



Oklahoma Guardian Ad Litem Institute

STANDARD OPERATING MANUAL FOR GUARDIANS AD LITEM

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I. INTRODUCTION

For purposes of these Standards, a Guardian Ad Litem (GAL) is an attorney at law appointed by a Family Court in Oklahoma to investigate facts in cases involving the care and custody of minor children and other matters that implicate the interests or rights of children under the authority of Title 43, Section 107.3 of the Oklahoma Statutes.

The purpose of these standards is to

1. provide accountability related to GAL investigations;
2. improve custody, visitation, and other outcomes for children;
3. promote uniformity and consistency in GAL investigations; and
4. promote respect for the rights of parties and their children, including their safety.

These standards apply to all attorneys serving as guardians ad litem for children by the Oklahoma Guardian Ad Litem Institute. These standards augment the law and policies governing the qualification of attorneys as guardians ad litem in the State of Oklahoma. Many of the competencies required to represent the best interests of children in family courts 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 advocating on behalf of the best interests of children. 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.

Representing the best interests of children, however, is different from other forms of litigation. The importance of the legal process and the effect of court proceedings on children and the family provide the basis for these distinctions. The long-term consequences to a child makes the role of a 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 critical investigation.

II. ROLE OF GAL

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 objectively advocates for the child's best interests within the scope of the court order of appointment.

The ultimate decision-making power resides with the court¹. “The guardian ad litem in a custody dispute is an arm of the court and must see to the best interests of the child.” *Kahre v. Kahre*, 1995 OK 133, ¶34. “A guardian ad litem ‘becomes an officer of the court and is charged with the duty of protecting the rights of the infant for the State in its role of *parens patriae*. . . . In custody matters the guardian ad litem has almost universally been seen as owing his primary duty to the court that appointed him, not strictly to the child client.” *Kahre v. Kahre*, 1995 OK 133, ¶31, 33.

Oklahoma law statutorily defines the role of a GAL in 43 O.S. §107.3(A)(2) and states as follows:

The guardian ad litem may be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

- a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, caregivers and health care providers and any other person with knowledge relevant to the case including, but not limited to, teachers, counselors and child care providers,
- b. advocate for the best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,
- c. monitor the best interests of the child throughout any judicial proceeding,
- d. present written factual reports to the parties and court prior to trial or at any other time as specified by the court on the best interests of the child, which determination is solely the decision of the court, and
- e. the guardian ad litem shall, as much as possible, maintain confidentiality of information related to the case and is not subject to discovery pursuant to the Oklahoma Discovery Code.

Commentary. The court, not the GAL, decides legal issues and ultimately makes credibility determinations and factual findings when facts are in dispute. The GAL reports on facts and avoids providing legal conclusions or improper legal analysis.

¹ 43 O.S. §107.3(A)(2)(d), and *Guymer v. Guymer*, 2011 OK CIV APP 4.

Inappropriate analysis: “This case presents a legal question of first impression as to whether the mother is entitled to relief from judgment. The national trend is to deny relief in this situation and in a recent case, Oklahoma courts hinted that it also would reject a claim based on weak facts such as those in this case.”

1. *The GAL shall gather and report factual data to the Court*

The role of the GAL is to gather and report factual information² that will assist the court in making custody, visitation, or other decisions related to the best interests of a child.

Unless the appointing judge specifies otherwise, the GAL investigator’s role is limited to gathering and reporting information to the court.

2. *The GAL is not a clinical evaluator and shall not perform clinical assessments or other clinical functions.*

The GAL should provide descriptive information without clinical interpretations, even if the GAL has mental health education and training.

Example of a descriptive statement: “Mr. Jones said that he has felt very sad since his separation with his wife; he said he has trouble sleeping, has no appetite, and has missed numerous days of work because he is too depressed to get up.”

Example of improper clinical interpretation: “Mr. Jones appears to be clinically depressed.”

3. *The GAL’s role requires participation at all stages during the pendency of the case.*

The GAL shall advocate for the best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary, and monitor the best interests of the child throughout any judicial proceeding.³

4. *The GAL shall engage in non-discriminatory practices.*

The GAL shall not engage in conduct manifesting bias or prejudice based on race, gender, religion, ethnicity, disability, age, socioeconomic status, marital status or sexual orientation against a party, witness, counsel, or other persons involved in the case.

