

Rules of Superintendence for the Courts of Ohio

RULE 48. Application.

Sup.R. 48 through 48.07 shall apply in all domestic relations and juvenile cases in the courts of common pleas where a court appoints a guardian ad litem to act in the best interest of a child.

RULE 48.01. Definitions.

As used in Sup.R. 48 through 48.07:

(A) Allocation of parental rights and responsibilities

References in this rule to cases involving “allocation of parental rights and responsibilities” shall also include those cases in which legal custody, parenting time, companionship, or visitation rights are at issue. “Allocation of parental rights and responsibilities, legal custody, parenting time, companionship, or visitation rights” has the same meaning as in R.C. 3109.04 and 3109.051.

(B) Attorney for the child

“Attorney for the child” means an attorney appointed to act as legal counsel for a child and advocate for the wishes of the child.

(C) Guardian ad litem

“Guardian ad litem” means an individual appointed to assist a court in its determination of the best interest of a child.

(D) Child

“Child” means:

- (1) A person under eighteen years of age;
- (2) A person who is older than eighteen years of age who is deemed a child until the person attains twenty-one years of age under R.C. 2151.011(B)(6) or 2152.02(C);
- (3) A child under R.C. 3109.04 or a disabled child under R.C.3119.86 who falls under the jurisdiction of a domestic relations or juvenile court.

RULE 48.02. Appointment of Guardian Ad Litem.

(A) Orders of appointment

Each court appointing a guardian ad litem under this rule shall enter an order of appointment. The order of appointment shall include statements regarding all of the following:

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

(B) Limited scope of appointment

A court may appoint a guardian ad litem to address a specific issue or issues. A court shall include in the order of appointment the specific issue or issues to be addressed and a statement the guardian ad litem is relieved of the duties set forth in Sup.R. 48.03(D) that are not applicable to the specific issue or issues.

(C) Mandatory appointments in abuse, neglect, dependency, unruly, and delinquent cases

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

(D) Separate appointments in abuse, neglect, dependency, unruly, and delinquency cases and cases of conflict

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

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

(E) Separate appointments in cases involving allocation of parental rights and responsibilities

If a court appoints a guardian ad litem in an allocation of parental rights and responsibilities case, the guardian ad litem shall be appointed only to represent the best interest of the child and shall not also be appointed as the attorney for the child.

(F) Discretionary appointments in allocation of parental rights and responsibilities, unruly, and delinquency cases

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

- (1) Allegations of abuse and neglect of the child;
- (2) Consideration of extraordinary remedies, such as supervised visitation, terminating or suspending parenting time, or awarding custody or visitation to a non-parent;
- (3) Relocation that could substantially reduce the time of a child with a parent or sibling;
- (4) The wishes and concerns of the child;
- (5) Harm to the child from drug or alcohol abuse by the party;
- (6) Past or present child abduction or risk of future abduction;

- (7) Past or present family violence;
- (8) Past or present mental health issues of the child or a party;
- (9) Special physical, educational, or mental health needs of the child that require investigation or advocacy;
- (10) A high level of conflict;
- (11) Inappropriate adult influence or manipulation;
- (12) Interference with custody or parenting time;
- (13) A need for more information relevant to the best interests of the child;
- (14) A need to minimize the harm to the child from family separation or litigation;
- (15) Any other relevant factor.

(G) Reappointment

A court should consider reappointment of the same guardian ad litem for a specific child in any subsequent case determining the best interest of the child.

(H) Guardian ad litem fee determinations in cases involving allocation of parental rights and responsibilities

(1) A court appointing a guardian ad litem in a case involving allocation of parental rights and responsibilities shall make a determination of the ability of any party to pay a deposit for the fees and expenses to the guardian ad litem and may reconsider that determination at any time prior to conclusion of the case. In making this determination, the court shall consider all of the following:

- (a) The income, assets, liabilities, and financial circumstances of the parties, as demonstrated by an affidavit, testimony to the court, or evidence of qualification for any means-tested public assistance;
- (b) The complexity of the issues;
- (c) The anticipated expenses, including the travel of the guardian ad litem.

(2) At any time prior to the conclusion of a case, a guardian ad litem may submit a motion for payment. A guardian ad litem shall submit a motion for payment upon conclusion of the duties. Any motion shall itemize the duties performed, time expended, and costs and expenses incurred pursuant to Sup.R. 48.03(H)(1).

(3) In determining the allocation of guardian ad litem fees and expenses, a court shall consider any relevant factor, including any of the following:

- (a) The rate or amount of compensation of the guardian ad litem;
- (b) The sources of compensation of the guardian ad litem, including the parties, any specialized funds allocated for payment of the guardian ad litem, or pro bono contribution of services by the guardian ad litem;
- (c) The income, assets, liabilities, and financial circumstances of the parties, as demonstrated using an affidavit, testimony to the court, or evidence of qualification for any means-tested public assistance;
- (d) The conduct of any party resulting in the increase of the guardian ad litem fees and expenses without just cause;
- (e) The terms and amount of any installment payments.

