

GAL Guidelines for Civil Family Law Cases

Preamble: A Guardian ad Litem (GAL) is a qualified individual appointed by a court to represent the best interests of a child in civil family law cases, which include but are not limited to: custody and parenting time matters in dissolution of marriage cases and in paternity cases; guardianship cases; third party custody actions in dissolution of marriage cases and in paternity cases; adoptions, grandparent visitation cases, and third party visitation cases.

Rule 1—Qualifications

Rule 1.1: (a) A person may serve as a GAL if the person is:

1. a licensed attorney in good standing with the Indiana Bar;
 2. a licensed mental health professional in good standing with the Indiana Behavioral Services and Human Health Licensing Board or the Indiana Department of Education;
 3. employed by, or contracted with, a court-approved GAL services program;
or
 4. approved by the GAL Family Law Oversight Committee to operate independently based on their knowledge, skill, experience, training, education, or other qualifications; and
- (b) meets the initial and ongoing training requirements outlined in these rules;
and
- (c) continuously meets the background, reporting and other requirements outlined in these rules.

Commentary: A GAL must have the necessary knowledge, skills, experience, training, education, or other qualification(s) the Court finds necessary to enable the GAL to conduct a thorough and impartial investigation and to effectively advocate for the best interests of the child.

Rule 1.2: A person may not serve as a GAL if they have been convicted of, or have charges pending for, a felony or misdemeanor involving a sex offense, child abuse or neglect, or related acts that would pose risks to children or to the GAL's credibility.

Commentary: A person wishing to serve as a GAL must pass a background check that specifically checks for the offenses noted in this rule. Criminal background checks should be conducted for any jurisdiction in which the person has lived in the past five years. If a person wishing to serve as a GAL is aware of a conviction on their record that does not

appear in a background check, the person is required to disclose the conviction and any related information to the GAL Family Law Oversight Committee.

Rule 1.3: A person may not serve as a GAL if they have any substantiated history of child abuse or neglect with the Indiana Department of Child Services or with a child protection agency in another state.

Commentary: A person wishing to serve as a GAL must pass a background check that specifically checks for child abuse and neglect substantiations or their equivalent in another jurisdiction. Child abuse/neglect background checks should be conducted for any jurisdiction in which the person has lived in the past fifteen years. If a person wishing to serve as a GAL is aware of a substantiation or equivalent finding on their record that does not appear in a background check, the person is required to disclose the substantiation or equivalent finding and any related information to the GAL Family Law Oversight Committee.

Rule 1.4: A GAL has an ongoing duty to notify the GAL Family Law Oversight Committee if the GAL falls out of qualified status, and no longer meets the minimum requirements.

Commentary: This includes, but is not limited to, new criminal convictions, new child abuse and neglect substantiations, and failure to maintain ongoing training requirements. The GAL must notify the GAL Family Law Oversight Committee within 10 days of any criminal convictions, child abuse and neglect substantiations, or other disqualifying events.

Rule 2–Training

Rule 2.1: Unless a person receives an approved waiver from the GAL Family Law Oversight Committee, a person must complete an initial GAL training course that provides a minimum of twelve (12) hours of training related to GAL services. An initial GAL training course must include training on:

- (1) legal framework of relevant types of child-related cases, including laws, relevant standards, and other legal considerations;
- (2) best interests assessment and advocacy;
- (3) GAL investigative skills;
- (4) interviewing skills, rapport building and communication, methods of questioning, and child-focused interview skills;
- (5) appropriate GAL protocol;
- (6) the roles and duties of a GAL in both their best interests advocacy and their roles and duties in court proceedings;
- (7) diversity, economic diversity, and multicultural awareness;

- (8) identification and treatment of child abuse and neglect;
- (9) early childhood, child and adolescent development;
- (10) family and child related issues, including family dynamics in the context of legal proceedings, substance abuse and its effects, and domestic violence and its effects;
- (11) trauma informed care;
- (12) GAL ethical obligations and the GAL Code of Ethics.