² 43 O.S. §107.3(A)(2)(d)

³ 43 O.S. §§107.3(A)(2)(b) and (c)

Commentary. The GAL must be aware of how societal and personal biases may interfere with an objective investigation and recommendations. The GAL recognizes and strives to overcome any such biases. If the GAL is not able to do so, he or she must promptly decline or withdraw from the appointment. If the GAL considers factors related to race, gender, religion, ethnicity, disability, age, sexual orientation, marital status or socioeconomic status concerning a party in the investigation or report, the GAL must explain the relevance of these factors to the issues before the court.

5. *The GAL does not represent parties and shall not give any party legal advice.*

The GAL shall refrain from giving legal advice to parties, including but not limited to advice about how to obtain or modify court orders, or how to draft legal documents.

The GAL shall refer parties to their attorneys for legal advice. If a party is pro se, the GAL shall suggest that the party seek legal advice from an attorney.

The GAL shall refrain from giving a party legal advice that he or she should drop a restraining order so that the parties may meet together with the GAL or engage in mediation pertaining to the restraining order.

Commentary. To provide such services during the investigation or pendency of the case is inconsistent with the GAL's role as an impartial investigator and reporter. The GAL, however, may provide information to the parties, the court, and counsel about community resources available to the parties, such as but not limited to substance abuse treatment programs or other professional services that may be helpful to the parties and their children.

6. *Provide the court sufficient information for court action based on the findings of the interviews and independent investigation.*

The role of the GAL is to gather and report factual information⁴ that will assist the court in making custody, visitation, or other decisions related to the best interests of a child. The GAL is obligated to assure that all facts relevant to the case are presented to the court.

Unless the appointing judge specifies otherwise, the GAL investigator's role is limited to gathering and reporting information to the court.

The GAL's reports 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; services

⁴ 43 O.S. §107.3(A)(2)(d)

to be made available to the child and family; and any other orders the GAL deems to be in the child's interest.

The GAL's investigation reports should contain, but not be limited to, an analysis of and comment on plans presented by other parties such as the Department of Human Services or therapists for the parties and/or child.

Commentary. The court, not the GAL, decides legal issues and ultimately makes credibility determinations and factual findings when facts are in dispute. The GAL reports on facts and avoids providing legal conclusions or improper legal analysis.

Inappropriate analysis: "This case presents a legal question of first impression as to whether the mother is entitled to relief from judgment. The national trend is to deny relief in this situation and in a recent case, Oklahoma courts hinted that it also would reject a claim based on weak facts such as those in this case."

7. *The GAL shall adhere to applicable ethical and professional standards.*

Attorneys who serve as GALs are subject to the Rules of Professional Conduct promulgated by the Oklahoma State Bar as they would be in any other case. For example, an attorney would follow the conflict rules (1.7, 1.8, 1.9, and 1.12) to determine if there would be a possible conflict of interest if the attorney served as GAL.

The GAL shall decline or withdraw from an appointment if a conflict of interest exists, or the GAL has information or personal relationships that will bias the process or outcome of the investigation.

Unlike the Rules for Professional Conduct as they apply to confidentiality, the attorney serving as a GAL does not have a true attorney-client relationship⁵ and does not have the same client confidentiality requirements.

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.

Further, an attorney must remain in good standing as a member of the bar and adhere to the Rules of Professional Conduct that apply to lawyers.

⁵ "The legislature has created in §107.3 a blended role of guardian ad litem and attorney for the children. The guardian ad litem appointed pursuant to §107.3 does not have a true attorney-client relationship with the minor children. The guardian ad litem's obligation remains the same as that of the trial court: the child's best interests, even though the child's wishes may be otherwise." *Rowe v. Rowe*, 2009 OK 65, ¶4.

