the GAL should attend all meetings or hearings involving legal, educational and therapeutic issues specifically related to the case. These would include meetings of the Family Assessment and Planning Team, Individualized Education Plan (IEP) meetings, school disciplinary or other educational meetings, and foster care placement and review meetings. The GAL can present the child's perspective, gather information necessary to proper representation, and potentially achieve a negotiated settlement of all or some issues of the case at such meetings.

The GAL should contact any CASA volunteer assigned to the case and coordinate all aspects of the investigation with the CASA volunteer. Such volunteers can offer significant information and assistance to the GAL.

The GAL should contact the attorneys for the other parties to the case as soon as possible and at least seventy-two hours prior to any hearing. Counsel for other parties to the case may have information not included in any of the available records and can provide their respective clients' perspectives. Appropriate communication should be maintained between the GAL and all agencies and professionals involved in the case.

## PRACTICE TIPS

- Listen on behalf of the child, but also be a voice for the child. The information gathered during the course of a case will provide opportunities to recommend and advocate new and innovative solutions to issues that will promote the child's best interests.
- In jurisdictions that have a CASA program, it is important to contact the CASA volunteer assigned to the case and to coordinate the GAL's investigation with the CASA. The Virginia Code specifies "assisting any appointed guardian ad litem..." as among the duties of a CASA. § 9.1-153. CASA can offer significant information and assistance, including interviewing hard-to-reach witnesses and supplementing information relevant to the case. However, do not relinquish the responsibility to investigate by leaving it solely up to the CASA volunteer. The GAL works cooperatively with CASA. CASA does not work at the pleasure of the GAL.



**J.** File appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case.

**COMMENT:** The GAL should make appropriate motions, including motions *in limine* and evidentiary objections, to advance the child's best interest in court and during other proceedings. When necessary, the GAL should file briefs in support of legal issues. The GAL should file a show cause against a party who is not following a court order or a motion under § 16.1-278 to compel an agency to provide services if it is not doing so as ordered.

If the GAL believes the court's determination is contrary to the child's interest or welfare, after considering the wishes of the child, a notice of appeal should be filed and measures taken to assure that the appeal is perfected expeditiously. The GAL should file any appropriate pleadings on behalf of the child, including responses to pleadings of other parties.

The GAL should also ensure that the child has representation in any appeal related to the case regardless of who files the appeal. During an appeal process initiated by another party, the GAL for a child may file a brief and participate fully at oral argument.

If the GAL feels he or she lacks the necessary experience or expertise to handle an appeal, the GAL should notify the court and seek to be replaced.

- Be an active, not passive, participant in court proceedings. Ensure petitions, motions, pleadings, briefs, and appeals are filed in a timely manner and that a hearing date is obtained as soon as possible. Court dockets, particularly juvenile court dockets, can be congested and waiting until the last minute will not provide for timely proceedings.
- Work with the other parties to solve problems. If it is in the child's best interest, be a "peacemaker."
- Timely note any appeal on behalf of the child and actively participate in any matters that are appealed. This includes cases appealed *de novo* to the circuit court and on the record to the Court of Appeals of Virginia and the Supreme Court of Virginia.
- If representation of the child has come to an end, consider having termination of representation language inserted into any final order entered by the court.





- K.** Advise the child, in terms the child can understand, of the court’s decision and its consequences for the child and others in the child’s life.

**COMMENT:** The GAL should review all orders to ensure they conform to the court’s verbal orders and statutorily required findings and notices. The GAL should discuss all such orders and their consequences with the child. The child is entitled to understand what the court has done and what that means to the child. The GAL should explain whether the order may be modified or whether the actions of the parties may affect how the order is carried out. For example, an order may permit an agency to return the child to the parents if certain goals are accomplished.

- The role of the GAL extends to meeting with the child and explaining to him/her the outcome of the court proceedings and court ruling(s).
- Speak with the child as soon as possible after court proceedings are concluded to explain any court rulings, services to be provided, etc. If the child is present, meet with him/her at the court. If the child is not present, arrange to speak with the child by phone. For a child who is in a residential setting, it may be appropriate to coordinate the call with the resident counselor or therapist. Be as straightforward as possible in explaining the court's ruling(s) to the child.
- When informing the child of court proceedings, do so based on the ability of the child to understand. Be clear and simple and invite him/her to ask questions when there is an aspect of the explanation that is unclear. If the community has a handbook for court-involved youth that will help the child better understand the court process, provide a copy to the child.
- As appropriate, have the child appear in court with the parties and/or counsel and ask the court to explain the outcome of the proceedings to the child.

