

**FRANKLIN COUNTY COURT OF COMMON PLEAS,  
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH**

**NOTICE OF PROPOSED LOCAL RULE**

The judges of the court are publishing this notice to solicit comments concerning proposed additions to the local rules of the court. The court will accept written comments concerning the rule until May 3, 2021. Written comments may be directed to Administrative Magistrate William Sieloff, 373 S. High St., Third Floor, Columbus, OH 43215 or by email to: [william\\_sieloff@fccourts.org](mailto:william_sieloff@fccourts.org). The complete text of the proposed rule is below. A version with tracked changes can be found on the LOCAL RULES page of the Court's website (<https://drj.fccourts.org>) under "Proposed Amendments."

**Domestic Rule 15/Juvenile Rule 27: GUARDIAN AD LITEM**

**(A) Applicability**

This rule shall apply when the court appoints a guardian ad litem to provide recommendations regarding the best interest of the child(ren) in allocation of parental rights and responsibilities cases.

**(B) Duties and Responsibilities of Guardians ad Litem:**

1. Attorneys accepting appointments to serve as guardian ad litem shall be familiar with the following rules and be able to apply them to their practice: Sup. R. 48.01, *et seq.*, the Court's Local Rules, Ohio Rules of Civil Procedure, and Ohio Rules of Juvenile Procedure, as all may be updated or supplemented from time to time.
2. Attorneys accepting appointments to serve as guardian ad litem shall:
  - a) Be knowledgeable of the laws of Ohio and relevant case law applicable to the cases for which they receive appointments;
  - b) Act with respect and courtesy to the parties and all persons involved in the case at all time;
  - c) Immediately identify yourself and your role in any correspondence or communication with any other person or party involved in the case, and inform them that documents or information obtained may be used in court proceedings;
  - d) Initiate and maintain reasonable contact with their ward;
  - e) Review all pleadings and other relevant court documents, and request discovery in a timely manner;
  - f) Communicate prior to and outside of scheduled court hearings with counsel and unrepresented parties regarding the issues in the case and resolution of those issues in advance of hearing dates;

- g) Appear for hearings timely;
  - h) Personally appear on behalf of their ward unless an emergency situation exists;
  - i) Be prepared to discuss outstanding issues and be knowledgeable of the facts of the case at each hearing;
  - j) File necessary motions and pleadings as needed and in a timely manner;
  - k) Communicate with all counsel, parties, and court staff regarding scheduling conflicts well in advance of scheduled hearings;
3. Attorneys appointed to serve as guardian ad litem shall perform all duties and responsibilities and comply with all requirements as set forth in Sup. R. 48.01, *et. seq.*
  4. Guardians ad litem are under an ongoing duty to notify the court of changes in their status, address, or telephone number. Additionally, they are required to notify the Court immediately of any disciplinary action that results in sanctions and promptly advise the court of any grounds for disqualification or unavailability to serve.
  5. Repeated failure to appear for hearings timely, communicate regarding scheduling conflicts in advance, work to resolve matters outside of scheduled hearing dates, comply with the requirements of Sup. R. 48 including timely filing of reports, or to personally appear on behalf of the ward will result in removal from the guardian ad litem list as outlined in this Rule.

### **(C) Initial Training Requirements**

In order to serve as a guardian ad litem, an applicant shall complete the pre-service training requirements as set forth in Sup. R. 48.04. 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 updated requirements that were effective as of this date.

### **(D) Qualifications**

The Court, through its administrative magistrate, will maintain a list of attorneys who have completed the required training and are eligible to serve as a guardian ad litem. In order for an attorney to be considered for placement on the list, they shall:

1. Be an attorney licensed to practice in the State of Ohio who is in good standing.
2. Have been licensed to practice law at least 2 years, whether in Ohio or another state. If the applicant has not been licensed to practice law in Ohio or another state for 2 years or more, the applicant may provide a statement detailing significant and/or complex domestic or juvenile cases in which the applicant represented a party which would show advanced knowledge of juvenile and domestic law and procedure.
3. Provide, at the attorney's expense, a criminal and civil background check and [background disclosure statement](#) relevant to the applicant's fitness to serve as a Guardian ad litem.

