

RULE 34 GUARDIANS AD LITEM

Pertinent portions of Sup. R. 48 through 48.07, shall apply to all cases where the court appoints a guardian *ad litem* (“GAL”) to act in the best interest of a child. These sections are set forth below:

Sup. R. 48.01 Definitions

As used in Sup. R. 48 through 48.07:

(A) Allocation of Parental Rights and Responsibilities.

References in this rule to cases involving “allocation of parental rights and responsibilities” shall also include those cases in which legal custody, parenting time, companionship, or visitation rights are at issue. “Allocation of parental rights and responsibilities, legal custody, parenting time, companionship, or visitation rights” has the same meaning as in R.C. 3109.04 and 3109.051.

(B) Attorney for the Child.

“Attorney for the child” means an attorney appointed to act as legal counsel for a child and advocate for the wishes of the child.

(C) Guardian Ad Litem.

“Guardian *ad litem*” or “GAL” means an individual appointed to assist a court in its determination of the best interest of a child.

(D) Child.

“Child” means:

- (1) A person under eighteen years of age;
- (2) A person who is older than eighteen years of age who is deemed a child until the person attains twenty-one years of age under R.C. 2151.011(B)(6) or 2152.02(C);
- (3) A child under R.C. 3109.04 or a disabled child under R.C.3119.86 who falls under the jurisdiction of a domestic relations or juvenile court

Sup. R. 48.02 Appointment of Guardian *ad litem*

(A) Orders of Appointment.

Each court appointing a guardian *ad litem* under this rule shall enter an order of appointment. The order of appointment shall include statements regarding all of the following:

- (1) Whether it is a sole guardian *ad litem* appointment or a dual guardian *ad litem* and attorney appointment;
- (2) That unless otherwise specified by court rule, the appointment shall remain in effect until discharged by order of the court;
- (3) That the guardian *ad litem* shall be given notice of all hearings and proceedings and be provided a copy of all pleadings, motions, notices, and other documents filed in the case;
- (4) That the guardian *ad litem* report shall include the following language: “The guardian *ad litem* report shall be provided to the court, unrepresented parties, and legal counsel. Any other disclosure of the report must be approved in advance by the court. Unauthorized disclosure of the report may be subject to court action, including the penalties for contempt, which include fine and/or incarceration.”
- (5) The rate or amount of compensation for the guardian *ad litem* in allocation of parental rights and responsibilities cases;
- (6) The terms and amount of any installment payments and deposits in allocation of parental rights and responsibilities cases.

(B) Limited Scope of Appointment.

A court may appoint a guardian *ad litem* to address a specific issue or issues. A court shall include in the order of appointment the specific issue or issues to be addressed and a statement the guardian *ad litem* is relieved of the duties set forth in Sup. R. 48.03(D) that are not applicable to the specific issue or issues.

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(D) Separate Appointments in * * * Cases of Conflict.

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- (2) If an attorney who has been appointed to serve as both guardian *ad litem* and attorney for the child or any other party believes that a conflict exists in the dual appointment, the attorney or party shall immediately notify the court in writing with notice to the parties or affected agencies and request a separate appointment of a guardian *ad litem* and attorney for the child. The court shall make such additional appointment or appointments or order or orders to remedy the conflict. The court may also make such appointment or appointments on its own motion.

(E) **Separate Appointments in Cases Involving Allocation of Parental Rights and Responsibilities.**

If a court appoints a guardian *ad litem* in an allocation of parental rights and responsibilities case, the guardian *ad litem* shall be appointed only to represent the best interest of the child and shall not also be appointed as the attorney for the child.

(F) **Discretionary Appointments in Allocation of Parental Rights and Responsibilities * * *.**

Unless a mandatory appointment is required by rule or statute, a court may make a discretionary appointment of a guardian *ad litem* in the allocation of parental rights and responsibilities * * *. In making a discretionary appointment, a court should consider all of the circumstances of the case, including but not limited to all of the following factors:

- (1) Allegations of abuse and neglect of the child;
- (2) Consideration of extraordinary remedies, such as supervised visitation, terminating or suspending parenting time, or awarding custody or visitation to a nonparent;
- (3) Relocation that could substantially reduce the time of a child with a parent or sibling;
- (4) The wishes and concerns of the child;
- (5) Harm to the child from drug or alcohol abuse by the party;
- (6) Past or present child abduction or risk of future abduction;
- (7) Past or present family violence;
- (8) Past or present mental health issues of the child or a party;

- (9) Special physical, educational, or mental health needs of the child that require investigation or advocacy;
- (10) A high level of conflict;
- (11) Inappropriate adult influence or manipulation;
- (12) Interference with custody or parenting time;
- (13) A need for more information relevant to the best interests of the child;
- (14) A need to minimize the harm to the child from family separation or litigation;
- (15) Any other relevant factor.