III. SCOPE AND CONTENT OF THE INVESTIGATION

A comprehensive history creates a context for understanding the current issues in dispute. The nature and extent of the family history obtained, through both interviews as well review of documents depends on the particular family's circumstances and the directives contained in the order of appointment. However, it is commonplace to obtain the:

- A. History of legal proceedings and prior investigations.
 - The nature of the case, including the parties and children involved, relevant procedural history, current orders, and the relief sought by each party;
 - History of other cases involving the parties, including prior cases pertaining to parties or the children including, but not limited to Family Court, Juvenile Court, criminal, DHS, or other relevant cases;
 - Prior custody related investigations and evaluations, including GAL, Department of Human Services, or other evaluations or assessments;
- B. Facts designated by court order and the applicable law.
 - The issues that the court specifies for investigation in the order of appointment;
 - Facts relevant to the legal standard that applies to the case for original and modification of custody or visitation;
- C. Relevant concerns raised in the case by each parent, including facts related to how each parent's proposed outcome serves or conflicts with the child's best interests.
- D. Parenting history.
 - With whom have the children lived and for how long;
 - What parenting tasks have each parent performed, when, for how long;
 - The competence with which each parent carried out parenting tasks;
 - History of parents' past joint decision-making regarding children;
 - Parent's present ability to communicate or make joint decisions;
 - Whether a third party or either party is or was a primary caretaker;
 - History and impact of a parent's substance abuse, mental illness, or domestic violence on the children and the parent's parenting ability;

- History of physical, sexual or emotional abuse of the children;
- History of past restraining orders and violence against others;
- Each parent's past and present parenting skills and deficits;
- The strength and quality of the parent-child relationships, emotional closeness, attachment, and perceptions of each other;
- Each parent's or potential caretaker's knowledge of the children, knowledge of parenting techniques, disciplinary practices, ability to distinguish his or her own needs from the needs of the children, and to understand and respond to the children's needs;
- The ability of the parent to promote and support appropriate social, emotional, and educational development in the children, and to provide a stable home environment for the children;
- Each parent's or potential caretaker's ability to support the children's relationship with the other parent as appropriate;
- Each party's ability to communicate and cooperate with the other parent regarding the children as appropriate, including the impact of substance abuse, mental illness or domestic violence on that ability.

E. The family history.

- History of parents' relationship, including if and for how long the parties lived together as a family;
- Parties' accounts of how difficulties began, how they were disclosed, or if they persist;
- Prior Department of Human Services involvement with family members;
- Children's present and past school functioning;
- Criminal history of both parties;
- Sexual offense history (Sexual Offender Registry Information);
- Substance abuse and substance use history of family members;
- Mental health treatment and history of family members;
- Relevant medical history or problems of family members;
- Presence of new relationships, partners or their children;
- Relationships with significant caretakers, grandparents, relatives, child care providers;
- Each parent's relationship with family of origin and partner's family;
- Education and employment history of parents;
- If relevant, ethnic, cultural, lifestyle, and religious factors.

F. Developmental status and parenting needs of the children.

- Each child's developmental history, functioning in school, peer relationships, medical and mental health history, activities,

- schedules;
- Special needs of each child: medical, learning or developmental problems;
 - Assessment of each child's adjustment to school, friends, community, and extended families;
 - Child's temperament and response to transitions;
 - Impact of change on child's routines, attachments, environments;
 - Child's exposure to, understanding of or concerns about a parent's needs, wishes, concerns, safety, or problems;
 - Quality of relationship between siblings;
 - Particular challenges for either parent or the child with each other.

IV. FULFILLING THE DUTIES OF GAL

In fulfilling the duties of a GAL, an attorney shall do the following:

1. COMMENCEMENT OF THE INVESTIGATIONS

1.1. Promptly Make Contact with Parties

Upon receipt of the Order appointing the Institute, the Institute (through either the assigned GAL or through the project coordinator) shall promptly, and within seven (7) calendar days, make contact in the case by sending a letter of introduction to counsel and pro se parties outlining the investigative process of the Institute.

If a party has an attorney, the Institute/GAL should first make contact with the attorney.

The GAL should use additional means of communication if a party's primary language is not English, or there are literacy or other barriers impacting written communication. The GAL can determine more easily if a party understands what is communicated in a face-to-face interview.

Initial investigatory interviews and contacts with each of the parties in a case shall be scheduled as soon as possible for the assigned GAL promptly upon receipt of the online take form from a party

No initial interview or contact shall be scheduled with a party until that party's online intake form is received by the Institute.

1.2. File an Entry of Appearance

Once the Institute is appointed by a court, the attorney assigned to the case must file an Entry of Appearance as the guardian ad litem on behalf

of the Institute immediately upon having a case assigned to the attorney by the Institute.

