

Juvenile Court

Standing Order 1-24

Procedure Regarding the Appointment of Court Investigators and Guardians Ad Litem

1. Purpose and Applicability. This Standing Order sets forth the application process and qualifications for appointment of court investigators and guardians ad litem (GALs) in the Juvenile Court. This Standing Order is applicable to all applications submitted on or after October 14, 2024.

2. Role of the Court Investigator. A Juvenile Court judge is required to appoint a court investigator to "investigate the conditions affecting the child and make a report to the court under oath" in a care and protection proceeding. See G.L. c. 119, § 24. The report is an important source of information for a Juvenile Court judge when undertaking the challenging task of deciding the outcome of a care and protection proceeding.

3. Court Investigator Qualifications. An applicant shall have one or more of the following qualifications to be considered for appointment as a court investigator:

- a. Licensed social worker with 1 year experience preferred in child welfare protective cases;
- b. Person with an undergraduate degree who has knowledge of child welfare protective cases demonstrated through educational trainings/coursework or relevant work experience and experience in conducting investigations or writing reports; or
- c. An attorney who is a member in good standing of the Massachusetts Bar with experience in child welfare protective cases or one who completes an Administrative Office of the Juvenile Court (AOJC) court investigator training program.

4. Guardian Ad Litem Category Descriptions.

a. Guardian Ad Litem/Extraordinary Medical Treatment. A guardian ad litem 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**.

b. Guardian Ad Litem/Treatment Monitor. A guardian ad litem in this category is appointed after the judge has approved an extraordinary medical treatment plan ("plan") to monitor compliance with the plan and the effects of treatment.

c. Guardian Ad Litem/Education Surrogate. A guardian ad litem 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 the 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 guardian ad litem in this category must satisfy the criteria set forth in **Federal Regulation 34 CFR 300.519** , to act as Special Education Surrogate Parent.

A guardian ad litem 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.

d. Guardian Ad Litem/Legal Rights. A guardian ad litem 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 if 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 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.

e. Guardian Ad Litem/Evaluator. A guardian ad litem 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.

f. Guardian Ad Litem/Diminished Capacity. A guardian ad litem 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 (See Massachusetts Rules of Professional Responsibility [S.J.C. Rule 3:07](#), [Rule 1.14](#)).

5. Guardian Ad Litem Qualifications for Each Category.

a. Extraordinary Medical Treatment. An attorney who is a member in good standing of the Massachusetts Bar with five (5) years experience in child welfare protective cases or five (5) years experience representing adults in extraordinary medical care matters.

b. Treatment Monitor. An attorney who is a member in good standing of the Massachusetts Bar with three (3) years experience in child welfare protective cases or with three (3) years experience representing adults in extraordinary medical care matters.

c. Education Surrogate. An individual who is not employed by an agency involved in the care or education of his/her assigned student, who does not have personal or professional interests that conflict with the assigned student's interest and who has experience in special education and IEP process or a member in good standing of the Massachusetts Bar with three (3) years experience representing the interests of children in educational matters.

d. Legal Rights/Privilege and Legal Rights/Claims. An attorney who is a member in good standing of the Massachusetts Bar with three (3) years experience in child welfare protective cases.

e. Legal Rights/Advisor. An attorney who is a member in good standing of the Massachusetts Bar with three (3) years experience in child welfare protective cases or with three (3) years experience in delinquency and/or youthful offender cases.

f. Evaluator. An individual with a Masters degree or higher degree who holds a Massachusetts license in social work, counseling psychology or clinical psychology or a registered nurse with at least three (3) years experience in child welfare protective cases, or an attorney who is a member in good standing of the Massachusetts Bar with at least five (5) years experience in child welfare protective cases.

g. Diminished Capacity. An individual with a Masters degree or higher degree who holds a Massachusetts license in social work, counseling psychology or clinical psychology.

6. Application Process. Anyone seeking to be eligible for appointment as a court investigator or GAL shall submit the following to the First Justice of the county(ies) where they seek to be appointed:

- a. A letter of interest addressing their qualifications
- b. Application for Appointment, on a form approved by the Chief Justice of the Juvenile Court
- c. Current resume, listing relevant educational training or classes
- d. Writing sample, preferably in a legal memorandum or legal motion format for attorneys or report format for non-attorneys
- e. Two references from persons knowledgeable regarding the applicant's qualifications
- f. Consent to Criminal Record Check

7. Interview. An applicant who satisfactorily meets the qualifications and other requirements of the application process as outlined in sections 3, 5 and 6 of this Standing Order shall be interviewed by the First Justice or his/her designee. The interview may take place in-person or virtually as determined by the First Justice. The First Justice's lobby shall be responsible for notifying the applicant regarding the interview.

8. Notification of Qualification to Serve as a Court Investigator or GAL. The applicant shall receive written notification from the First Justice upon decision. If approved, the applicant may receive appointments as a court investigator or GAL in that county.

The First Justice shall send a copy of the notification and application to the AOJC. The AOJC shall enter the applicant's information into the fee generating list report in MassCourts.

9. Currently Approved Court Investigators and GALs. Anyone qualified to serve as a court investigator or GAL prior to October 14, 2024, may continue to receive appointments as a court investigator or GAL.

10. Probationary Period. All newly appointed court investigators and GALs are subject to a probationary period. For court investigators, the probationary period ends upon the submission of two satisfactorily completed reports. If the First Justice deems one or both reports unsatisfactory, the court investigator shall remain on a probationary period. The First Justice shall identify the deficiencies in the report to the court investigator and refer the court investigator to additional training. If the next two reports remain unsatisfactory, the First Justice shall notify the AOJC and request the investigator's removal from the applicable fee generating list in compliance with Supreme Judicial Court Rule 1.07.

For GALs, if the quality of work performance or written report after two appointments is determined unsatisfactory by the First Justice or appointing judge, the GAL shall remain on a probationary period. The First Justice shall identify the deficiencies in the work and/or report to the GAL and refer the GAL to additional training. If the next two appointments remain unsatisfactory, the First Justice shall notify the AOJC and request the GAL's removal from the applicable fee generating list in compliance with Supreme Judicial Court Rule 1.07.

11. Guidelines. Every court investigator appointed prior to and after the effective date of this Standing Order shall comply with the Juvenile Court Guidelines on Court Investigator Reports promulgated by the AOJC. Failure to comply with the Guidelines may result in the investigator's removal from the fee generating list.

12. Training. Every court investigator and GAL appointed prior to and after the effective date of this Standing Order shall comply with any training requirements set forth by the AOJC. Failure to comply with required trainings may result in the investigator or GAL's removal from the fee generating list.

13. Timely Submission of Reports. Every court investigator appointed prior to and after the effective date of this Standing Order shall comply with the deadlines for submission of the court investigator report as outlined in Rule 9 of the Juvenile Court Rules on Care and Protection Proceedings. Every GAL appointed prior to and after the effective date of this Standing Order shall comply with the deadlines set by the court regarding their appointment in a case. Failure to comply with deadlines may result in the investigator or GAL's removal from the fee generating list.

Date: September 27, 2024



Effective Date: October 14, 2024

Honorable Dana M. Gershengorn
Chief Justice, Juvenile Court