Commentary: A person seeking to become a GAL who has completed training to obtain or maintain their professional licensure or certification, and whose training meets some or all of the requirements outlined in Rule 2.1, may apply to use that training to completely or partially fulfill these requirements. Additionally, a person who has served as a GAL for at least three (3) years prior to passage of these rules may seek a waiver of the initial training requirement from the GAL Family Law Oversight Committee, and upon approval, may continue their services as a GAL without meeting the initial training requirements.

Rule 2.2: All persons who serve as a GAL, whether they are required to complete the initial training requirements or receive a waiver for the initial training requirements, must complete six (6) hours of ongoing training each year beginning the calendar year after they complete, or have waived, their initial training. A GAL who has completed training to obtain or maintain their professional licensure or certification can use that training to completely or partially fulfill these requirements if their professional training meets the Continuing GAL Training requirements.

Commentary: Courses which qualify for Continuing GAL Training must cover topics relevant to GAL services. Examples include, but are not limited to:

- The effects of trauma, trauma-informed care, and adverse childhood experiences;
- Childhood development;
- Education and education-related legal matters for children;
- Updated or advanced legal topics pertaining to children, family law, or other relevant matters;
- Availability of services for children addressing special needs, child welfare, family preservation, medical, mental health, and educational needs, including placement/evaluation/diagnostic treatment services;
- Other legal, psychological, or social based topics relating to children and families;
- Other topics relating to conflict resolution for children and families;
- Other topics relating to skills and development relevant to GAL practice.

Rule 2.3: A GAL who fails to complete the required amount of Continuing GAL Training is not qualified to serve as a GAL until the requirement is satisfied.

Rule 3—Roles and Responsibilities

Rule 3.1: A GAL is appointed to serve and represent a child's best interests in proceedings under IC 29-3, IC 31-14, IC 31-17, IC 31-19, and other civil family law matters relating to matters of child custody, parenting time, and visitation.

Commentary: A (GAL) is appointed by a court to represent the child's best interests in civil family law cases, which include, but are not limited to: custody and parenting time matters in dissolution of marriage cases and in paternity cases; guardianship cases; third party custody actions in dissolution of marriage cases and in paternity cases; adoptions, grandparent visitation cases, and third party visitation cases.

A GAL represents a child's best interests at all stages of the proceedings, from the time the GAL accepts the case until the end of their appointment. A GAL's appointment ends when the GAL is released from their appointment by the court, replaced by an appointment of a new GAL, or the court otherwise determines that termination of the appointment is appropriate.

Rule 3.2: A GAL must be appointed by a court in a written order.

Commentary: The court may appoint a GAL when the court finds that the child's best interests are not adequately protected by the parties and that separate representation of the child's best interests is necessary. The Court may make such appointment on its own motion at any stage of the proceeding. The parties to a case may agree to a GAL, subject to court approval.

A GAL may only be appointed by written court order. The GAL represents the child's best interests in a legal proceeding from appointment until termination of the appointment. Factors that a court may consider in appointing a GAL include, but are not limited to:

- the fundamental right of parents to the care, custody, and control of their children;
- the court's need for additional information and/or assistance;
- the financial impact on the parties and the ability of the parties to pay reasonable fees to the GAL;
- the cost and availability of alternative methods of obtaining the information and evidence necessary to resolve the issues in the proceeding without appointing a GAL;

- any alleged factors indicating a particular need for the appointment of a GAL, including:
 - the circumstances and needs of the child, including the child's age and developmental level;
 - any desire for representation or participation expressed by the child;
 - any inappropriate adult influence on or manipulation of the child;
 - the likelihood that the child may be called as a witness or be questioned by the court in chambers;
 - any excessive acrimony indicating the parties' lack of objectivity concerning the needs and best interests of the child;
 - any interference, or threatened interference, with custody, access, visitation, or parenting time, including abduction or risk of abduction of the child;
 - the likelihood of a geographic relocation of the child that could substantially reduce the child's time with a parent, a sibling, or another individual with whom the child has a close relationship;
 - any conduct or action during the exercise of parenting time by a party or an individual with whom a party associates that raises serious concerns;
 - any physical, educational, developmental, psychological, or educational needs of the child, parents or other relevant individuals that require investigation or advocacy;
 - whether the above referenced considerations and factors can be adequately addressed in a brief, focused, assessment or other limited appointment; and
 - any other factors necessary to address the best interests of the child.