(G) Reappointment.

A court should consider reappointment of the same guardian *ad litem* for a specific child in any subsequent case determining the best interest of the child.

(H) Guardian Ad litem Fee Determinations in Cases Involving Allocation of Parental Rights and Responsibilities.

- (1) A court appointing a guardian *ad litem* in a case involving allocation of parental rights and responsibilities shall make a determination of the ability of any party to pay a deposit for the fees and expenses to the guardian *ad litem* and may reconsider that determination at any time prior to conclusion of the case. In making this determination, the court shall consider all of the following:
 - (a) The income, assets, liabilities, and financial circumstances of the parties, as demonstrated by an affidavit, testimony to the court, or evidence of qualification for any means-tested public assistance;
 - (b) The complexity of the issues;
 - (c) The anticipated expenses, including the travel of the guardian *ad litem*.
- (2) At any time prior to the conclusion of a case, a guardian *ad litem* may submit a motion for payment. A guardian *ad litem* shall submit a motion for payment upon conclusion of the duties. Any motion shall itemize the

duties performed, time expended, and costs and expenses incurred pursuant to Sup. R. 48.03(H)(1).

- (3) In determining the allocation of guardian *ad litem* fees and expenses, a court shall consider any relevant factor, including any of the following:
 - (a) The rate or amount of compensation of the guardian *ad litem*;
 - (b) The sources of compensation of the guardian *ad litem*, including the parties, any specialized funds allocated for payment of the guardian *ad litem*, or pro bono contribution of services by the guardian *ad litem*;
 - (c) The income, assets, liabilities, and financial circumstances of the parties, as demonstrated using an affidavit, testimony to the court, or evidence of qualification for any means-tested public assistance;
 - (d) The conduct of any party resulting in the increase of the guardian *ad litem* fees and expenses without just cause;
 - (e) The terms and amount of any installment payments.
- (4) Unless a hearing is requested by a party or the court within fourteen days after a motion for payment is filed, a court shall issue an order regarding payment of guardian *ad litem* fees and expenses approving or denying any portion of the requested fees and expenses and allocating payment to one or more of the parties as appropriate.

(I) Enforcement of Payment.

- (1) If the fees and expenses of a guardian *ad litem* exceed the deposits or installment payments ordered and made, a court may do any of the following:

 - (b) Enforce the payment of fees and expenses of the guardian *ad litem* through contempt of court proceedings;
 - (c) Enforce any order regarding the payment of guardian *ad litem* fees and expenses in any other manner authorized by law.

- (2) A court shall not delay or dismiss a proceeding solely because of the failure of a party to pay guardian *ad litem* fees and expenses required to be paid by the court.
- (3) The inability of a party to pay guardian *ad litem* fees and expenses ordered by a court shall not delay any final entry.

Sup. R. 48.03 Responsibilities of Guardian *ad litem*

(A) General Responsibilities.

The responsibilities of a guardian *ad litem* shall, include, but are not limited to, the following:

- (1) Provide the court recommendations of the best interest of the child. Recommendations of the best interest of the child may be inconsistent with the wishes of the child or other parties.
- (2) Maintain independence, objectivity, and fairness, as well as the appearance of fairness, in dealings with parties and professionals, both in and out of the courtroom, and have no *ex parte* communications with the court regarding the merits of the case;
- (3) Act with respect and courtesy in the performance of the responsibilities of the guardian *ad litem*;
- (4) Attend any hearing relevant to the responsibilities of the guardian *ad litem*;
- (5) Upon becoming aware that the recommendations of the guardian *ad litem* differ from the wishes of the child, immediately notify the court in writing with notice to the parties * * *. The court shall take action as it deems necessary.
- (6) If necessary, request timely court reviews and judicial intervention in writing with notice to the parties * * *;
- (7) If the guardian *ad litem* is an attorney, file pleadings, motions, and other documents as appropriate and call, examine, and cross-examine witnesses pursuant to the applicable rules of procedure;
- (8) Be available to testify at any relevant hearing. Attorneys who are to serve as both guardian *ad litem* and attorney in any dual appointments shall comply with Rule 3.7 of the Rules of Professional Conduct.