(4) Unless a hearing is requested by a party or the court within fourteen days after a motion for payment is filed, a court shall issue an order regarding payment of guardian ad litem fees and expenses approving or denying any portion of the requested fees and expenses and allocating payment to one or more of the parties as appropriate.

(I) Enforcement of payment

(1) If the fees and expenses of a guardian ad litem exceed the deposits or installment payments ordered and made, a court may do any of the following:

- (a) Issue a lump-sum judgment against any party owing guardian ad litem fees and expenses at the time of the determination of fees or at any further proceedings regarding payment of fees;
- (b) Enforce the payment of fees and expenses of the guardian ad litem through contempt of court proceedings;
- (c) Enforce any order regarding the payment of guardian ad litem fees and expenses in any other manner authorized by law.

(2) A court shall not delay or dismiss a proceeding solely because of the failure of a party to pay guardian ad litem fees and expenses required to be paid by the court.

(3) The inability of a party to pay guardian ad litem fees and expenses ordered by a court shall not delay any final entry.

RULE 48.03. Responsibilities of Guardian Ad Litem.

(A) General responsibilities

The responsibilities of a guardian ad litem shall include, but are not limited to, the following:

- (1) Provide the court recommendations of the best interest of the child. Recommendations of the best interest of the child may be inconsistent with the wishes of the child or other parties.
- (2) Maintain independence, objectivity, and fairness, as well as the appearance of fairness, in dealings with parties and professionals, both in and out of the courtroom, and have no ex parte communications with the court regarding the merits of the case;
- (3) Act with respect and courtesy in the performance of the responsibilities of the guardian ad litem;
- (4) Attend any hearing relevant to the responsibilities of the guardian ad litem;
- (5) Upon becoming aware that the recommendations of the guardian ad litem differ from the wishes of the child, immediately notify the court in writing with notice to the parties or affected agencies. The court shall take action as it deems necessary.
- (6) If necessary, request timely court reviews and judicial intervention in writing with notice to the parties or affected agencies;
- (7) If the guardian ad litem is an attorney, file pleadings, motions, and other documents as appropriate and call, examine, and cross-examine witnesses pursuant to the applicable rules of procedure;
- (8) Be available to testify at any relevant hearing. Attorneys who are to serve as both guardian ad litem and attorney in any dual appointments shall comply with Rule 3.7 of the Rules of Professional Conduct.
- (9) If the guardian ad litem is not an attorney, avoid engaging in conduct that constitutes the unauthorized practice of law and be vigilant in performing the duties of the guardian ad litem;
- (10) If the guardian ad litem is not an attorney, request the court to appoint an attorney for the guardian ad litem to file pleadings, motions, and other documents as appropriate and call, examine, and cross-examine witnesses pursuant to the applicable rules of procedure. The court shall take action as it deems necessary.

(B) Conflicts of interest

(1) A guardian ad litem shall avoid any actual or apparent conflict of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the case. A guardian ad litem shall avoid self-dealing or associations that might directly or indirectly benefit except from compensation for services as a guardian ad litem.

(2) Upon becoming aware of any actual or apparent conflict of interest, a guardian ad litem shall immediately notify the court in writing. The court shall take action as it deems necessary.

(C) Satisfaction of training requirements

A guardian ad litem shall meet the qualifications and satisfy all pre-service and continuing education requirements of Sup.R. 48.04 and 48.05 and any local court rules governing guardians ad litem. A guardian ad litem shall do both of the following:

(1) Meet the qualifications for guardians ad litem for each court and promptly advise the court of any grounds for disqualification or any issues affecting the ability to serve;

(2) Provide the court documentation indicating compliance with pre-service and continuing educational requirements so the court may maintain the files required pursuant to Sup.R. 48.07. The documentation shall include information detailing the date, location, contents, and credit hours received for any relevant education.