Rule 3.3: An order appointing a GAL (Order of Appointment) must contain the following items:

- (1) a statement appointing the GAL and naming the individual or organization who will serve as the GAL;
- (2) the duties of the GAL in the case;
- (3) the cost of services and/or apportionment of fees;
- (4) the duration of the GAL appointment; and
- (5) a statement requiring the GAL to adhere to the GAL Guidelines and the GAL Code of Ethics.

Commentary: The court will provide, in its Order of Appointment, as much detail and clarity as possible concerning the GAL duties in the case and will make the parties aware of the GAL Guidelines. Providing such specificity will assist the parties in understanding the role of the GAL and enable the court to exercise effective oversight of the GAL. If there are particular items the court wishes the GAL to investigate or make recommendations upon, the court should include these items in their order.

A GAL appointment should include a specific duration of time for the GAL to serve, such as until the final hearing on a pending petition or until a specific goal or service is accomplished. GAL appointments may be extended beyond this time by a court order indicating the necessity of the extension of the appointment. A GAL may be appointed to monitor a case, but such appointments should be for a limited rather than an indefinite period of time. It is not the role of a GAL to monitor a case for an ongoing, perpetual basis.

Rule 3.4: Once appointed, a GAL is a party to the case until they are released by the appointing court. A GAL is entitled to the same rights as a party, including the ability to retain counsel, use the compulsory process, present evidence, call witnesses, and be present at all stages of proceedings.

Commentary: A GAL has the status of a party to the case and can fully participate in every aspect of the court proceedings. A GAL may be represented by counsel or may proceed without counsel. The GAL or their counsel is authorized to engage in court proceedings and ancillary proceedings.

This includes, but is not limited to, the following:

- attending pretrial conferences;
- attending trials, mediations, negotiations, and other settlement processes;
- initiating negotiations and mediation (but not serving as the mediator) when appropriate and beneficial to the child;
- making discovery requests and receiving discovered information from other parties;
- filing pleadings, motions, and responsive pleadings in furtherance of the child's best interests;
- requesting hearings;
- being present in the courtroom for all aspects of the proceedings;
- subpoenaing witnesses;
- calling and cross-examining witnesses;
- submitting evidence, filing reports, and testifying;
- submitting findings of fact and conclusions of law;

- preserving issues for appeal, and initiating or participating in an appeal in appropriate circumstances; and
- taking such actions during the pre-trial, trial and post-trial proceedings as are necessary to advocate for the best interests of the child.

Rule 3.5: A GAL must advocate for the child's best interests at all stages of the proceedings.

Commentary: In determining a child's best interests, the GAL should use the objective criteria outlined under these rules. A GAL should avoid relying on subjective experiences or stereotypical views of individuals whose backgrounds differ from that of the GAL. A GAL must carefully consider each child's individual needs. The child's developmental level, including his or her sense of time, is relevant to an assessment of needs.

Rule 3.6: A GAL must be an independent actor, solely advocating for and influenced by the child's best interests.

Commentary: The GAL functions independently of all parties to the case and is a full and active participant in all stages of the proceedings. The GAL must investigate, assess, and evaluate the issues, and must advocate for the child's best interests.

The GAL must conduct a thorough, on-going, and independent investigation in accordance with advocacy for the child's best interests. The GAL must present the information obtained to the court and the parties with respect to the child's developmental, emotional, physical, psychological, and educational well-being.

Rule 3.7: The GAL must have a reasonable amount of in-person contact with the child. Reasonable contact is determined by the age of the child, the child's developmental needs, the child's physical and mental health, the facts and circumstances presented in the case, and any other relevant factors.

Commentary: Best interest representation must be child-centered and shall include spending time with the child, observing the child, talking with the child, and assessing the child's perspective and needs. Every child, including infants and children who do not engage in traditional communication, needs to be seen to ascertain their condition, the home environment, and the child's needs in order to make appropriate best interest recommendations. A GAL should have direct and sufficient contact with the child to complete an independent investigation of the child's circumstances and needs to be able to make sound, thorough and objective recommendations as to the child's best interests. This contact should occur in person to provide the GAL with firsthand knowledge of the child and his/her unique personality, abilities and needs.