- (9) If the guardian *ad litem* is not an attorney, avoid engaging in conduct that constitutes the unauthorized practice of law and be vigilant in performing the duties of the guardian *ad litem*;
- (10) If the guardian *ad litem* is not an attorney, request the court to appoint an attorney for the guardian *ad litem* to file pleadings, motions, and other documents as appropriate and call, examine, and cross-examine witnesses pursuant to the applicable rules of procedure. The court shall take action as it deems necessary.

(B) Conflicts of Interest.

- (1) A guardian *ad litem* shall avoid any actual or apparent conflict of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the case. A guardian *ad litem* shall avoid self-dealing or associations that might directly or indirectly benefit except from compensation for services as a guardian *ad litem*.
- (2) Upon becoming aware of any actual or apparent conflict of interest, a guardian *ad litem* shall immediately notify the court in writing. The court shall take action as it deems necessary.

(C) Satisfaction of Training Requirements.

A guardian *ad litem* shall meet the qualifications and satisfy all pre-service and continuing education requirements of Sup. R. 48.04 and 48.05 and any local court rules governing guardians *ad litem*. A guardian *ad litem* shall do both of the following:

- (1) Meet the qualifications for guardians *ad litem* for each court and promptly advise the court of any grounds for disqualification or any issues affecting the ability to serve;
- (2) Provide the court documentation indicating compliance with pre-service and continuing educational requirements so the court may maintain the files required pursuant to Sup. R. 48.07. The documentation shall include information detailing the date, location, contents, and credit hours received for any relevant education.

(D) Duties of the Guardian *ad litem*.

Unless specifically relieved by the court, the duties of a guardian *ad litem* shall include, but are not limited to, the following:

- (1) Become informed about the facts of the case and contact all relevant persons;
- (2) Observe the child with each parent, foster parent, guardian or physical custodian;
- (3) Interview the child, if age and developmentally appropriate, where no parent, foster parent, guardian, or physical custodian is present;
- (4) Visit the child at the residence or proposed residence of the child in accordance with any standards established by the court;
- (5) Ascertain the wishes and concerns of the child;
- (6) Interview the parties, foster parents, guardians, physical custodian, and other significant individuals who may have relevant knowledge regarding the issues of the case. The guardian *ad litem* may require each individual to be interviewed without the presence of others. Upon request of the individual, the attorney for the individual may be present.
- (7) Interview relevant school personnel, medical and mental health providers, child protective services workers, and court personnel and obtain copies of relevant records;
- (8) Review pleadings and other relevant court documents in the case;
- (9) Obtain and review relevant criminal, civil, educational, mental health, medical, and administrative records pertaining to the child and, if appropriate, the family of the child or other parties in the case;
- (10) Request that the court order psychological evaluations, mental health substance abuse assessments, or other evaluations or tests of the parties as the guardian *ad litem* deems necessary or helpful to the court;
- (11) Review any necessary information and interview other persons as necessary to make an informed recommendation regarding the best interest of the child.

(E) Identification as Guardian *ad litem*.

A guardian *ad litem* shall immediately identify himself or herself as a guardian *ad litem* when contacting individuals and inform the individuals about the role of the guardian *ad litem*, including as an attorney if a dual appointment, the scope of appointment, and that documents and information obtained by the guardian *ad litem* may become part of court proceedings.

(F) **Confidentiality.**

A guardian *ad litem* shall make no disclosures about a case or investigation, except to the parties and their legal counsel, in reports to the court, or as necessary to perform the duties of a guardian *ad litem*, including as a mandated reporter. The guardian *ad litem* shall maintain the confidential nature of personal identifiers, as defined in Sup. R. 44, and address where there are allegations of domestic violence or risk to the safety of a party or child. Upon application, the court may order disclosure of or access to the information necessary to challenge the truth of the information received from a confidential source. The court may impose conditions necessary to protect witnesses from potential harm.

(G) **Timeliness.**

A guardian *ad litem* shall perform responsibilities in a prompt and timely manner.

(H) **Record-Keeping.**

- (1) A guardian *ad litem* shall keep accurate records of the time spent, services rendered, and expenses incurred in each case while performing the responsibilities of a guardian *ad litem*.
- (2) In allocation of parental rights and responsibilities cases, a guardian *ad litem* shall provide a monthly statement of fees and expenses to all parties.
- (3) A guardian *ad litem* shall file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment upon order of the court or upon the conclusion of those responsibilities.

