

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 25th day of April, 2017, the following order was made and entered:

RE: Approval and Adoption of Amendments to certain Guardian Ad Litem Rules for Family Court, Docket No. 17-Rules-02

On a former day, March 8, 2017, the Court published for comment proposed amendments to certain guardian ad litem rules for Family Court. Comments were filed by Garrett M. Jacobs, Commissioner, Department of Health and Human Resources, Bureau for Child Support Enforcement, Joyce Chernenko, Family Court Judge, Deanna Rock, Family Court Judge, and Peter Conley, Family Court Judge. The Court expresses its gratitude to those who filed comments.

On this day the Court proceeded to consider the comments, together with the proposed amendments, as published for comment, to Rules 21.04 and 21.05 of the West Virginia Trial Court Rules and Rule 47 of the Rules of Practice and Procedure for Family Courts, as well as amendments to Appendix B. Guidelines for Guardians Ad Litem in Family Court.

These amendments are necessary because guardians ad litem shall not routinely be appointed in family court unless the court is presented with substantial allegations of domestic abuse, serious allegations of abuse and neglect, serious issues relating to the child's health and safety, or allegations involving disproving a child's paternity.

Upon consideration, the Court is of the opinion to and does hereby approve and adopt said amendments, effective immediately.

The text of the amended rules to read as follows, with insertions indicated by underscore and deletions indicated by strikethrough:

West Virginia Trial Court Rules

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Rule 21.04. Definitions

For purposes of this Rule, the following definitions shall apply:

- (a) “Indigent person” means any person who qualifies for a waiver of fees pursuant to the provisions of W. Va. Code § 59-2-1.
- (b) “Infant” means any person under the age of eighteen (18) years.
- (c) “Incarcerated person” means any person who is being held against the person’s will in any facility operated under the authority of any governmental authority in the United States.
- (d) “Incompetent person” means any person who is admitted to a mental health facility or has been found by the court to be incompetent.
- (e) “Nondiscretionary appointment” means when substantial allegations of domestic abuse have been made, when serious allegations of abuse and neglect have been made, when there are serious issues relating to the child’s health or safety, or in cases involving disproving a child’s paternity.

Rule 21.05. Eligibility for a Supreme Court-Paid Guardian Ad Litem

To be eligible for Supreme Court payment, an attorney must serve as the appointed guardian ad litem, and the person for whom the guardian is appointed must be:

- (a) an infant-party who is indigent;
- (b) an infant of a party ~~who is indigent~~ or parties who are indigent, provided however, if both parents are parties to the action, both parents must be indigent;
- (c) an incarcerated person who is indigent; or
- (d) an incompetent person who is indigent; provided however, in a domestic relations case the cost of a guardian ad litem for a party and/or an infant(s) of the parties may be ordered to be paid by a non-indigent party ~~and a guardian ad litem for an infant of the parties may be ordered to be paid by a non-indigent party or the~~ if otherwise qualified, by the Supreme Court when the appointment is nondiscretionary regardless if one or both parties are indigent, provided the order appointing the guardian ad litem complies with the requirements of Rule 47 of the Rules of Practice and Procedure for Family Court. The

compensation payable by the Supreme Court is limited to the amounts set forth in Trial Court Rule 21.06.

The appointment shall end automatically when a person for whom a guardian ad litem has been appointed either (a) is no longer indigent, or is an infant of a party or parties who are no longer indigent, (b) reaches the age of eighteen (18) years, (c) is no longer an incarcerated person, (d) is released from a mental health facility, or (e) is found by the court to have regained competency. The guardian ad litem shall notify the appointing court when an appointment has been automatically terminated.

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Rules of Practice and Procedure for Family Court

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Rule 47. Attorneys and Guardians ad Litem for children

~~(a) *Appointed Attorney.*—A court-appointed attorney’s services are provided to the child. An appointed attorney acts as an independent legal advocate for the best interests of the child and takes an active part in the hearing, ranging from subpoenaing and cross-examining witnesses to appealing the decision, if warranted.~~

~~(b) (a) *Appointment of Guardian Ad Litem.* – Rule 21 of the West Virginia Trial Court Rules for Trial Courts of Record, Rule 47 of the Rules of Practice and Procedure for Family Court and the Guidelines for Guardians Ad Litem in Family Court set forth in Appendix B of these rules shall govern the appointment of guardians ad litem in family court cases. Courts shall not routinely assign guardians ad litem for children in a domestic relations case. Where, however, the court is presented with substantial allegations of domestic abuse, serious allegations of abuse and neglect, serious issues relating to the child’s health and safety, or allegations involving disproving a child’s paternity, a guardian ad litem shall be appointed by the court for the child(ren). The order appointing a guardian ad litem shall specify the terms of the appointment, including the guardian’s role, duties and scope of authority, as well as the specific reasons for the appointment and the expectations of the court for the guardian ad litem’s report, including the date by which the written report is due. If the Guidelines for Guardians Ad Litem in Family Court conflict with other rules or statutes, the Guidelines shall apply.~~