## Ethical Considerations for Attorneys Serving as Guardians Ad Litem

### Rules of Professional Conduct - Virginia State Bar

- **RULE 1.1: COMPETENCE:** As a general rule, attorneys must competently represent their clients. Rule 1.1 defines competent representation as having “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
- **RULE 1.2: SCOPE OF REPRESENTATION:** The GAL must provide to the court what he/she believes is in the child’s best interest, not the child’s expressed wishes. In doing so, the GAL must consider the child’s position. This requires an assessment of the child’s age, maturity, mental capacity, competence, and environment. This duty conflicts with the traditional role of an attorney and is inconsistent with the attorney’s responsibility under Rule 1.2 of the Rules of Professional Conduct, which requires an attorney to “abide by a client’s decisions concerning the objectives of representation,...” However, the GAL is required by statute to present to the court what he/she believes is in the child’s best interest, as well as the reasoning behind such assessment, regardless of what the child client has expressed. Additionally, the GAL has a duty to inform the court of any wishes expressed by the child that are inconsistent with the GAL’s assessment of what is in the child’s best interest.
- **RULE 1.3: DILIGENCE:** Paragraph (a) of Rule 1.3 requires an attorney to “act with reasonable diligence and promptness in representing a client.” Comment [1] further demands action “with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”
- **RULE 1.4: COMMUNICATION:** As previously provided, Virginia Supreme Court Rule 8:6 requires the GAL to protect the child’s “interest and welfare.” Standard C further provides that the GAL shall “advise the child,..., of the nature of all proceedings, ... the court process and the possible consequences of the legal action.” The child’s interest and welfare should take precedence over communication requirements if the GAL believes that the information, if shared, would be detrimental to the child.
- **RULE 1.6: CONFIDENTIALITY:** Attorneys who serve as GAL are often unsure about the level of confidentiality that should be given to

certain conversations with the child. A strict reading of Rule 1.6 of the Rules of Professional Conduct would prevent the GAL from disclosing information shared by the child that the child does not want disclosed to his/her parents or other parties. This would be true even if the GAL believed the information would be important for the court to consider in determining the child’s best interest under the statute.

However, not disclosing certain information may hinder the GAL’s statutory duty to advocate for the child’s best interest. As such, there are strategies the GAL may consider to alleviate concerns of a breach of confidentiality. These strategies include: (i) the GAL requests the permission of the court to redact the GAL’s written report of the sensitive information and (ii) the GAL requests that the court issue a protective order to allow only counsel to review the sensitive information.

If the child is old enough to understand the limitations on confidentiality, the GAL should ensure that the child is aware of these limitations from the beginning of the representation.

If questions regarding confidentiality remain, Legal Ethics Opinion 1844 (2008) further addresses the issue. It notes that Rule 1.6 (b)(1) allows an attorney to disclose information protected by Rule 1.6 if such disclosure is necessary “...to comply with law or court order.” Compliance, therefore, with the *Performance Standards* and Virginia Supreme Court Rule 8:6 justify disclosure.

The Opinion further provides, based on the *Performance Standards*,

that the duties of a GAL may extend further than those anticipated by the typical lawyer/client relationship, as the GAL not only serves as the child’s advocate but is obliged to identify and recommend the outcome that best serves the child’s interests. Therefore, the GAL needs to investigate information obtained from and about the child in order to ascertain certain facts. The GAL must interview parties and other persons who have relevant knowledge of the child and facts that give rise to the allegations. ....

Only after this investigation can the GAL independently make an evaluation. Through this independent investigation, the GAL assesses the risk of probable harm to the child. That assessment then leads to the determination of whether the GAL has a duty, as an advocate for the child’s best interests, to disclose to the court or appropriate authority information necessary to safeguard the best interests of the child. That disclosure would be permitted in light of the Committee’s analysis ... of Rule 1.6(b)(1), where a lawyer can reveal protected information to the extent reasonably necessary to comply with law.

- **RULE 4.2: COMMUNICATIONS WITH PERSONS REPRESENTED BY COUNSEL:** This rule applies even though the represented person initiates or consents to the communication. Therefore, even if a parent approaches a GAL with questions or comments about the case, the GAL must immediately end communication unless the GAL obtains consent from the parents' attorney to speak with the parent.

Additionally, because the parties to child dependency cases work together closely outside of court, difficulty arises when applying Rule 4.2. The caseworker and child's counsel, in particular, have extensive contact with parents and the child, which is almost always outside the presence of attorneys. Issues arise not only when an attorney is preparing for court, but during home visits, educational meetings, case staffings, and other routine activities. It is best for GALs to get a clarification at the beginning of their appointment about when and how communication with parents may occur when parents' counsel is not present.

Parents' attorneys who are concerned about protecting their clients, especially in the pre-adjudication phase when allegations have not been sustained, should make clear to GALs, caseworkers, the agency's attorney, and the child's attorney, if applicable, that they are not consenting to any contact with their client outside of their presence. This rule also precludes parents' counsel from meeting with the minor child without the GAL's permission, because it prohibits *ex parte* communications with "persons" rather than "parties."

As to communications with caseworkers, the caseworker is not the "client" of the agency attorney, because the agency attorney represents the child welfare agency, not the individual caseworker.

Legal Ethics Opinion 1870 (2013) further addresses communications with persons represented by counsel.