Sup. R. 48.04 Pre-Service Education

(A) **Pre-Service Education Required for Appointment.**

A guardian *ad litem* shall complete pre-service education provided by the Supreme Court, the Ohio Court Appointed Special Advocates (CASA) Guardian *ad litem* Association, or with the approval of the appointing court, another provider.

(B) **Pre-Service Education Hours and Topics.**

- (1) Pre-service education for guardians *ad litem* shall be twelve hours.

- (2) Of the twelve hours of pre-service education, six hours shall be obtained via a live education program where the guardian *ad litem* is physically present.
- (3) The remaining six hours of pre-service education may be satisfied by online or live education, teaching, writing, mentoring, or field-training activities with approval by the appointing court.
- (4) Six hours of pre-service education shall include training on all the following topics:
 - (a) Basic human needs, stages of child development, and the impact of trauma;
 - (b) Communication skills, including, but not limited to communication with children and adults, interviewing skills, methods of critical questioning, use of open-ended questions, understanding the perspective of a child, sensitivity, building trust, multicultural awareness, diversity, and confidentiality;
 - (c) Child abuse, neglect, dependency, unruliness, delinquency, and assessing risk and safety;
 - (d) Family and child issues, including but not limited to family dynamics, substance abuse and its effects, basic psychopathology for adults and children, and domestic violence and its effects, including assessing for lethality and safety;
 - (e) Legal processes, the role of a guardian *ad litem* in court, available community agencies and resources, methods of service, records checks, the role of a guardian *ad litem* in court, local resources and service practice, report content, mediation, and other types of dispute resolution processes;
 - (f) Any other topic that concerns the role of the guardian *ad litem* to help determine the best interest of the child.

(C) **Current Guardians *ad litem*.**

An individual who is currently serving as a guardian *ad litem* on January 1, 2021, shall be deemed compliant with the pre-service education and not be required to complete the twelve hours of pre-service education.

Sup. R. 48.05 Continuing Education

(A) Continuing Education Hours and Topics.

- (1) Continuing education for guardians *ad litem* shall total six hours annually and be provided by the Supreme Court; the Ohio Court Appointed Special Advocates (CASA) Guardian *ad litem* Association; or, with the approval of the appointing court, another provider.
- (2) Of the six hours of continuing education, three hours shall be obtained via a live education program where the guardian *ad litem* is physically present.
- (3) The remaining three hours of continuing education may be satisfied by online or live education, training, writing, mentoring, or field-training activities as pre-approved by the appointing court.
- (4) Continuing education shall consist of advanced education related to topics identified in Sup. R. 48.04.

(B) Failure to Comply.

If a guardian *ad litem* fails to complete six hours of continuing education within any calendar year, the individual shall not be eligible to serve as a guardian *ad litem* on any new appointments until this continuing education requirement is satisfied. The court shall have the discretion to continue the current guardian *ad litem* appointments.

Sup. R. 48.06 Guardian *ad litem* Reports

(A) General Report Requirements.

- (1) A guardian *ad litem* shall prepare a written final report, including recommendations to the court, within the times set forth in this division. The report shall affirmatively state that responsibilities have been met and shall detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted, and all other relevant information considered by the guardian *ad litem* in reaching the recommendations and in accomplishing the duties required by statute, by court rule, and in the order of appointment from the court.

- (2) All reports shall include the following warning: “The guardian *ad litem* report shall be provided to the court, unrepresented parties, and legal counsel. Any other disclosure of the report must be approved in advance by the court. Unauthorized disclosure or distribution of the report may be subject to court action, including the penalties for contempt, which include fine and/or incarceration.”
- (3) Oral and written reports shall address relevant issues, but shall not be considered determinative.
- (4) A guardian *ad litem* shall be available to testify at any relevant hearing and may orally supplement the report at the conclusion of the hearing.
- (5) A guardian *ad litem* may provide an interim written or oral report at any time.

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(C) Guardian Ad litem Reports in Allocation of Parental Rights and Responsibilities Cases.

- (1) A guardian *ad litem* in proceedings involving the allocation of parental rights and responsibilities, custody, and visitation shall provide a report to the court, unrepresented parties, and legal counsel not less than seven days before the final hearing date, unless the due date is modified by the court.
- (2) The court shall consider the recommendation of the guardian *ad litem* in determining the best interest of the child only when the report or a portion of the report has been admitted as an exhibit.

