

Guidelines for Guardians Ad Litem
Juvenile Court Department
Effective: 7/6/2015

I. INTRODUCTION

The *Guidelines for Guardians Ad Litem* set forth the role and the duties and responsibilities for each category of appointment. These *Guidelines for Guardians Ad Litem* are effective July 6, 2015

II. ROLE OF THE GUARDIAN AD LITEM

A guardian ad litem (“GAL”) holds a position of public confidence and trust and, as such, guardians ad litem (“GALs”) shall conduct themselves in a professional manner and refrain from any conduct that may result in a breach of public trust and confidence. GALs must know and understand the scope of appointment, know the due date of any report that may be required, and know the number of hours that are approved. Additional duties and responsibilities vary depending on the category of appointment.

III. DUTIES AND RESPONSIBILITIES BY CATEGORY OF APPOINTMENT

A. GAL EXTRAORDINARY MEDICAL TREATMENT

Description

A GAL in this category is appointed to make recommendations regarding the authorization of extraordinary medical treatment. Extraordinary medical treatment includes administration of medical treatment and/or procedures not considered routine, refusal of medical treatment and/or procedures on religious or other grounds, administration of antipsychotic medication, and forgoing or discontinuing life sustaining medical treatment pursuant to G.L. c. 119, § 38A.

Duties and Responsibilities

GAL Extraordinary Medical Treatment must:

1. Review medical records
2. Interview medical personnel
3. Review affidavit of licensed medical personnel, if any
4. Meet with child
5. Interview legal parent(s) and/or caretakers(s)
6. File a report with the court that identifies sources of information includes a recommendation to the court regarding the petitioner’s request to authorize, forego or withdraw treatment, an analysis of the below factors

Report must provide background information regarding the child and address the following factors of substituted judgment/best interests determination:

1. Child's expressed preferences, if any
2. Child's religious beliefs (strength of child's religious convictions to the extent that they may contribute to refusal of treatment)
3. Impact on the child's family of ordering or foregoing treatment
4. Probability of adverse side effects of treatment, including severity
5. Prognosis without treatment
6. Prognosis with treatment
7. Present and future competency of the child
8. Any other relevant factors

B. GAL TREATMENT MONITOR

Description

A GAL in this category is appointed after the judge has issued a Substituted Judgment Order ("SJO") and approved a Treatment Plan ("plan") to monitor compliance with the plan and the effects of treatment.

Duties and Responsibilities

GAL Treatment Monitor must:

1. Review treatment order
2. Review medical records and speak with treating medical personnel
3. Meet with child
4. Interview caretaker(s)
5. Interview DCF staff
6. Interview teacher(s), if any
7. Consult with child's counsel
8. File a report with the court that includes a recommendation of whether or not the judge should schedule a Substituted Judgment Hearing to review the SJO

Report must address the following:

1. Treating medical personnel/caretaker's compliance with the plan
2. Child's general condition and tolerance of treatment, including any side effects [behavioral, medical and psychiatric/psychological]
3. Effectiveness of treatment on presenting medical/psychiatric issue
4. Child's expressed preferences, if any, for continuance with the plan
5. Changed circumstances, if any, which may require a modification of the SJO or plan [Note: any modification of a SJO or plan requires a Substituted Judgment Hearing]

C. GAL EDUCATION SURROGATE

Description

A GAL in this category is appointed to stand in the place of the parent(s) to make all special education decisions on behalf of the child, including but not limited to assessment of the Individualized Educational Plan (“IEP”), participation in all Team meetings, acceptance or rejection of the proposed IEP (in whole or in part), and filing complaints with Department of Elementary and Secondary Education when necessary in accordance with the Individuals with Disabilities Education Act (IDEA 2004), Federal Regulation 34 CFR 300 and Massachusetts Regulation 603 CMR 28. A GAL in this category must satisfy the criteria set forth in Federal Regulation 34 CFR 300.519, to act as Special Education Surrogate Parent.

A GAL appointment under this section does **not** include the authority to litigate educational issues in federal or state courts.

Note: These appointments are limited to Care and Protection cases in which custody of the child has been transferred to the Department of Children and Families.

Duties and Responsibilities

GAL Education Surrogate must:

1. Review educational records
2. Review and determine status of the IEP, if any
3. Interview child
4. Interview caretaker(s)
5. Interview teacher(s)
6. Interview collaterals
7. Attend Team and other education meetings
8. Stand in the place of parent(s) in all matters relating to the identification, evaluation, education program and educational placement of the child and the provision of a free and appropriate public education to the child
9. File a report with the Court

Report must address the following:

1. Status of current IEP, if any
2. Barriers, if any, to the implementation of the IEP
3. Recapitulation of relevant actions and outcomes, including meetings, that occurred since the appointment or most recent court review
4. Effectiveness of the current IEP
5. Recommendations or prospective actions, if any, to improve and/or modify the IEP

D. GAL LEGAL RIGHTS

Description

A GAL in this category is appointed to enforce and defend the child's legal rights and does not include appointment as the child's attorney. The scope of the appointment may include the authority to:

1. *Legal Rights/Privilege.* Assert or waive a statutory privilege (e.g., psychotherapist-patient privilege pursuant to G.L. c. 233, § 20B, social worker-client privilege pursuant to G.L. c. 112, §§ 135A & B, etc.);
2. *Legal Rights/Claims.* Protect the child's legal claims including, but not limited to, the authority to consult with counsel or other experienced professionals in the field(s) to determine whether or not the child may have a tort, estate or other claim and there is a reasonable basis to retain counsel, to retain counsel to initiate litigation on the child's behalf, where appropriate, and to approve settlements arising out of any claims and/or litigation on the child's behalf unless otherwise ordered by the judge. This appointment includes petitioning the appropriate court for the appointment of a conservator to manage the child's assets. A GAL in this category is **not** authorized to litigate any matters or file an appearance as an attorney for the child in any proceeding. A GAL in this category may not obligate the Commonwealth financially or in any other manner. A GAL in this category is not entitled to receive any funds or compensation from the resolution of any such claims(s) or litigation;
3. *Legal Rights/Advisor.* Advise the child on matters arising in delinquency and youthful offender cases (e.g., waiver of right to a jury trial, tender of plea), in the absence of a parent or interested adult, to the same extent and in the same manner as the parent(s) or interested adult whose responsibility it is to consult with and advise the child. Therefore, the appointment does **not** extend to the actual assertion or waiver of the child's constitutional rights. The child asserts or waives his or her rights after consultation with the GAL.

Duties and Responsibilities

GAL Legal Rights/Privilege must take the following steps:

1. Determine whether a recognized privilege exists
2. Determine if the information sought is available from another source
3. Review medical records and/or speak with treatment professionals
4. Speak with child's attorney
5. Speak with child
6. Speak with the caseworker from the Department of Children and Families, if appropriate
7. Speak with the child's legal parent(s) or guardian(s), if appropriate
8. Determine if it is more important to the child's best interests that the information be communicated rather than that the relationship between the child and psychotherapist/social worker be protected
9. File a report with the court, unless otherwise ordered by the judge

Report must include:

1. List of persons consulted
2. Considerations/basis for decision to assert or waive the privilege

GAL Legal Rights/Claims, as directed by the judge, and where appropriate, must:

1. Explore potential legal claims on behalf of the child, including entitlement to benefits
2. Consult with child's attorney
3. Speak with child
4. Consult with relevant experienced professionals
5. Consult with a minimum of three (3) attorneys relative to potential litigation
6. Retain the services of counsel, after consultation listed above, to litigate claims on behalf of the child
7. Initiate litigation by directing counsel to file claim(s) on behalf of the child
8. Approve settlements on behalf of the child, unless otherwise ordered by the judge
9. File a report with the court

Report must include:

1. List of person(s) consulted, including attorneys, and the information he/she/they provided
2. Events, if any, that occurred since the date of the appointment or last court hearing, including any administrative or other meetings
3. Action(s) taken and their outcome(s)
4. Proposed action(s), the purpose(s)/reason(s), and the anticipated outcome(s)

GAL Legal Rights/Advisor must:

1. Consult with the child's attorney
2. Speak with the child
3. Consult/speak with others, if appropriate, who may have relevant information

E. GAL EVALUATOR

Description

A GAL in this category is appointed to report on a narrowly defined issue where the judge deems an updated court investigation is not appropriate and where the appointment does not fall into one of the other categories of GAL appointments.

Duties and Responsibilities

GAL Evaluator must:

1. Investigate, evaluate and make a recommendation to the court on the narrowly defined issue set forth in the court's order
2. File a report with the court in accordance with the court's order

Report must address the following and include a recommendation on the narrowly defined issue set forth in the court's order:

1. Description of narrowly defined issue contained in court's order
2. Summary of work done to accomplish the objective of the court's order, such as interviews, consultations, record review, and actions
3. List of person(s) consulted and/or interviewed and the information he/she/they provided

F. GAL DIMINISHED CAPACITY

Description

A GAL in this category is appointed, at the request of the attorney for an adult party, in civil matters to direct the attorney in the representation of the adult party after the judge has determined that the adult is unable to assist his/her attorney in the preparation and/or presentation of the case. This appointment does **not** extend to the actual assertion or waiver of the adult's constitutional rights (Massachusetts Rules of Professional Responsibility S.J.C. Rule 3:07, Rule 1.14).

Duties and Responsibilities

GAL Diminished Capacity must:

1. Speak with the adult
2. Consult with the adult's attorney
3. Consult/speak with others, if appropriate, who may have relevant information

IV. FILING THE REPORT

If the appointment requires the production of a written report, then the GAL shall file the original report, along with copies for each party, in the Clerk Magistrate's office.

V. REQUEST FOR ADDITIONAL HOURS OR EXTENSION OF TIME TO FILE THE REPORT

A. REQUEST FOR ADDITIONAL HOURS

Additional hours may be requested when necessary to complete the objectives of the appointment. A request for additional hours shall be made by typed motion, on a form approved by the Chief Justice of the Juvenile Court, which sets forth the specific reasons for the request. Requests for additional hours shall be limited to increments not to exceed 10 hours. GALs must receive written authorization for additional hours by a justice of the appointing Juvenile Court division prior to the provision of services. Requests for additional hours made after services have been provided shall not be approved by the Court.

B. REQUEST FOR EXTENSION OF TIME TO FILE REPORT

A request for an extension of time to file the GAL's report shall be made by typed motion, on a form approved by the Chief Justice of the Juvenile Court, which sets forth the specific reasons for the request. GALs must receive prior written authorization by a justice of the appointing Juvenile Court division for such request. A request for an extension of time shall be filed no later than fourteen days prior to the date the report is due. The Court may, however, permit the filing of a request for an extension at some other time in the interests of justice.

VI. PAYMENT FOR SERVICES

GALs shall submit requests for payment of services rendered in accordance with procedures and forms established and approved by the Chief Justice of the Juvenile Court.