1.3. File statutory disclosures

Title 43, Section 120.7 of the Oklahoma Statutes **requires** all guardians ad litem to make the following disclosures to the parties:

1. A disclosure of any prior relationships with any party, attorney or judge in the pending action;
2. A complete resume disclosing all personal and professional qualifications to serve as a court expert;
3. Any suspensions from practice, reprimands, or other formal punishments resulting from an adjudication of complaints filed against the person with the professional licensing board or other organization authorized to receive complaints regarding the performance of the individual in question; and
4. Any criminal convictions within the past ten (10) years and inclusion on any sexual offender list.

While these disclosures are technically required “before the court appoints an individual”, since the Institute is appointed in our cases before each case is assigned to an individual, our attorneys are not able to make these disclosures before appointment.

To effectuate compliance with 43 O.S. §120.7, each attorney shall file these statutory disclosures with the Court, with copies sent to all parties, at the time of filing an Entry of Appearance.

A party may file an objection to the appointment of a proposed guardian ad litem within fifteen (15) days after the receipt of these disclosures. Upon filing an objection to the proposed guardian ad litem, the court shall set the matter for hearing.

If requested, the party objecting to the appointment of the proposed guardian ad litem shall be entitled to discovery related to the qualifications and appropriateness of the proposed court expert prior to hearing.

2. GAL INVESTIGATION SOURCES AND METHODS

The GAL shall conduct the investigation in a fair and balanced manner. The GAL should obtain similar types of information about each party. If the case

involves more than one child, each child's best interests must be addressed unless the court orders otherwise. If the GAL is unable to report on all of the children, the GAL shall indicate why in the report.

Commentary. Depending on the circumstances, the GAL may need to spend more time investigating facts that relate only to one party, especially if such facts are disputed, difficult to investigate, or new information arises about that parent. The GAL may have satisfactory information about one parent, but incomplete data about the other parent. For example, further investigation of alleged drug use might be needed if a party's drug testing results are unreliable because the facility did not monitor how samples from the party were collected, or new sources indicate that the party has used drugs since the time of the last testing.

2.1. The GAL shall provide an explanation of the GAL's role at the commencement of the investigation.

The GAL must explain the GAL's role and the purpose of the investigation to the parties.

The GAL shall inform the parties how the information gathered by the GAL will be used.

The GAL must explain there are no "off the record" discussions and any information collected by the GAL may appear in the GAL report, be disclosed in court or to the other party, or otherwise disclosed as required or permitted by law.

As appropriate based on the child's level of maturity, the GAL should provide a similar explanation of the investigative process and warning to a child, but modified to reflect the child's age and level of understanding.

If the GAL interviews other witnesses, they also must receive the same warning.

Commentary. To ensure a person understands the warning, the GAL should ask the person to summarize it for the GAL. The parties or witnesses should be informed that while they are encouraged to provide information, they may decline to answer a question and have an attorney present during any interview. Increasingly, parties represent themselves in court. Therefore, the GAL should avoid use of professional jargon or legalese that a party may not understand. The GAL should strive to explain things in simple language and terms as appropriate so that a party with a limited educational background or language ability can better understand what the GAL is communicating.

2.2. *The GAL shall inquire if either of the parties have relevant safety concerns and screen for domestic violence.*

The GAL shall inquire at the outset of the investigation about any safety risks related to the investigation for either party, the child, or others because of any party's mental illness, substance abuse, domestic violence, child abuse, or history of violence against others.

To ensure this inquiry, the Institute, either through the GAL or the Project Coordinator, shall screen each parent for domestic violence.

The GAL shall conduct the investigation in such a manner as appropriate to avoid likely harm to the child, a party, the GAL, or others.

2.3. *Meet face-to-face and interview the child.*

The GAL is to establish a relationship with the child. 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 information for the Court and parties.

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, attend interviews of the child conducted by trained experts, and/or discuss the interviews with the experts who conducted them, 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.

Care should be taken so that the child never feels compelled to state a preference or choose between parents or placements.

Young children present a challenge, but the age and verbal ability of the child does 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, as well as whether or not these wishes are in the best interests of the child. 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.

The GAL has a duty to avoid further harm to children when possible. If concerns are raised that a child will be traumatized or at risk by contact with a parent (e.g. due to severe neglect or abuse, exposure to domestic violence, traumatic or unpredictable absence, or other inappropriate behavior) a parent-child observation may not be indicated. The GAL explains the reasons for not observing children with each parent in the report.