#### Additional Ethical Considerations

- **CONFLICTS & REPRESENTATION OF MULTIPLE CHILDREN:** A GAL may face a different conflict analysis when representing multiple children of the same family. These conflicts, however, are viewed differently than traditional conflicts by the GAL whose duty is to protect the interests of the child even if contrary to the child's wishes. Because the GAL's role differs from that in the traditional attorney-client relationship, the GAL's unique role complicates resolving traditional ethics conflicts.

From the GAL's perspective, when representing multiple children, there may be no conflict of interest because the arguments for placing the children, although seemingly contradictory, ultimately serve their best interests. Possible conflicts may arise when the

siblings want different outcomes in the case, such as wanting to live with different parents. Advocating for the best interest of one sibling may compromise the best interests of another sibling. Contrary to traditional ethics conflict analysis, where an attorney should withdraw from *both* cases when a conflict arises, that analysis may differ where a GAL is involved. A GAL may be able to continue to represent one child and ask the court to appoint a different GAL for the second child.

In LEO 1725, the attorney/GAL raised the question of what to do when a GAL has a conflict in a case. The opinion indicates that in such situations the GAL must go to the appointing court to resolve the conflict. Because the relationship between the GAL and the “ward” is not the same as a traditional attorney-client relationship, and because the “ward” is a juvenile, the GAL cannot have the appropriate discussion to disclose the conflict and cannot get the consent that may be necessary to resolve a conflict.

- **GAL AS A WITNESS:** Because of the special nature of GAL appointments and the role of the GAL, the GAL may continue to represent a child and also testify as to disputed issues of material fact. However, as provided in the Introductory Comment to the *Performance Standards*,

the GAL acts as an attorney and not a witness, which means that he or she should not be cross-examined and, more importantly, should not testify. The GAL should rely primarily on opening statements, presentation of evidence and closing arguments to present the salient information the GAL feels the court needs to make its decisions.

The guardian *ad litem* should minimize his/her personal statements to the court to include only those events that the guardian *ad litem* personally witnessed, as well as recommendations that are based upon evidence, which has been admitted.

As to the issue of calling the GAL as a witness; LEO 1729 opines that there is a conflict between the attorney’s ethical obligations under the “witness-advocate” rule and the attorney’s duty as a GAL to report facts to the court that were learned during the GAL’s appointment and investigation, and to make recommendations to the court based upon such facts. If the GAL cannot report to the court what the GAL has observed or learned during the visitation, for fear of violating the “witness-advocate” rule, then the GAL cannot discharge the legal obligations of his/her appointment. The GAL is charged with the duty of “fully protecting the child’s interest and welfare.” (See Virginia Supreme Court Rule 8:6.)

- **THE CHILD WITH “DIMINISHED CAPACITY”:** Determination of a client’s capacity to make decisions and understand each issue relevant to the representation is not an easy task, nor is it one for which most attorneys are trained. Further, unlike the concept of “competency,” “capacity” occurs along a continuum; therefore, capacity can be “diminished” but still exist.

Capacity refers to a client’s ability to understand information relevant to the case and the ability to appreciate the consequences of a decision. Does the client really know what the case is about, what is happening, and what consequences might result from certain actions or inactions? Again, capacity refers to ability and *comes in various degrees*.

Competence is a legal standard, and denotes a specific level of skill, knowledge, or ability; a legal status the client either possesses or does not possess.

Factors to consider when assessing client capacity include: cognitive ability, emotional and mental development and stability, ability to communicate, ability to understand consequences, consistency of decisions, strength of wishes, and the opinions of others that play a role in the child’s life. The child’s age and developmental stage need to be taken into consideration with these factors.

To the extent possible, the GAL should attempt to maintain a relationship with the child that consists of regular communication, interviews, advice and coordination with other parties.

Rule 1.14(b) provides guidance in those events where capacity issues are problematic.

When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical ... or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonable necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client...

- **CHILD HAS A GAL AND DEFENSE COUNSEL:** The defense attorney cannot deny the GAL access to his/her client. However, it may be reasonable for a GAL to conclude that a child’s right to competent defense and right to due process of law is an important consideration in the best interests of the child and takes precedence over other considerations. Best practice supports postponing an interview with the child until the GAL has had an opportunity to confer with defense counsel.



- **REQUESTS FOR THE GAL'S FILE:** The GAL acts as a fact-finder, investigator, and then, ultimately, as an advocate for the best interests of the child. The GAL can only turn over a copy of his/her file with the permission of the court. If the GAL receives a subpoena for a copy of his/her file or materials, the GAL should file a formal Motion to Quash the subpoena and let the court decide if anyone receives access to the file.
- **GIFTS TO CHILD CLIENTS:** In LEO 1830, the Legal Ethics Committee found that it was not improper for a criminal defense attorney to provide nominal funds for commissary purchases to his/her criminal client on an occasional basis as long as it did not impair the attorney's independent judgment. Similar to the above, the critical issue in a GAL giving a gift to a child he/she is representing would be the attorney's independent judgment. (See Rule 2.1.)