If in-person contact cannot occur due to unusual circumstances, the GAL should request permission from the court to make virtual visits. In the rare instance in which contact with a child is not in the child's best interests, such as when a child's mental health is seriously endangered, the GAL shall notify the parties and the court of the concerns and seek further guidance from the court.

Rule 3.8: The GAL must investigate and make a written or oral report to the court. A written report must be filed on the order of the court. A GAL may prepare written reports and submit them to the court at any stage of the proceedings. A minimum of ten (10) days prior to hearing, a GAL must provide a report to the court and the opposing parties or their counsel, unless the time requirement is waived by all parties or good cause is shown.

Commentary: Best interest representation requires that GALs conduct a thorough, continuing and independent investigation of the case so that the GAL can make fact-based recommendations to the court. GALs may speak with all parties to the case without the presence of counsel.

A report to the Court may be oral or written unless the court orders otherwise. A GAL should make reasonable efforts to complete their investigation and report within the time allowed, and not cause delay in the progression of the case.

In making best interest recommendations, the GAL must ascertain the child's needs, including, at a minimum:

- Physical needs (food, clothing, shelter, medical care, safety, protection)
- Emotional needs (attachment between parent or caregiver and child, affection, safety)
- Developmental needs (social, education, appropriate support for children with disabilities, opportunity for adequate sleep)
- Psychological needs (access to counseling, testing, medications)
- Educational needs (social support, tutoring, testing, school sports, and activities)

A GAL may use the Checklist of Factors for Assessing Best Interest of Child and should consider factors related to parents' and caregivers' past conduct, observable present conduct, and related to future conduct as outlined in the Checklist.

A GAL's report does not prevent a GAL from testifying at any proceedings.

Rule 3.9: If a child expresses wishes or desires pertaining to the issues before the court, the GAL must convey those wishes or desires to the court, unless the child does not want them

conveyed or conveying them would compromise the child's safety. This Rule shall not be construed as a requirement for GALs to ask about a child's wishes or desires.

Commentary: In addition to the best interest assessment and recommendation, a GAL must present to the court the child's expressed wishes or desires, if any. If the child does not want those wishes or desires expressed to the court, a GAL is not required to include them. If a GAL has reasonable and legitimate concerns for the child's safety if the child's wishes and desires are disclosed to the court, the GAL may avoid disclosure of those wishes and desires or seek alternative methods of confidential disclosure, including seeking a protective order under the Indiana Trial Rules.

A GAL should not pressure a child to disclose their wishes and desires pertaining to the issues before the court. The GAL, as appropriate to the age and maturity of the child, should: (a) assure the child's views will be made known to the court even if inconsistent with the opinion of the GAL unless they fall into one of the exceptions outlined above; (b) ensure that the child is never compelled to choose between parents or placements; and (c) ensure that the child not be required to make choices about acrimonious issues.

Rule 3.10: Absent good cause, court order, or other law, a GAL must perform all actions necessary to carry out their duties as a GAL and a best interests advocate for the child.

Commentary: In fulfilling the role of the GAL, the GAL generally has the following duties:

- filing an Oath and Acceptance upon acceptance of the GAL appointment;
- reviewing the case file and all relevant pleadings and documents contained in the Court's case file;
- reviewing any non-confidential case files and documents of related cases;
- obtaining and reviewing records relevant to the case and the child's best interests;
- informing other parties or counsel of the GAL appointment, and that the GAL should be served with copies of all pleadings filed in the case and any discovery exchanges, and is entitled to notice of and to fully participate in all hearings related to the appointment;
- meeting with or observing the child as soon as practicable, unless there is compelling reason to forego doing so;
- tailoring all communications with the child to the child's age, level of education, cognitive and emotional development, cultural background, and degree of language acquisition, using an interpreter if necessary;
- informing the child in a developmentally appropriate manner about the GAL's role and duties;