(D) Duties of the Guardian ad Litem

Unless specifically relieved by the court, the duties of a guardian ad litem shall include, but are not limited to, the following:

(1) Become informed about the facts of the case and contact all relevant persons;

(2) Observe the child with each parent, foster parent, guardian or physical custodian;

(3) Interview the child, if age and developmentally appropriate, where no parent, foster parent, guardian, or physical custodian is present;

(4) Visit the child at the residence or proposed residence of the child in accordance with any standards established by the court;

(5) Ascertain the wishes and concerns of the child;

- (6) Interview the parties, foster parents, guardians, physical custodian, and other significant individuals who may have relevant knowledge regarding the issues of the case. The guardian ad litem may require each individual to be interviewed without the presence of others. Upon request of the individual, the attorney for the individual may be present.
- (7) Interview relevant school personnel, medical and mental health providers, child protective services workers, and court personnel and obtain copies of relevant records;
- (8) Review pleadings and other relevant court documents in the case;
- (9) Obtain and review relevant criminal, civil, educational, mental health, medical, and administrative records pertaining to the child and, if appropriate, the family of the child or other parties in the case;
- (10) Request that the court order psychological evaluations, mental health or substance abuse assessments, or other evaluations or tests of the parties as the guardian ad litem deems necessary or helpful to the court;
- (11) Review any necessary information and interview other persons as necessary to make an informed recommendation regarding the best interest of the child.

(E) Identification as guardian ad litem

A guardian ad litem shall immediately identify himself or herself as a guardian ad litem when contacting individuals and inform the individuals about the role of the guardian ad litem, including as an attorney if a dual appointment, the scope of appointment, and that documents and information obtained by the guardian ad litem may become part of court proceedings.

(F) Confidentiality

A guardian ad litem shall make no disclosures about a case or investigation, except to the parties and their legal counsel, in reports to the court, or as necessary to perform the duties of a guardian ad litem, including as a mandated reporter. The guardian ad litem shall maintain the confidential nature of personal identifiers, as defined in Sup.R. 44, and address where there are allegations of domestic violence or risk to the safety of a party or child. Upon application, the court may order disclosure of or access to the information necessary to challenge the truth of the information received from a confidential source. The court may impose conditions necessary to protect witnesses from potential harm.

(G) Timeliness

A guardian ad litem shall perform responsibilities in a prompt and timely manner.

(H) Record-keeping

(1) A guardian ad litem shall keep accurate records of the time spent, services rendered, and expenses incurred in each case while performing the responsibilities of a guardian ad litem.

(2) In allocation of parental rights and responsibilities cases, a guardian ad litem shall provide a monthly statement of fees and expenses to all parties.

(3) A guardian ad litem shall file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment upon order of the court or upon the conclusion of those responsibilities.

RULE 48.04. Pre-Service Education.

(A) Pre-service education required for appointment

A guardian ad litem shall complete pre-service education provided by the Supreme Court, the Ohio Court Appointed Special Advocates (CASA) Guardian ad Litem Association, or with the approval of the appointing court, another provider.

(B) Pre-service education hours and topics

- (1) Pre-service education for guardians ad litem shall be twelve hours.
- (2) Of the twelve hours of pre-service education, six hours shall be obtained via a live education program where the guardian ad litem is physically present.
- (3) The remaining six hours of pre-service education may be satisfied by online or live education, teaching, writing, mentoring, or field-training activities with approval by the appointing court.
- (4) Six hours of pre-service education shall include training on all the following topics:
 - (a) Basic human needs, stages of child development, and the impact of trauma;
 - (b) Communication skills, including but not limited to communication with children and adults, interviewing skills, methods of critical questioning, use of open-ended questions, understanding the perspective of a child, sensitivity, building trust, multicultural awareness, diversity, and confidentiality;
 - (c) Child abuse, neglect, dependency, unruliness, delinquency, and assessing risk and safety;
 - (d) Family and child issues, including but not limited to family dynamics, substance abuse and its effects, basic psychopathology for adults and children, and domestic violence and its effects, including assessing for lethality and safety;
 - (e) Legal processes, available community agencies and resources, methods of service, records checks, the role of a guardian ad litem in court, local resources and service practice, report content, mediation, and other types of dispute resolution processes;
 - (f) Any other topic that concerns the role of the guardian ad litem to help determine the best interest of the child.

(C) Current Guardians ad Litem

An individual who is currently serving as a guardian ad litem on January 1, 2021, shall be deemed compliant with the pre-service education and not be required to complete the twelve hours of pre-service education.

RULE 48.05. Continuing Education.

(A) Continuing education hours and topics

(1) Continuing education for guardians ad litem shall total six hours annually and be provided by the Supreme Court; the Ohio Court Appointed Special Advocates (CASA) Guardian ad Litem Association; or, with the approval of the appointing court, another provider.

(2) Of the six hours of continuing education, three hours shall be obtained via a live education program where the guardian ad litem is physically present.

(3) The remaining three hours of continuing education may be satisfied by online or live education, training, writing, mentoring, or field-training activities as pre-approved by the appointing court.

(4) Continuing education shall consist of advanced education related to topics identified in Sup.R. 48.04.

(B) Failure to comply

If a guardian ad litem fails to complete six hours of continuing education within any calendar year, the individual shall not be eligible to serve as a guardian ad litem on any new appointments until this continuing education requirement is satisfied. The court shall have the discretion to continue the current guardian ad litem appointments.