Commentary. Some children may be much less candid in the interview if a parent or the parents are present during the child's interview, or are visible or able to hear the interview. Therefore, try to talk with the child outside the visible and auditory presence of each parent.

2.4. *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.*

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.

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 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.

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

The GAL is an impartial investigator and reporter in all cases.

The GAL shall review any and all relevant records, which include court, DHS, medical, mental health, and school records. The GAL should attach a filed copy of the Order appointing the Institute, as well as a filed copy of the attorney's Entry of Appearance on behalf of the Institute, to any written request for records since it sets forth the 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, a prior GAL, DHS or 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.

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 incorporate the information into the GAL report.

The GAL should visit each parent's home, preferably when the child is at the 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.

2.6. The GAL shall spend sufficient time interviewing parties and investigating concerns as necessary to gather relevant information.

The GAL conducts an initial interview with each party and additional interviews with each party and other witnesses as necessary to gather relevant information. In addition, the GAL may gather information by telephone, email, and or other means.

Commentary. A party is permitted to have counsel present during an interview, but the GAL controls the interview and conducts the questioning. If counsel directs a party to refuse to answer a question or plead the Fifth Amendment against self-incrimination, the GAL moves on to other questions, noting the objection. Such objections do not prohibit the GAL from using other sources to obtain the information. If the GAL does not meet with any party, the GAL explains why in the report.

2.7. The GAL shall ask each party about relevant witnesses and documents and investigate these sources of information as appropriate.

As a starting point, the GAL invites counsel and parties to provide relevant information, including a fact summary, procedural history, relevant documents, and a list of witnesses and professionals who can provide relevant information. In deciding what records to review or witnesses to interview, the GAL considers the likelihood that relevant information will be obtained, with reasonable convenience, efficiency, cost, and physical safety of a party, child or informant.

Commentary. In determining what witnesses to interview, the GAL may also consider: the number of witnesses suggested, whether the witness directly witnessed important events or the aftermath of important events, the potential bias of the witness, the importance of the interview to a party, and other relevant considerations. At the beginning of each collateral witness or party interview, it is important that the GAL explain the GAL's role and the limits of confidentiality. In addition to oral communications, the GAL may provide written questions and accept additional written responses from witnesses or collateral sources.

2.8. The GAL shall access original sources when possible.

To increase the reliability of reported information, the GAL investigates original sources of information.

Commentary. For example: John Jones says that Jane Doe saw the parties' son drinking beer at a soccer game. The GAL speaks with Jane Doe to ascertain what she observed.

Commentary. For example: a police report indicates that the child told his soccer coach that the child's parent supplied the beer. The GAL speaks with the coach and the child.

2.9. The GAL shall use multiple fact sources when possible.

If certain events or facts are disputed, the GAL should investigate more than one source of information relating to the events or allegations when possible. The parties should be encouraged to provide names of witnesses who were present, written reports, or other relevant evidence related to the event or allegation.

Commentary. For example, the father disputes the mother's claim that the father told the mother that he was treated at a hospital after he attempted suicide. The GAL contacts the hospital and interviews any other witnesses with direct knowledge about the disputed event or his statements about it. Hospital records in the case lead to other relevant sources of information such as "911" call records, a police report, an ambulance report, and a copy of a suicide note. The GAL reports all the relevant facts collected about the disputed allegation.

2.10. The GAL shall conduct a home visit at each parent's home.

Home visits can yield valuable information. A home visit will be conducted at each parent's home. If no home visit is conducted, the GAL shall explain why that decision was made in the report.

Commentary. If home visits are conducted, care must be exercised so that inequality in housing conditions or perceived wealth do not lead to bias. A person, who is a fit parent and caretaker for the child, also may experience transitional or temporary housing difficulties as a result of separation from the other party, nonpayment of support, inadequate financial support, or relocation related to domestic violence or loss of income.

2.11. The GAL shall consider the need for any further information necessary to complete the GAL investigation and provide a comprehensive report.

The GAL shall collect and review documents as well as conduct additional interviews of the parties, each of the children and other witnesses until the necessary information is fully gathered.

2.12. File appropriate petitions, motions, pleadings, and briefs on behalf of the child's best interest.

The GAL should make appropriate motions, including motions for testing of the parents and/or child, to advance the child's best interest in court. When necessary, the GAL should file briefs in support of legal issues.