Sup. R. 48.07 Responsibilities of the Court

Each court appointing guardians *ad litem* shall do all of the following:

- (A) Maintain a public list of approved guardians *ad litem* while maintaining individual privacy pursuant to Sup. R. 44 through 47;
- (B) Establish criteria, which include all requirements of Sup. R. 48 through 48.07, for appointment and removal of guardians *ad litem* and procedures to ensure an equitable distribution of the work load among the guardians *ad litem* on the list. Equitable distribution means a system through which appointments are made in an objectively rational, fair, neutral, and

nondiscriminatory manner and are widely distributed among substantially all persons from the list maintained by the court. The court may consider the complexity of the issues, parties, counsel, and the children involved, as well as the experience, expertise, and demeanor of available guardians *ad litem*.

- (C) Coordinate the application and appointment process, keep the files and records required by Sup. R. 48 through 48.07, maintain information regarding training opportunities, and receive written comments and complaints regarding the performance of guardians *ad litem* practicing before that court;
- (D) Maintain files for all applicants and for individuals approved for appointment as guardians *ad litem* with the court. The files shall contain all records and information required by, Sup. R. 48 through 48.07 and by local rules for the selection and service of guardians *ad litem*, including a certificate or other satisfactory proof of compliance with training requirements.
- (E) Require all applicants to submit a resume or information sheet stating the applicant's training, experience, and expertise demonstrating the ability of the applicant to successfully perform the responsibilities of a guardian *ad litem*;
- (F) Review a criminal and civil background check and investigation of information relevant to the fitness of the applicant to serve as a guardian *ad litem*;
- (G) Review all guardian *ad litem* reports, written or oral, to ensure that the guardian *ad litem* has performed those responsibilities required by R.C. 2151.281;
- (H) Conduct, at least annually, a review of its list to determine that all guardians *ad litem* are in compliance with the training and education requirements of Sup. R. 48 through 48.07 and local rules, have performed satisfactorily on all assigned cases during the preceding calendar year, and are otherwise qualified to serve;
- (I) Require all guardians *ad litem* on its list to certify annually they are unaware of any circumstances that would disqualify them from serving and to report the training they have attended to comply with Sup. R. 48.05;
- (J) Develop a process or local rule for comments and complaints regarding the performance of guardians *ad litem* practicing before that court that does all of the following:

- (1) Designates a person for accepting and considering written comments and complaints;
- (2) Provides a copy of the comments and complaints to the guardian *ad litem* who is the subject of the complaint or comment;
- (3) Forwards any comments and complaints to the administrative judge of the court for consideration and appropriate action;
- (4) Develops a provision for the timely disposition by the court;
- (5) Notifies the person making the comment or complaint and the subject guardian *ad litem* of the disposition;
- (6) Maintains a written record in the file of the guardian *ad litem* regarding the nature and disposition of any comment or complaint.

Comment:

The above portions of the Rules of Superintendence are incorporated into the Local Rules for ease of access. The ellipses used above (* * *) indicate portions of the Rules of Superintendence not pertinent to the Summit County Domestic Relations Court Local Rules regarding GALs.

48.02 (I)(1)(a) was deleted as this Court does not render lump sum judgments for GAL fees.

34.01 Procedure.

When requested by either party or by the Court, Family Court Services will recommend a guardian *ad litem* (“GAL”) to be appointed by the Court. This request for a GAL shall be made no later than the initial pretrial conference date in divorce cases or the initial hearing in legal custody, parentage, or post decree cases, absent good cause shown.

34.02 Qualifications.

An applicant shall complete the pre-service education requirements as set forth in Sup. R. 48.04 prior to submitting an application to this Court. In addition, an applicant shall possess an advanced degree in law, social work, counseling or other related fields and a minimum of three (3) years of experience in practice involving juvenile or domestic relations law. For legal custody cases, the Court shall appoint only attorneys licensed to practice law in the State of Ohio in good standing as Guardians ad Litem.

At the discretion of the Court, in order to be included on the Court’s appointment list, candidates shall:

- (1) complete a formal application and interview process;

- (2) provide the Court with proof of a valid driver's license and current liability insurance;
- (3) complete a BCI criminal background check; and
- (4) provide three completed reference forms.