The GAL is acting as an arm of the court in carrying out his/her duties. As such, the GAL is required to act independently and to maintain a professional working relationship with all parties. The GAL should be mindful of his/her role as an advisor, pursuant to Rule 2.1, and his/her duty of independence and advocacy and not confuse that with a more personal role of involvement with the child. While the rules would not preclude a GAL from giving a nominal gift to a child, the greater duty of maintaining the independence of the role and relationship leads to foregoing such gifts unless very specific circumstances exist.

- **LAW FIRM ASSOCIATES SHARING GAL DUTIES AND RESPONSIBILITIES:** When completing district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, the court specifies the name of an attorney to “protect and represent the interests” of the child. The order does not provide for a specific law firm to represent the child. Therefore, it is not permissible for attorneys working together in a law firm to determine who will serve as the child's GAL or share in the duties of the GAL based on caseload and availability, even if all are qualified as GALs. Only the attorney whose name is referenced on the order may “perform the duties and have access to the parties and documents specified on the ... order.”

The *Rules of Professional Conduct* may be accessed through the Virginia State Bar's website at <http://www.vsb.org/pro-guidelines/index.php>. For additional information about the above-referenced ethical considerations, or to discuss other ethics related issues involving the duties as a GAL, please contact the Virginia State Bar at 804.775.0500.

## Court of Appeals of Virginia Rulings Related to Guardian Ad Litem Representation

Selected Court of Appeals of Virginia rulings related to the representation of children by guardians *ad litem* are provided below. Included are the issue addressed by the court and the court's specific ruling. It is recommended that each case be reviewed for the factual basis of the ruling.

### GAL Appointment

*Ferguson v. Grubb*, 39 Va. App. 549, 560, 574 S.E.2d 769, 774 (2003). “[B]oth the J&DR and circuit courts specifically found that this was a ‘foster care prevention case,’ requiring the continued intervention of the court, through the guardian *ad litem*, to protect the best interests of the children at issue. Under these circumstances, we find no error in the court’s order directing the continued appointment of the guardian *ad litem*.”

### Duties of the GAL

*Norfolk Division of Social Services v. Unknown Father*, 2 Va. App. 420, 425 n.5, 345 S.E. 2d 533, 536 n.5 (1986). Footnote 5 provides that “the duties of a guardian *ad litem* when representing an infant are to defend a suit on behalf of the infant earnestly and vigorously and not merely in a perfunctory manner. [The guardian *ad litem*] should fully protect the interest of the child by making a bona fide examination of the facts and if he does not faithfully represent the interest of the infant, he may be removed,....”





## GAL as a Witness

*Hernandez v. Chesterfield-Colonial Heights Department of Social Services.*, Memorandum Opinion, Court of Appeals of Virginia, Record # 2203-08-2, page 4, May 12, 2009 (unpublished opinion). “By overruling mother’s objection, the trial court stated that it was accepting the guardian *ad litem*’s statements about the children because ‘it’s a basis for her recommendation.’ At this point in the trial, the guardian *ad litem* was explaining her recommendation to the circuit court. She was not testifying, as mother alleges.”

## Role and Responsibilities of the GAL in Termination of Parental Rights Cases

*Stanley v. Fairfax County Department of Social Services*, 10 Va. App. 596, 603, 395 S.E.2d 199, 202 (1990). “...Code § 16.1-283 does not restrict the guardian *ad litem* from initiating a termination petition as long as the required foster care plan recommending termination has also been filed.”

*M. G. v. Albemarle County Department of Social Services*, 41 Va. App. 170, 177, 593, S.E.2d 761, 764 (2003). “[I]n a suit involving a termination of parental rights, a guardian *ad litem* for the child or children is an indispensable party to the appeal and, thus, qualifies as an ‘opposing counsel’ under Rule 5A:6(a), to whom the appellant has a duty to mail or deliver a copy of the notice of appeal.”

This ruling was reaffirmed in *Watkins v. Fairfax County Department of Family Services*, 42 Va. App. 760, 595 S.E.2d 19 (2004).

## Requalification Requirements for Guardians *Ad Litem*

The requirements to requalify as a GAL are provided in Section II of the *Standards to Govern the Qualification of Guardians Ad Litem for Children* (“Qualification Standards”). Section II.A states, in part,

**Complete six hours of approved continuing education biennially [after initial qualification] on any topic related to the representation of children as a guardian *ad litem*.** Credit for repeating the basic training class, “Representation of Children as a Guardian *Ad Litem*” will be approved once within a six-year period. A maximum of six hours will be approved within a six-year period for programs designed especially for attorneys specializing in adoption.

[Emphasis added.]

Upon completing a course approved for continuing education credit for GALs, certify attendance by entering the completed continuing education credits into the Guardian Ad Litem Information System, accessible through the Member Portal at [www.vsb.org](http://www.vsb.org). Alternatively, submit the completed Certification of Attendance form to [galadmin@vacourts.gov](mailto:galadmin@vacourts.gov) or fax it to 804-786-1301.