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

The GAL is expected to act as an advocate for the client. 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.

The GAL should provide independent evidence as necessary to properly advocate for the best interests of the child.

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 or their counsel.

The GAL should be prepared for each hearing and should not, absent extraordinary circumstances, request or be the reason for delay or continuances of any hearing or trial in a matter.

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

The GAL should be involved in all pre-trial conferences and negotiations including phone calls, formal or informal conferences and mediation.

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.

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 best interests 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 appropriate pleadings, if necessary.

Any proposed settlement which is contrary to the best interests of a child should be opposed despite the agreement of the other parties.

2.15. The GAL shall maintain an attitude of respect.

The GAL shall approach all family members and parties with an attitude of respect and openness to hear their account of the relevant facts regardless of any allegations that have been made.

The GAL shall be patient, courteous, and dignified in his or her interactions with litigants, witnesses, attorneys, and others with whom the GAL deals in this official capacity.

Commentary. The GAL may limit the number of telephone calls and contacts made by a party or attorney as is reasonable given the particular circumstances. The GAL may seek assistance from the court on issues related to the GAL's safety or to address inappropriate conduct by a party related to the investigation. In such instances, a motion must be filed with the court with a copy sent to counsel of record and any pro se parties.

2.16. The GAL shall be diligent and adhere to time deadlines.

The GAL shall adhere to all time frames set forth in the order of appointment as applicable.

The GAL shall endeavor to prepare and provide written reports to the parties, through counsel when available, prior to each court hearing and/or as otherwise set forth in the order of the appointment.

If the written report is not prepared and provided to the parties prior to a hearing or other time specified in the order of appointment, the GAL

shall notify the parties prior to each such hearing.

Absent extraordinary circumstances, it is not appropriate for the GAL to be the cause of or request a continuance based upon an inability to complete a report.

If the GAL needs more time to complete the written report, the GAL shall file a motion with notice to counsel and pro se parties to extend the deadline prior to the date when it is due. The motion shall indicate the proposed due date for the report.

The GAL shall complete the report even if a party declines to participate or an attorney indicates that the case may settle.

2.17. The GAL is a mandatory reporter of suspected child abuse or neglect.

- a. Every person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter promptly to the Department of Human Services. Reports shall be made to the hotline, 1-800-522-3511. 10A O.S. §B.1.
- b. Any person who knowingly and willfully fails to promptly report **suspected** child abuse or neglect or who interferes with the prompt reporting of suspected child abuse or neglect may be reported to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor. Any person with prolonged knowledge of ongoing child abuse or neglect who knowingly and willfully fails to promptly report such knowledge may be reported to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a felony. For the purposes of this paragraph, “prolonged knowledge” shall mean knowledge of at least six (6) months of child abuse or neglect. 10A O.S. §C.
- c. Any person who knowingly and willfully makes a false report pursuant to the provisions of this section or a report that the person knows lacks factual foundation may be reported to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor. 10A O.S. §D.1.
- d. If the GAL has reasonable cause to believe a child is in imminent danger, the GAL should report this information to the DHS hotline and should also report the information to the Court through an emergency motion for instructions with the required notice to counsel and pro se parties.
- e. Keep in mind, however, that if a court determines that an accusation of child abuse or neglect made during a child custody proceeding is false

and the person making the accusation knew it to be false at the time the accusation was made, the court may impose a fine, not to exceed Five Thousand Dollars (\$5,000.00) and reasonable attorney fees incurred in recovering the sanctions, against the person making the accusation. 10A O.S. §D.2.

2.18. The GAL shall use a process for communication and collection of information that is conducive to disclosure of information and fair to the parties.

The GAL shall provide each party with a separate interview so that each party may speak with candor.

The GAL shall encourage parties and their attorneys to provide additional relevant information and documents.

The process for communications must be even-handed and provide each party with the opportunity to present relevant information and respond to relevant allegations by the opposing party.

The GAL shall also afford a pro se party the same procedural protections that the GAL affords a party with an attorney.

2.19. The GAL shall conduct all oral and written communications with attorneys and pro se parties in a manner that avoids the question of bias.

The GAL shall send counsel of record and pro se parties copies of any motions and other documents filed by the GAL in court.