Following acceptance, GALs must initially, and annually thereafter, complete two (2) hours of mandatory training by the Summit County Domestic Relations Court in addition to the continuing education requirements set forth in Sup. R. 48.

GALs will be evaluated on an annual basis, through a formal evaluation process to determine their continued inclusion on the Court's list. GALs may be removed from the list at their own request. The Court may, in its discretion, remove any GAL from the list. In the event of such a removal, the Court shall notify the GAL that he or she has been removed from the appointment list.

Comment

Legal custody guardians ad litem are court-appointed and as such are not compensated by the parties. Therefore these guardians ad litem are required to submit an Application for Appointed Counsel Fees which does not permit anyone other than attorneys licensed to practice law in the State of Ohio to be paid.

34.03 Role.

One role of the GAL is to assist the Court in allocating parenting time, with the primary focus being the best interest of the child(ren). GALs will provide a comprehensive assessment of the parenting issues related to the allocation of parental rights and responsibilities. It is expected that the GAL will attend all Court hearings, have a summary available or report if specifically requested, and testify if requested.

34.04 Assessment.

GALs will have full access to Court and Family Court Services records. GALs will also have full access to school, daycare, medical, psychological and personnel records, regarding the child(ren). Confidential information provided to the GAL by counsel should be copied to opposing counsel.

Unless otherwise specified by Sup. R. 48.01 or the Court, the GAL will:

- (A) meet with each parent individually;
- (B) meet with child alone as often as time permits;
- (C) observe each child's interaction with each parent;

- (D) explore collateral resources such as grandparents, stepparents, parent’s significant others, neighbors, medical and/or mental health providers and school personnel;
- (E) review legal and criminal records; and
- (F) be able to provide an interim oral report at status hearings;
- (G) prepare a written summary at least seven (7) days prior to the settlement conference;
- (H) if requested, create a written report at least seven days prior to trial.

34.05 Guardian *ad litem* Summaries and Reports

- (A) (1) Summaries.
The attorneys of record and unrepresented parties will be provided a copy of the Guardian ad Litem_summary by the GAL. The summary is an abbreviated form of the report that will be provided to counsel and unrepresented parties at least seven days prior to the settlement conference unless otherwise specified by the Court. The summary form is available at www.drcourt.org for GALs to utilize.
- (2) Reports. If requested and necessary for trial purposes, the GAL shall prepare a Guardian ad Litem report and provide a copy of the report pursuant to Sup. R. 48.06 to counsel and unrepresented parties.
- (3) In lieu of the Sup. R. 48.06 warning, all Guardian ad litem summaries and reports shall contain the following notice with additional warnings:

“NOTICE: This report is being provided to the Court, unrepresented parties, and legal counsel of record. If you are an attorney, you may share its contents with your client. Under NO circumstances are the contents of the report to be shared with the minor child(ren) in any format. Additionally, any other disclosure of the report must be approved *in advance* by the Court. Unauthorized disclosure of the report in any fashion through any means including, but not limited to, copying the report, posting the report or any portion of the report on social media or other mediums, or disclosing all or portions of the report to another person, without prior approval, may be subject to Court action including, but not limited to, a finding of contempt, for which penalties include incarceration and fines.”

- (B) Once the guardian ad litem report is provided, the GAL is under no obligation to respond to any questions from counsel, parties, or unrepresented parties other than at the time of hearing.
- (C) Any written summary or report of the GAL shall be considered as part of “the original papers and exhibits filed with the trial court” for purposes of Appellate Rule 9(A). A party may move the Court to transmit a copy of the report under seal to the Clerk of Courts to be filed as part of the original papers and exhibits if the summary or report has been filed as an exhibit with trial Court.
- (D) Guardian ad litem summaries, reports and recommendations contain adult information which is not to be shared with the minor children. Attorneys are expected to use professional discretion in sharing information with their clients.

Comment:

This rule has been amended to align with amended Sup.R. 48.06, and includes an additional notice that a party may be found in contempt of court for improperly sharing the GAL report. New subsection (B) is added to avoid ex parte communication with the GAL after the report has been completed. The sentence added to subsection (C) recognizes confidential nature of the GAL report and the need for a complete record on appeal. The definition of a guardian ad litem summary and timeline for providing the summary is added.