~~(e) (b) *Order of Appointment of Guardian Ad Litem.* – The order appointing a guardian ad litem shall specify the terms of the appointment, including the guardian’s role, duties and scope of authority, the issues to be investigated, as well as the specific reasons for the appointment and the expectations of the court for the guardian ad litem’s report, including the date by which the written report is due. The order appointing a guardian ad litem shall also require the parties to fully cooperate with the guardian ad litem in terms of the investigation. If the Guidelines for Guardians Ad Litem in Family Court conflict with other rules or statutes, the Guidelines shall apply.~~

~~(c) *Guardians Ad Litem.* – A guardian ad litem shall be an attorney licensed to practice law. A court-appointed guardian ad litem’s services are provided to the court on behalf of the child. The guardian ad litem shall follow the Guidelines for Guardians Ad Litem in Family Court set forth~~

in Appendix B of these rules and if the Guidelines conflict with other rules or statutes, the Guidelines shall apply. The guardian ad litem acts as an independent fact finder, investigator and evaluator as to what furthers the best interests of the child. The guardian ad litem submits a written report to the court and is available to testify.

(d) *Investigations by Guardians Ad Litem.* – West Virginia Code § 48-9-301, § 48-9-302, and the Guidelines for Guardians Ad Litem in Family Court set forth in Appendix B of these rules shall govern investigations by guardians ad litem. If the Guidelines for Guardians Ad Litem in Family Court conflict with other rules or statutes, the Guidelines shall apply.

(e) *Timing of Written Report.* – A guardian ad litem shall submit a written report to the court and a copy to all parties on the date specified by the court not to exceed sixty (60) days from the date of entry of the order appointing the guardian ad litem. Upon proper petition of the guardian ad litem, the court, in its discretion, may seal the report or redact information that may place a child or other individual in danger.

(f) *Payment of Guardians ad Litem Fees.* – The fees for a guardian ad litem appointed in a domestic relations case may be paid by a non-indigent party or, when applicable, in accordance with Trial Court Rule 21.

~~(f)~~ (g) *Training of Guardians Ad Litem.* – On or after January 1, 2013, the court shall only appoint a guardians ad litem ~~that has~~ who have completed the required training provided by the West Virginia Supreme Court.

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Appendix B. Guidelines for Guardians Ad Litem in Family Court

1. A guardian ad litem appointment is a unique and complex assignment and, as such, requires education, training and experience with the regard to the needs of children. Every guardian ad litem shall complete eight (8) hours of continuing legal education credits every two years provided by the West Virginia Supreme Court comprising of: understanding the stages of child development from early childhood through adolescence; recognizing the signs and symptoms of abuse and neglect and their effects upon children; recognizing the signs and characteristics of domestic violence and their effects upon children; recognizing the signs and symptoms of drug and/or alcohol abuse and addiction in both children and adults; recognizing the emotional effects of parental conflict on children; preparing of parenting plans that adequately safeguard the child's opportunity to have a relationship with both parents unless otherwise contraindicated by the facts; interviewing techniques for both children and adults; analyzing facts and making meaningful recommendations to ensure child safety; and preparing written guardian ad litem reports and recommendations.

~~2. Courts shall not routinely assign guardians ad litem for children or require court-ordered investigations unless the court has reasonable cause to suspect the parenting issues involve a child's safety or the best interest of the child warrants further investigation by the court. Courts shall not routinely appoint guardians ad litem in cases where there is counsel for both parties unless the additional investigation required by the court cannot otherwise be accomplished by counsel for the parties.~~ Provided, however, that when serious allegations of abuse and neglect or issues relating to the child's health and safety are raised, the family court

~~shall appoint a guardian ad litem. The Order appointing the guardian ad litem shall state the specific reasons for the appointment; require the parties to fully cooperate with the guardian ad litem in terms of the investigation; and the expectations of the court for the guardian ad litem, including but not limited to the issues to be investigated and the date by which the written report is due.~~

~~3.~~ 2. The guardian ad litem (GAL) shall accept an appointment only if he or she has a thorough understanding of the issues involved and the functions to be performed. If the GAL finds the appointment order to be unclear, the GAL should request clarification and/or modification of the order.