If the GAL sends a substantive written communication to one counsel or a pro se party, the GAL shall send a copy of the communication to the opposing counsel or pro se party.

Commentary. A GAL's written communications to one party or attorney about administrative or scheduling matters, such as arranging a time for an interview or signing releases, are not substantive matters. While it is not required by any statute or rule, attorneys may agree to send copies of all written correspondence addressed to the guardian ad litem to the opposing counsel.

2.20. The GAL shall arrange for a qualified interpreter if a party or child is unable to understand or use the English language.

The need for an interpreter goes beyond the courtroom if a party is not completely fluent or comfortable in using the English language. The

party, child or child's guardian should be interviewed to determine the communication system to be used and the party's or child's comfort with it. In the case of a deaf or hard-of-hearing person, this communication system could be oral, cued-speech, finger spelling, sign language, or a combination of all of them. People may prefer to use their native language. Using a child as an interpreter is not appropriate, and using relatives or friends may have a chilling effect on what is disclosed. If the child or a party has limited or no English language skills and the GAL does not speak the language, every effort should be made to ensure that only qualified interpreters are used. Any authorizations for release of information and other forms should be translated for such parties. Likewise, a party or child may have a need for a sign language interpreter.

Commentary. Bias or incompetence of an interpreter can lead to omitted and inaccurate communications with the GAL. The interpreter should not have a conflict of interest or a relationship with a party or other person that will bias the interpretation. The role of the interpreter is to facilitate communication rather than serve as a substitute for an expert on a particular culture.

2.21. The GAL shall be mindful and aware of cultural issues in each case.

Certain cases may require that the GAL possess or utilize cross-cultural competence and expertise. For example, if the parents dispute whether a certain religious ritual was integral to a certain faith and whether the ritual should be performed on the child.

2.22. The GAL shall maintain confidentiality.

The information gathered by the GAL for the court is necessarily confidential. However, the GAL shall not disclose confidential and personally identifiable information about the parties, their children, or the services rendered by the GAL to a person who is not a party or counsel in the case, except as necessary to gather information to complete the investigation and report, or to perform responsibilities related to the order of appointment. This prohibition is permanent and applies to the GAL's writings, lectures, or other media communications.

2.23. The GAL shall obtain appropriate release forms or Court orders before obtaining privileged and confidential information about the parties and their children.

Many of the most common and relevant records that are subject to statutory privileges or other restrictions can be obtained with an appropriate authorization for release of the information or a court order.

- a. Department of Human Services (DHS) records. The GAL can obtain DHS records without a separate Court order pursuant to 10A O.S. §1-6-103(A)(1).
- b. The Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (HIPAA) requires that health providers may only release personal health information if the release signed by a party complies with the provisions of the federal law. Even if no statutory privilege applies to the information sought by the GAL, the provider or keeper of other records (e.g. unlicensed support group leaders, batterer intervention programs) may also request a written release from their client. The order appointing the Institute provides that the GAL is permitted to access certain records and information. However, the GAL shall still request each party to sign HIPAA releases for all records in each case to help ensure the release of information and document to the GAL in each case.

V. REPORT WRITING

The report should address and relate to the areas of investigation designated by the order of appointment. The report should provide accurate, detailed and balanced information about the parties and their children.

1. The report should appear professional in appearance, format and writing style.

The report should be typed, well-written and neat in appearance. Pages must be numbered. The GAL shall attempt to avoid spelling, grammar or typographical errors in the report. The GAL should write the report in a way that is concise in words, yet able to encompass all the relevant facts and provide detailed information. The language used in the report should be understandable to the average layperson and avoid jargon that may be confusing. The GAL should prepare a report that is well-organized. Use of headings, bold type, or underlining to separate sections or topics in the report may make a report easier to comprehend. The report shall be dated and signed by the GAL with the GAL's name typed below the signature. The report shall include the GAL's mailing or office address and telephone number.

2. The report should be accurate, objective and unbiased.

When writing the report, the GAL provides a balanced view of the parties that includes all of their relevant strengths and weaknesses. The information contained in the report should be accurate. It also should be as factual and detailed as possible. The GAL report should:

2.1. Use descriptive statements rather than evaluative statements.

Evaluative statement: "Michael is a cruel and aggressive boy."

Descriptive statements: “In his interview, Michael said he punches his younger brother, Joseph, almost every day. Michael’s father reports that he had to interfere three times last week when Michael hit the family dog with a hockey stick.”