The biennial timeframe noted above begins from the date of initial qualification, which is provided to the attorney in a letter from the Office of the Executive Secretary, Supreme Court of Virginia, confirming receipt of the information required to qualify the attorney as a GAL. There are four possible qualification dates - January 1, April 1, July 1, and October 1. Thus, if the GAL’s qualification date is October 1, 2018, the GAL is required

to complete six hours of approved continuing education prior to October 1, 2020, and submit evidence of the completion of this requirement to the address above ten days prior to that date.





Qualification Standard III.A.2 provides that failure to complete the continuing education requirement outlined in Standard II.A and Standard II.B shall result in the GAL's removal from the list of qualified GALs. Qualification Standard III.B provides that an attorney removed from the list of qualified GALs may again be included on the list of attorneys eligible for appointment by submitting the following:

- a. Within one year of being removed from the list, certification of attendance indicating completion of the required six (6) hours of continuing education.
- b. If more than one year passes since removal from the list, certification of attendance indicating completion of seven (7) hours of approved continuing education.
- c. If more than five years pass since removal from the list, complete the initial qualification process as outlined in Standard I.

The Office of the Executive Secretary will notify the GAL six months prior to the end of the biennial timeframe if the GAL has not completed the required six hours of continuing education. Thus, a GAL with a qualification date of October 1, 2018 will be notified on or about April 1, 2020 that the GAL must complete the required six hours of continuing education to remain qualified after October 1, 2020.

The *Standards to Govern the Qualification of Guardians Ad Litem for Children* is available online at <http://www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html>

## Continuing Education Courses for Guardians Ad Litem

Courses meeting the continuing education requirement are approved by the Office of the Executive Secretary, Supreme Court of Virginia. A list of approved courses is available online at <http://www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html>. If the GAL has attended a course that is not included on the list and believes it will satisfy the continuing education requirement for guardians *ad litem* for children, the GAL may submit the complete agenda, any course/session descriptions, and speaker biographies to the Guardian Ad Litem Program at [galadmin@vacourts.gov](mailto:galadmin@vacourts.gov) or 100 N. 9th Street, 3rd Floor, Richmond, VA 23219.

## Compensation of Guardians Ad Litem

Guardians *ad litem* are compensated at the rate of \$75 per hour for in-court service and \$55 per hour for out-of-court service, a rate approved by the Supreme Court of Virginia. The documentation method for payment as a GAL is the same as that used for court-appointed counsel, district court form DC-40, LIST OF ALLOWANCES, which must be approved by the appointing judge. As provided in the Chart of Allowances, GAL time shall be recorded in increments not greater than .10 hour (6 minutes). If the amount of reimbursement exceeds \$500, GALs submit an itemized statement that details the dates, times and tasks performed for the hours claimed (e.g., “meeting with client,” “interviewing parent,” etc.). The court is authorized to pay for the reasonable expenses of a GAL incurred in representing a child. Guardians *ad litem* should seek preapproval of the court for all large expenses, including all long-distance travel greater than 80 miles.





Chapter 7 of the *Court-Appointed Counsel Procedures and Guidelines Manual* provides additional information regarding payment of attorneys serving as a GAL. The *Court-Appointed Counsel Procedures and Guidelines Manual* is available online at <http://www.vacourts.gov/legal.html>.

## Compensation of Experts

Section 17.1-612 authorizes “Every witness who qualifies as an expert witness, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may, if requested in its discretion, order without regard to any limitation described [in this section] but the same shall be paid by the party in whose behalf he shall testify.”

An opinion by the Virginia Attorney General provides for compensation of expert witnesses in child abuse cases in the juvenile court. (See 1979-80 Op. Va. Atty. Gen. 401.)

Before engaging any expert witness, the GAL should obtain prior approval from the judge.

The documentation method for payment of an expert witness is district court form DC-40, LIST OF ALLOWANCES, which must be approved by the judge. A court order qualifying the individual as an expert witness and an itemized invoice is required and must be submitted with the DC-40.





## On-line Resources for Guardians Ad Litem

### Virginia's Children's Services Act (CSA)

[www.csa.virginia.gov](http://www.csa.virginia.gov)

Learn more about the Children's Services Act. Information includes the CSA Manual and other publications, statewide statistics, and local contacts.

### Virginia's Court Appointed Special Advocate (CASA) Program

[www.dcjs.virginia.gov/juvenile-services/grants/casa](http://www.dcjs.virginia.gov/juvenile-services/grants/casa)

Become familiar with CASA programs in Virginia. Information includes a description of Virginia's CASA program, including a listing of operational local CASA programs.

### Virginia Department of Social Services

[www.dss.virginia.gov](http://www.dss.virginia.gov)

Provides local agency contact information, as well as a description and information about the various programs and services for children.





## Virginia's Judicial System

[www.vacourts.gov](http://www.vacourts.gov)

Provides general information about Virginia's court system and court administration.

### Guardian Ad Litem for Children Program

[www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html](http://www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html)

Information used to administer the GAL program in Virginia is included here.