~~4.~~ 3. The GAL shall obtain and review the court file, as well as all relevant copies of school, medical, Child Protective Services, or other records necessary to thoroughly understand and investigate the case.

~~5.~~ 4. The GAL shall immediately make contact with the child and parents/caretakers upon appointment by the court.

~~6.~~ 5. The GAL shall schedule a face-to-face meeting with the child at a time and place that allows for observation and private consultation with the GAL unless the court specifically determines that such a meeting would be inappropriate given the age, medical and/or psychological condition of the child.

~~7.~~ 6. The GAL shall thoroughly explain to a child capable of understanding, parents/caretakers and the attorneys of record the general role of the GAL, the specific reasons for the GAL's appointment and the expectations of the court.

~~8.~~ 7. The GAL shall meet with both parents (if applicable) and/or caretakers to ascertain each party's concerns, needs, and responsibilities with regard to parenting the child. During the meeting with the parents and/or caregivers, the GAL shall ascertain each party's understanding of the needs and concerns of the child.

~~9.~~ 8. When appropriate, the GAL shall conduct home visits of the child's parents/caretakers to observe their respective living environments and the interaction of the parents/caretakers with the child.

~~10.~~ 9. When appropriate, the GAL shall interview the child's caseworkers, therapists, school personnel and/or medical providers to obtain information about the child's needs and any concerns they have regarding the child. During such interview, the GAL should inquire about the roles and responsibilities each parent has in the child's life and each parent's relationship with the child.

~~11.~~ 10. When appropriate, the GAL shall interview relatives, neighbors and/or other individuals with relevant knowledge of the child or parents and the facts that gave rise to the allegations underlying the appointment of the GAL.

~~12.~~ 11. If the GAL believes that the parties and/or the child should undergo further evaluations, then the GAL shall file a motion with the court requesting same. Said motion shall clearly set forth the reasons why such evaluations are deemed necessary by the GAL.

~~13.~~ 12. The GAL shall complete his or her investigation with sufficient time between the interviews and court appearances for the GAL to thoroughly analyze the information gleaned, take appropriate actions and formulate meaningful arguments and written recommendations to the court.

~~14.~~ 13. The GAL shall disclose to the court the child's wishes unless the GAL believes such disclosure would jeopardize the child's safety. If the child's wishes are contrary to the GAL's assessment of the child's best interests, the GAL may request that an attorney be appointed to serve as counsel for the child. The court may appoint an attorney to represent the child if the court finds that a conflict of interest has arisen between the GAL and the child.

~~15.~~ 14. The GAL shall include in his or her written report to the court the following: the dates on which face-to-face contacts with the child occurred and any observations of the child with the parents or caretakers; an outline of all records and documents reviewed; a summary of all relevant portions of any records and documents reviewed; the name of each person interviewed and the manner in which they were interviewed (i.e. whether by telephone or in person); provided, however, the GAL may petition the court to seal or redact information as provided in Rule 47 of the Rules of Practice and Procedure for Family Court. The GAL shall also fully explain any special needs, medical and/or psychological conditions of the child and the ability and willingness of each parent to provide for the needs of the child. The GAL may attach any necessary documents to the written recommendation. Medical and/or mental health records of the parents/caretakers relevant to the written report of the GAL shall be sealed in the court record and shall not be attached to the written report.

~~16.~~ 15. The GAL shall provide the court with sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation. In cases involving parenting responsibilities, the recommendations shall provide clear and concise requirements of both parents to accomplish the recommendations of the GAL. The GAL shall review all relevant statutory provisions regarding allocation of custodial responsibility and shall support the proposed allocation of custodial responsibility recommended to the court.

~~17.~~ 16. The GAL shall be prepared to explain and advocate his or her assessments and recommendations in all proceedings before the court.

~~18.~~ 17. The GAL shall be present at all court hearings and respond to all motions and appeals which affect the recommendations of the GAL or interests of the child during the pendency of the case. The GAL shall review all parenting agreements between the parents/caretakers and shall advise the court if he or she has any concerns regarding the agreement.

~~19.~~ 18. If appropriate, the court may require the GAL to monitor the case for a reasonable period set by the court to ensure the parties are complying with the court's order. The GAL shall provide a brief, written progress report consisting of whether the parties are following the order

of the court; whether the recommendations made by the GAL are providing for the needs of the child; and any concerns the GAL may have regarding the child.

A True Copy

Attest: //s// Edythe Gaiser
Deputy Clerk of Court