34.06 Fees.

In addition to the requirements set forth in Sup. R. 48.03(H), depending on the type of case in requesting compensation for fees, the guardian ad litem shall:

- (A) Legal Custody cases. Court-appointed attorney guardians ad litem shall be compensated at the rate set forth in the Fee Schedule provided on the Court’s website at www.drcourt.org in accordance with Summit County Codified Ordinance (SCCO) 113.09 for legal custody cases by submitting a request for payment following the procedures set forth in Loc. R. 13.08(C).
- (B) For all other cases, fees for the GAL shall be compensated at the rate set forth in the Fee Schedule provided on the Court’s website at www.drcourt.org unless the GAL is serving at a reduced rate. Unless specified otherwise by the Court, fees will be assessed equally between the parties and should be deposited with the Clerk of Court’s office by the date set forth in the order. Fees shall not exceed the deposit amount set forth in the Fee Schedule without prior written approval of the Court. Note that a two percent (2%) processing fee is collected by the Clerk of Courts and will be added the fees required to be deposited with the Clerk.

- (C) **Extraordinary fees.** In the event that fees for court-appointed attorney guardian ad litem should exceed the limits set forth in SCCO 113.09 in legal custody cases or the funds on deposit with the Clerk of Courts in all other cases, the GAL shall file a motion for extraordinary fees detailing why the additional time was required on this case. The GAL shall include therewith a detailed listing of all time and expenses expended on the case along with the motion. The GAL shall also provide the court with a proposed judgment entry approving the extraordinary fees. Any award of extraordinary fees are within the sole discretion of the Court and are not guaranteed.

Comment

34.06 has been expanded to differentiate compensation for guardians ad litem on legal custody cases and all other cases. The fee schedule for all GALs will now be posted on the Fee Schedule provided on the Court’s website at www.drcourt.org as a generalized term to negate the necessity of amending local rules each time the hourly rate increases. Section (C) Extraordinary Fees was added to set forth the procedure for GALs in making such a request.

34.07 Appointments.

Appointments of GALs will be recommended by the Family Court Services on a rotating basis. Special needs of a particular case, (e.g. child abuse, medical or psychological issues), may be considered in the appointment of a guardian with specialized qualifications or skills; however, every effort will be made to ensure an equitable distribution of cases. A review of case distribution shall be conducted annually. In cases returning to court and requiring a guardian, every effort will be made to ensure the reappointment of the previous guardian to the case, unless otherwise specified by the Court.

34.08 Guardian *ad litem* Removal; Complaint Process.

Pursuant to Sup. R. 48.07(J), should a party or attorney of record have a complaint regarding the performance of a guardians ad litem, the following process shall be utilized:

- (1) The Family Court Services (“FCS”) Director shall be designated as the person for accepting and considering written comments and complaints;
- (2) The FCS Director shall provide a copy of the comment or complaint to the opposing counsel or pro se party and the guardian ad litem who is the subject of the complaint or comment;

- (3) The FCS Director or shall forward any comment or complaint to the administrative judge of the Court for consideration and appropriate action;
- (4) The matter shall be set for hearing in a timely manner before the judge assigned to the case in order to effectuate the timely disposition by the Court; All parties are to be present at the hearing;
- (5) For any motion requesting removal of a Guardian *ad litem*, the Court shall issue an Order;
- (6) For any comment or complaint, the parties shall be notified in writing of the disposition of the matter;
- (7) The FCS Supervisor shall maintain a written record in the file of the guardian *ad litem* regarding the nature and disposition of any comment or complaint.

34.09 Guardian *ad litem*s to be appointed for Minors or Incompetent Persons.

Whenever a minor or incompetent person has a representative, such as a guardian or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative, the minor may sue by a next friend or defend by a guardian *ad litem*. When a minor or incompetent person is not otherwise represented in an action, the Court shall appoint a guardian *ad litem* or shall make such other order as it deems proper for the protection of such minor or incompetent person.

As to incompetent persons, a hearing shall be set prior to the appointment of a Guardian *ad litem*. All parties, and the proposed guardian *ad litem*, shall appear for the hearing. The incompetent person shall have an opportunity to be heard on the motion for appointment of guardian *ad litem*.

Rule 35. Parenting Coordination.

(A) Definitions

As used in this rule:

- (1) “Domestic abuse” means a pattern of abusive and controlling behavior that may include physical violence; coercion; threats; intimidation; isolation; or emotional, sexual, or economic abuse.
- (2) “Domestic violence” has the same meaning as in R.C. 3113.31(A)(1).