- meeting with or observing the child with the parties, and meeting with or observing the child in a more private or neutral setting, where possible and necessary;
- communicating the child's expressed wishes and desires, even if those expressed wishes and desires stand in opposition to the GAL's best interests' recommendations;
- reviewing case-related records of social service agencies and other service providers;
- reviewing relevant medical, social, educational, psychiatric, law enforcement, and psychological evaluations or records;
- contacting, meeting with, and interviewing all the parties to a case;
- interviewing individuals who play a significant role in the child's life;
- identifying themselves to all persons interviewed as the GAL and explaining the role of the GAL as necessary;
- attending meetings involving issues within the scope of the GAL appointment;
- reviewing other evidence related to the best interests factors and other custody, parenting time, guardianship, third party custody, and grandparent visitation factors;
- filing a report with the court as requested in any appointment or subsequent orders;
- notifying the court in writing of any agreement with or opposition to any settlement agreement or mediated agreement, and the basis for that agreement or opposition;
- assisting the parties and the court in identifying and accessing services for the child and family and verifying implementation of such services;
- obtaining information regarding the child and the child's medical, psychiatric, educational, or other services provided to the child without obtaining the consent of the child's parents, guardians, or custodians; Obtaining the consent of the child with respect to gathering records and information regarding the child's medical, psychiatric, educational, or other provided services, if the child is of sufficient age and capable of forming rational and independent judgments;
- seeking court orders referring a child for any needed services;
- taking a position on any requests for in chambers interviews or requests for the child to testify, and filing motions or other pleadings to further that

- position; Reporting child abuse and neglect to the Department of Child Services as required by Indiana Law;
- adhering to the GAL Code of Ethics.

With respect to the duty of taking a position on any requests for in chambers interview with or testimony from the child, the GAL should protect and shield the child from being required to testify or otherwise provide information in court proceedings. The potential negative impact of the child testifying in court shall be considered and the GAL should seek imposition of less harmful methods such as in-camera interviews when appropriate. This shall be construed in light of constitutional and statutory limitations.

Rule 3.11: If a party so requests, the GAL must make their file available to any requesting party or their counsel as is outlined in IC 31-17-2-12. A GAL may file a motion for a protective order under the Indiana Trial Rules.

Commentary: Upon request, the GAL must make their GAL file available to any party or counsel for party requesting the file as outlined in Indiana law. The GAL should produce underlying data and reports, complete texts of diagnostic reports made to and obtained by the GAL, and the names and contact information of all persons with whom the GAL consulted or interviewed. Any party or counsel for a party may seek copies of this information and that party or counsel is responsible for any costs pertaining to making such copies.

A GAL may seek a protective order to prevent disclosure of highly sensitive information in the GAL file. A GAL may also seek orders from the court protecting the GAL file if the GAL reasonably believes that a party is attempting to use the GAL as a vehicle to obtain information to which the party is not entitled, or if the GAL can reasonably demonstrate that a party is making multiple file requests in an effort to hinder the GAL's investigation.

Rule 3.12: A GAL report may not be excluded on hearsay grounds if:

- (1) the report is timely submitted to court, parties or their counsel; and
- (2) the GAL has properly maintained and made available their file, if requested pursuant to these rules.

Commentary: A GAL report may be received into evidence and may not be excluded on hearsay grounds if the GAL report is timely submitted to the court and the parties or their counsel, and if the GAL has properly maintained and provided their GAL file.

Rule 3.13: A GAL report should be an accurate reflection of their investigation and recommendations on behalf of the child's best interests.

Commentary: A GAL report should include information about the child, including the child's expressed wishes or desires, if the child expressed any and this information is not otherwise excluded pursuant to these rules. A report should also contain information from other parties, collateral sources, or the child pertaining to the child's best interests.

Other items which may be contained in a GAL report include, but are not limited to:

- names of all persons contacted, and the date they were last contacted;
- the dates and location that the child was seen;
- a summary of relevant interviews and conversations;
- a summary of relevant records and information obtained; and
- recommendations as to what is in the child's best interests as requested in the Order of Appointment and recommended services.

Rule 3.14: GAL reports shall be submitted to the court as a confidential document, pursuant to Indiana Rules on Access to Court Records, Rule 5.