2.2. *Provide ample details, but avoid inflammatory characterizations if possible.*

Derogatory statement: “Mr. Jones is well-known to the courts as a drunk.

Descriptive statement: “Mr. Jones was convicted in District Court of driving under the influence of alcohol in 1986, 1996, 2001, and in July, 2003.”

3. *Provide past and present relevant facts relating to both parties and the children.*

Include all relevant facts that address the issues involved in each case. Include all relevant facts collected from all sources, including facts that are consistent and inconsistent with other reported facts. Provide balanced and similar information about both parties. Provide relevant and detailed information about all of the children. Disclose what important information may be missing and why it missing.

4. *Include specific information and provide dates and pinpoint time frames if at all possible.*

Avoid use of vague phrases or time frames such as “in the past” or “occasionally” or “sometimes” if a more precise time frame is available. The GAL should provide detailed information.

Vague: “John says he used heroin in the past.”

Specific: “John says he used heroin in May, 1996 and June, 1998.”

Vague: “Mary states that John occasionally uses drugs.”

Specific: “Mary states that she saw John use cocaine twice in August, 1998.”

Vague: “ The child has health problems.”

Specific: “ The child has diabetes.”

5. *Identify the sources of information.*

Sources should be easily identified in the report. The GAL must list every person interviewed and the records reviewed with any relevant information about the

informant or source.

- Date and Name of each person interviewed (e.g. Dr. Tom Jones on 9/5/03)
- Position, profession, place of employment (psychiatrist, General Hospital);
- Description of record reviewed (Dr. Jones' records regarding mother);
- Date the record was made and period it encompasses (July, 2002 to July, 2003);
- How information was obtained (e.g. received from mother/father, received by email, written reference questionnaire);
- Date records were reviewed or obtained by the GAL (9/5/03);
- Informant or record author's relationship to the parties, child or family (Dr. Jones is mother's psychiatrist, but also saw her and the husband for marriage counseling in May, 2001).

Use of hearsay statements is permitted in the report, but the GAL should always attempt to contact and also quote the original source in the report if possible.

6. *If a party fails or refuses to participate, the GAL should include the information that the GAL has obtained in the report.*

The GAL encourages parties to participate in the investigation. If a party does not participate, the GAL is still permitted to file a report and to disclose whatever information has been collected about that party from other sources. The report should disclose that such a party has not participated or declined to provide information.

Commentary. The GAL shall refrain from drawing conclusions about a party without a factual basis.

7. *Facts shall be separated in the report from conclusions.*

Only facts should be contained in the body of the investigation. The investigator's inferences or conclusions based on the facts shall be confined to separate summary sections of the report. Such material is then easier to redact if it is later excluded from evidence at trial and stricken from the report.

Commentary. The GAL's conclusions should be consistent with the information that is collected; the GAL shall set forth the connection between the facts and the conclusions. The trial judge is the ultimate fact finder. Thus, the GAL's conclusions as to whether a party has met his or her burden of proof should be avoided.

8. *The GAL shall submit timely reports.*

The GAL shall submit reports to the attorneys and pro se parties in a timely

manner to allow for review and follow up prior to a hearing. The GAL should inform parties that the report cannot be given out or shown to anyone, except the parties or their counsel. A court order may be required for any distribution of the report, even to parties or their counsel. The GAL shall not distribute copies of the report to any non-party or attorney unless the court orders that the GAL may release copies to such individuals.

Commentary. If information in the GAL report has the potential of exposing a party or the child to danger, the GAL should consider redacting that portion of the report for the information to be provided in a protected manner.

VI. THE GAL AS A WITNESS

In a custody proceeding, the parties have the right to cross-examine the GAL concerning the contents of the report and the investigation once the GAL's report is proffered to the trial court.⁶

VII. THE GAL SHALL RETAIN ANY MATERIALS GATHERED OR CREATED DURING THE INVESTIGATION

The GAL shall retain any notes, records, documents, taped recordings, videos, or other material gathered or created during the investigation so that these materials are available for trial, discovery, appeal and remand of the case.

VIII. COMPENSATION

No attorney working for the Institute shall accept compensation from any party or attorney for performing any services in a case.

⁶ *Kelley v. Kelley*, 2007 OK 100, ¶7, 12