Provided are links to the *Standards to Govern the Appointment of Guardians Ad Litem for Children*, forms required for submission of continuing education credit, a list of courses approved for GAL continuing education credit, and listings of currently qualified GALs for children.

### Juvenile and Domestic Relations District Courts

[www.vacourts.gov/courts/jdr/home.html](http://www.vacourts.gov/courts/jdr/home.html)

General information about the juvenile courts is provided. Included are links to individual court home pages, forms, programs, manuals (e.g., *Court-Appointed Counsel Procedures and Guidelines Manual*, *District Court Judges' Benchbook*, *Juvenile and Domestic Relations District Court Manual*, etc.) and other resources and reference materials.

## Virginia State Bar

[www.vsb.org](http://www.vsb.org)

The Member Portal provides Virginia attorneys with selected circuit and district court forms. These forms include the district court forms DC-500 series, which are used in child dependency cases before the juvenile and domestic relations district courts.

# District Court Form DC-540, GUARDIAN AD LITEM DISCLOSURE

<p><b>GUARDIAN AD LITEM DISCLOSURE</b>                  Commonwealth of Virginia Va. Code § 16.1-266.1, Rule 8:6</p>	<p>Case No. ....</p> <p>DATE OF HEARING .....</p> <p style="text-align: center;"> <input type="checkbox"/> Circuit Court  <input type="checkbox"/> Juvenile and Domestic Relations District Court                 </p>								
<p><i>In re:</i> .....</p>									
<p>I have taken the following actions in performing the duties of the guardian <i>ad litem</i> for the child according to the <i>Standards to Govern the Performance of Guardians Ad Litem for Children</i> as indicated below.</p>									
<p>1. I <input type="checkbox"/> have <input type="checkbox"/> have not met face-to-face with the child since the last court hearing in this matter in a setting other than the courthouse.</p> <p>Comments: .....</p> <p>.....</p> <p>.....</p>									
<p>2. I <input type="checkbox"/> have <input type="checkbox"/> have not conducted an independent investigation of this matter.</p> <p>In conducting my independent investigation, I interviewed the parties and any other persons with relevant knowledge of the child and the facts, including:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;"><input type="checkbox"/> Parent(s)/Guardian(s)/Custodian(s)</td> <td style="width: 50%;"><input type="checkbox"/> CASA, if applicable</td> </tr> <tr> <td><input type="checkbox"/> DSS Case Worker</td> <td><input type="checkbox"/> Counselor</td> </tr> <tr> <td><input type="checkbox"/> Foster Parent(s)</td> <td><input type="checkbox"/> Household Members</td> </tr> <tr> <td><input type="checkbox"/> School Personnel</td> <td><input type="checkbox"/> Other .....</td> </tr> </table> <p>.....</p>		<input type="checkbox"/> Parent(s)/Guardian(s)/Custodian(s)	<input type="checkbox"/> CASA, if applicable	<input type="checkbox"/> DSS Case Worker	<input type="checkbox"/> Counselor	<input type="checkbox"/> Foster Parent(s)	<input type="checkbox"/> Household Members	<input type="checkbox"/> School Personnel	<input type="checkbox"/> Other .....
<input type="checkbox"/> Parent(s)/Guardian(s)/Custodian(s)	<input type="checkbox"/> CASA, if applicable								
<input type="checkbox"/> DSS Case Worker	<input type="checkbox"/> Counselor								
<input type="checkbox"/> Foster Parent(s)	<input type="checkbox"/> Household Members								
<input type="checkbox"/> School Personnel	<input type="checkbox"/> Other .....								
<p>AND</p> <p>I reviewed relevant records, including but not limited to:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;"><input type="checkbox"/> Medical Records</td> <td style="width: 50%;"><input type="checkbox"/> Counseling Records</td> </tr> <tr> <td><input type="checkbox"/> School Records</td> <td><input type="checkbox"/> Foster Care Plan</td> </tr> <tr> <td><input type="checkbox"/> CASA</td> <td><input type="checkbox"/> Other .....</td> </tr> </table> <p>.....</p>		<input type="checkbox"/> Medical Records	<input type="checkbox"/> Counseling Records	<input type="checkbox"/> School Records	<input type="checkbox"/> Foster Care Plan	<input type="checkbox"/> CASA	<input type="checkbox"/> Other .....		
<input type="checkbox"/> Medical Records	<input type="checkbox"/> Counseling Records								
<input type="checkbox"/> School Records	<input type="checkbox"/> Foster Care Plan								
<input type="checkbox"/> CASA	<input type="checkbox"/> Other .....								
<p>3. I <input type="checkbox"/> have <input type="checkbox"/> have not discussed this proceeding in an age appropriate manner with the child to ensure the child understands his or her rights, the nature of the proceeding, my role and responsibilities as guardian <i>ad litem</i>, the court process, the possible consequences of the legal action, the circumstances under which confidentiality may or may not apply, and how to contact me.</p> <p>Comments: .....</p> <p>.....</p> <p>.....</p>									
<p>4. <input type="checkbox"/> I have participated in <input type="checkbox"/> pre-trial conferences <input type="checkbox"/> mediations <input type="checkbox"/> family assessment and planning team (FAPT) meetings <input type="checkbox"/> negotiations <input type="checkbox"/> family partnership team (FPM)/team decision making (TDM) meetings <input type="checkbox"/> other (please specify) .....</p> <p><input type="checkbox"/> I have not participated in any of the above.</p> <p>Comments: .....</p> <p>.....</p> <p>.....</p>									
<p>FORM DC-540 (MASTER, PAGE ONE OF TWO) 04/18</p>									

Case No. ....