RULE 48.06. Guardian Ad Litem Reports.

(A) General report requirements

(1) A guardian ad litem shall prepare a written final report, including recommendations to the court, within the times set forth in this division. The report shall affirmatively state that responsibilities have been met and shall detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted, and all other relevant information considered by the guardian ad litem in reaching the recommendations and in accomplishing the duties required by statute, by court rule, and in the order of appointment from the court.

(2) All reports shall include the following warning: “The guardian ad litem report shall be provided to the court, unrepresented parties, and legal counsel. Any other disclosure of the report must be approved in advance by the court. Unauthorized disclosure or distribution of the report may be subject to court action, including the penalties for contempt, which include fine and/or incarceration.”

(3) Oral and written reports shall address relevant issues, but shall not be considered determinative.

(4) A guardian ad litem shall be available to testify at any relevant hearing and may orally supplement the report at the conclusion of the hearing.

(5) A guardian ad litem may provide an interim written or oral report at any time.

(B) Guardian ad litem reports in abuse, neglect, dependency, unruly, and delinquency reports

(1) A guardian ad litem in abuse, neglect, dependency, unruly, and delinquency cases and actions to terminate parental rights shall provide a written report to the court, unrepresented parties, and legal counsel not less than seven days prior to any initial dispositional hearing, permanent custody hearing, and any hearing upon a motion requesting a change in disposition. The court may alter the seven-day period as may be necessary for the administration of justice.

(2) A court shall review all guardian ad litem reports, written or oral, to ensure that the guardian ad litem has performed those responsibilities required by R.C. 2151.281.

(C) Guardian ad litem reports in allocation of parental rights and responsibilities cases

(1) A guardian ad litem in proceedings involving the allocation of parental rights and responsibilities, custody, and visitation shall provide a report to the court, unrepresented parties, and legal counsel not less than seven days before the final hearing date, unless the due date is modified by the court.

(2) The court shall consider the recommendation of the guardian ad litem in determining the best interest of the child only when the report or a portion of the report has been admitted as an exhibit.

RULE 48.07. Responsibilities of the Court.

Each court appointing guardians ad litem shall do all of the following:

- (A) Maintain a public list of approved guardians ad litem while maintaining individual privacy pursuant to Sup.R. 44 through 47;
- (B) Establish criteria, which include all requirements of Sup.R. 48 through 48.07, for appointment and removal of guardians ad litem and procedures to ensure an equitable distribution of the work load among the guardians ad litem on the list. Equitable distribution means a system through which appointments are made in an objectively rational, fair, neutral, and nondiscriminatory manner and are widely distributed among substantially all persons from the list maintained by the court. The court may consider the complexity of the issues, parties, counsel, and the children involved, as well as the experience, expertise, and demeanor of available guardians ad litem.
- (C) Coordinate the application and appointment process, keep the files and records required by Sup.R. 48 through 48.07, maintain information regarding training opportunities, and receive written comments and complaints regarding the performance of guardians ad litem practicing before that court;
- (D) Maintain files for all applicants and for individuals approved for appointment as guardians ad litem with the court. The files shall contain all records and information required by Sup.R. 48 through 48.07 and by local rules for the selection and service of guardians ad litem, including a certificate or other satisfactory proof of compliance with training requirements.
- (E) Require all applicants to submit a resume or information sheet stating the applicant's training, experience, and expertise demonstrating the ability of the applicant to successfully perform the responsibilities of a guardian ad litem;
- (F) Review a criminal and civil background check and investigation of information relevant to the fitness of the applicant to serve as a guardian ad litem;
- (G) Review all guardian ad litem reports, written or oral, to ensure that the guardian ad litem has performed those responsibilities required by R.C. 2151.281;
- (H) Conduct, at least annually, a review of its list to determine that all guardians ad litem are in compliance with the training and education requirements of Sup.R. 48 through 48.07 and local rules, have performed satisfactorily on all assigned cases during the preceding calendar year, and are otherwise qualified to serve;
- (I) Require all guardians ad litem on its list to certify annually they are unaware of any circumstances that would disqualify them from serving and to report the training they have attended to comply with Sup.R. 48.05;

(J) Develop a process or local rule for comments and complaints regarding the performance of guardians ad litem practicing before that court that does all of the following:

- (1) Designates a person for accepting and considering written comments and complaints;
- (2) Provides a copy of the comments and complaints to the guardian ad litem who is the subject of the complaint or comment;
- (3) Forwards any comments and complaints to the administrative judge of the court for consideration and appropriate action;
- (4) Develops a provision for the timely disposition by the court;
- (5) Notifies the person making the comment or complaint and the subject guardian ad litem of the disposition;
- (6) Maintains a written record in the file of the guardian ad litem regarding the nature and disposition of any comment or complaint.