5. I  have  have not ensured the child's attendance at all proceedings, where such attendance would be appropriate and/or mandated, and I  have  have not prepared the child to testify in accord with the child's interest and welfare.

Comments: .....  
.....

6. I  have  have not appeared in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.

Comments: .....  
.....

7. I  have  have not provided  will provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.

I  have  have not shared my preliminary recommendations with counsel and self-represented parties by

phone  letter  in person  written report. If shared in a written report, report was provided on: .....  
DATE

Comments: .....  
.....

8. I  have  have not communicated, coordinated and maintained a professional working relationship in so far as possible with all parties without sacrificing independence.

I  have  have not requested permission from the appropriate attorney/guardian *ad litem* to discuss this case with the child's  mother  father  guardian  other represented party. (Legal Ethics Opinion 1870)

Comments: .....  
.....

9.  I have filed  petitions  motions  pleadings  briefs and/or  issued subpoenas.  
 I have not filed any of the above documents.

Comments: .....  
.....

10. I  will  will not advise the child, in terms the child can understand, of the court's decision and its consequences for the child and others in his or her life.

Comments: .....  
.....

I have provided or will provide copies of this completed form to the court and to all counsel and self-represented parties at the beginning of the hearing.

.....  
NAME OF GUARDIAN *AD LITEM*

.....  
DATE

.....  
GUARDIAN *AD LITEM*

.....  
VSB NO.

FORM DC-540 (MASTER, PAGE TWO OF TWO) 04/18

# DISTRICT COURT FORM DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

<p><b>ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM</b>          Commonwealth of Virginia VA. CODE § 16.1-266</p>	<p>Court Case No. ....</p>
<p>.....  <small>CITY OR COUNTY</small></p>	<p><input type="checkbox"/> Circuit Court  <input type="checkbox"/> Juvenile and Domestic Relations District Court</p>
<p><i>In re:</i> .....</p>	
<p><small>JUVENILE</small></p>	<p><b>V.</b></p>
<p><small>PETITIONER</small></p>	<p><small>RESPONDENT</small></p>
<p>This proceeding involves a Petition/Motion regarding:</p>	
<p><input type="checkbox"/> custody  <input type="checkbox"/> visitation  <input type="checkbox"/> child support  <input type="checkbox"/> paternity  <input type="checkbox"/> consent to adoption</p>	<p><input type="checkbox"/> child abuse or neglect  <input type="checkbox"/> termination of parental rights  <input type="checkbox"/> entrustment  <input type="checkbox"/> family abuse protective order  <input type="checkbox"/> other: .....</p>
<p><input type="checkbox"/> delinquency  <input type="checkbox"/> child in need of services  <input type="checkbox"/> child in need of supervision  <input type="checkbox"/> relief of custody by parent</p>	
<p>and the Court finds that:</p>	
<p><input type="checkbox"/> the Juvenile named above is entitled to the appointment of a guardian <i>ad litem</i> pursuant to § 16.1-266 of the Code of Virginia, and the best interests of the child are not adequately protected by the parties or the appointment of a guardian <i>ad litem</i> is otherwise required by law.</p>	
<p><b>OR</b></p>	
<p><input type="checkbox"/> the <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Defendant named above is a person under a disability and is unable to protect his/her interest in this proceeding and is entitled to the appointment of a guardian <i>ad litem</i> pursuant to § 16.1-266 of the Code of Virginia because of the following disability:</p>	
<p><input type="checkbox"/> incarceration  <input type="checkbox"/> mental illness</p>	<p><input type="checkbox"/> intellectual disability  <input type="checkbox"/> minor <input type="checkbox"/> other: .....</p>
<p><b>The Court Orders that:</b></p>	
<p>.....  <small>NAME OF ATTORNEY</small></p>	<p>.....  <small>TELEPHONE NUMBER OF ATTORNEY</small></p>
<p>is hereby appointed as guardian <i>ad litem</i> to protect and represent the interests of .....</p>	
<p>..... in connection with all proceedings involved in this matter.</p>	
<p>The date and time for the next hearing is: .....</p>	
<p>.....</p>	
<p><b>The Court further orders</b> that the guardian <i>ad litem</i> perform the duties and have access to the parties and documents specified on the reverse and incorporated by reference into this order.</p>	
<p><input type="checkbox"/> In addition, the guardian <i>ad litem</i> shall .....</p>	
<p>.....</p>	
<p><b>So Ordered.</b></p>	
<p>.....  <small>DATE</small></p>	<p>.....  <small>JUDGE</small></p>
<p>FORM DC-514 FRONT 10/18</p>	

In conforming to the following standards of performance, guardians *ad litem* shall comply with Rule 8:6 of the *Rules of the Supreme Court of Virginia* and shall be further informed of their duties and responsibilities by the commentary of the *Standards to Govern the Performance of Guardians Ad litem for Children* as adopted by the Judicial Council of Virginia effective September 1, 2003.

**In fulfilling the duties of a guardian *ad litem* as appointed pursuant to this Order, an attorney shall:**

- A. Meet face to face and interview the child.
- B. Conduct an independent investigation in order to ascertain the facts of the case.
- C. Advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the guardian *ad litem*, the court process and the possible consequences of the legal action.
- D. Participate, as appropriate, in pre-trial conferences, mediation and negotiations.
- E. Ensure the child's attendance at all proceedings where the child's attendance is appropriate and/or mandated.
- F. Appear in Court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.
- G. Prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare.
- H. Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.
- I. Communicate, coordinate and maintain a professional working relationship, in so far as possible, with all parties without sacrificing independence.
- J. File appropriate petitions, motions, pleadings, briefs and appeals on behalf of the child and ensure that the child is represented by a guardian *ad litem* in any appeal involving the case.
- K. Advise the child, in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.

**Decision-making power resides with the court.**


**Failure to perform these duties may result in the appointing court's refusal to authorize payment of the fees requested by the guardian *ad litem* or a reduction of the payment requested, removal from the assigned case or removal from the court's Guardian *Ad Litem* Appointment List.**

The guardian *ad litem* is authorized to appear at the Family Assessment and Planning Team and at panel review hearings conducted by the local department of social services pursuant to Virginia Code § 63.2-907.

The guardian *ad litem* appointed to represent the child shall have access to the following persons and documents without further Order of the Court:

- A. The child.
- B. Parties to the proceeding.
- C. Court Appointed Special Advocate (CASA), local department of social services and court services unit worker in the case, and school personnel involved with the child.

**Upon presentation by the guardian *ad litem* of this order, the guardian *ad litem* shall have access to any records relating to the child held by any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health provider who shall permit the guardian *ad litem* to inspect and copy such records without the consent of the child or his parents. Upon the request of a guardian *ad litem* made at least seventy-two hours in advance, a mental health provider shall make himself available to conduct a review and interpretation of the child's treatment records which are specifically related to the investigation. Such a request may be made in lieu of or in addition to inspection and copying of the records.**



---

The following resources were heavily relied upon in the development of the *Standards to Govern the Performance of Guardians Ad Litem for Children*:

- American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, approved by the American Bar Association House of Delegates, February 5, 1996.
- American Bar Association Family Law Section Standards of Practice for Lawyers Representing Children in Custody Cases, Committee final draft approved April 24, 2003, and approved by the Section Council on May 2, 2003.
- The New York State Bar Association Committee on Children and the Law: Law Guardian Representation Standards, Volume II, Custody Cases, November 1999.
- Representing Children: Standards for Attorneys and Guardians Ad litem in Custody and Visitation Proceedings, American Academy of Matrimonial Lawyers, 1995.
- American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (NACC Revised Version), National Association of Counsel for Children, February 1996.
- Richmond Juvenile and Domestic Relations District Court Guardian Ad Litem Standards.





Improving Court Practice  
for Children and Families

## COURT IMPROVEMENT PROGRAM

Office of the Executive Secretary  
Supreme Court of Virginia

100 N. 9th Street, 3rd Floor

Richmond, VA 23219

804.786.6455

[www.vacourts.gov](http://www.vacourts.gov)



## Standards to Govern the Performance of Guardians *Ad Litem* for Children

In conforming with the standards of performance, guardians *ad litem* shall comply with Rule 8:6 of the *Rules of the Supreme Court of Virginia* and shall be further informed of their duties and responsibilities by the commentary of the *Standards to Govern the Performance of Guardians Ad Litem for Children* as adopted by the Judicial Council of Virginia.

- A. Meet face-to-face and interview the child.
- B. Conduct an independent investigation in order to ascertain the facts of the case.
- C. Advise the child, in terms the child can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the GAL, the court process and the possible consequences of the legal action.
- D. Participate, as appropriate, in pre-trial conferences, mediation and negotiations.
- E. Ensure the child's attendance at all proceedings where the child's attendance would be appropriate and/or mandated.
- F. Appear in court on the dates and times scheduled for hearings prepared to fully and vigorously represent the child's interests.
- G. Prepare the child to testify, when necessary and appropriate, in accord with the child's interest and welfare.
- H. Provide the court sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation.
- I. Communicate, coordinate and maintain a professional working relationship in so far as possible with all parties without sacrificing independence.
- J. File appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child and ensure the child is represented by a GAL in any appeal involving the case.
- K. Advise the child, in terms the child can understand, of the court's decision and its consequences for the child and others in the child's life.

**Decision-making power resides with the court.**