4. Provide a copy of the applicant's resume, stating the applicant's training, experience and expertise which will allow the applicant to successfully perform the duties and responsibilities of a guardian ad litem.
5. Provide information regarding any unique skills that the applicant has which may be of assistance to the Court, the child(ren) and/or the litigants (such as speaking a foreign language, background in social work or psychology, etc.).
6. Attest that at least 50% of the applicant's practice be in the areas of domestic relations and juvenile custody actions for 2-year period immediately preceding their application. If the applicant does not maintain 50% of their practice in these areas, the applicant may provide a statement detailing significant and/or complex domestic or juvenile experience which would show advanced knowledge of juvenile and domestic relations law and procedure.
7. A letter of recommendation from a member of the domestic relations bar indicating a level of proficiency and confidence in practice abilities that would translate to a practice as a guardian ad litem.

#### **(E) Application and Acceptance**

Upon completion of the required pre-service training, an attorney seeking to serve as a guardian ad litem shall submit an application to the administrative magistrate. The application shall be on the form prescribed by the Court, and shall include the requirements of §C and §D of this rule.

In submitting this application and the supporting documents, each individual is committing to the acceptance of an appointment on a pro bono or reduced fee basis at least once a year as well as possible participation in the mentoring program.

All applications for placement on the guardian ad litem list shall be reviewed by the administrative magistrate and any committee of domestic and juvenile magistrates and/or staff attorneys as the administrative magistrate shall assign. Accepted applicants shall complete a mentoring program with the assistance of a court designated guardian ad litem. The mentoring requirement may be waived by the administrative magistrate based on prior guardian experience of the applicant, or based on significant practice experience in domestic and juvenile law for at least five (5) years.

#### **(F) Mentoring**

The administrative magistrate shall maintain a list of experienced, qualified guardians ad litem who have more than five years of experience serving as guardian ad litem, and who agree to provide mentoring to new applicants. Mentors who successfully assist a new applicant will not be required to accept a pro bono appointment in the current year, or in the following year if they have already accepted a pro bono appointment in the current year.

Each guardian ad litem applicant may be assigned to a mentor by the administrative magistrate or his/her designee depending on their practice experience. The applicant shall be required to complete 9 hours of mentoring and six in-person meetings with their assigned mentor. The mentor shall coordinate with the

applicant regarding meetings, court dates, and interviews that the applicant should attend. Regardless of the flow of work on any case, the mentor and the applicant shall meet at least one time per month to review materials and discuss investigations. All hours incurred which directly correspond to mentoring responsibilities shall not be billed to any party to an action.

Any guardian ad litem appointment shall solely name the mentor as the guardian ad litem. The mentor shall have full responsibility for conducting and directing the appropriate investigations and attending all hearings.

At the conclusion of the mentoring responsibilities, the mentor shall complete an affidavit setting forth the applicant's participation on a form promulgated by the Court and shall provide the same to the administrative magistrate for review.

All mentors and applicants shall disclose their professional relationship created by this requirement to all counsel, parties, and judicial officers in any action where either may be appointed as a guardian ad litem and the other is counsel for a party. This requirement shall continue for a period of one year.

#### **(G) Placement on Appointment List**

Upon successful completion of the mentoring program, if required, the administrative magistrate shall consider the qualifications of the applicant along with the mentoring report for the applicant in determining whether the applicant shall be placed on the guardian ad litem list.

Once the applicant is placed on the guardian ad litem list, they shall complete an orientation offered by the Court for new guardians ad litem within one calendar year.

#### **(H) Continuing Eligibility/Annual Certification**

In order to maintain their eligibility on the guardian ad litem appointment list, each attorney shall comply with the annual training requirements as outlined in Sup. R. 48.05, and shall report the following information on an annual basis:

1. That their professional licensure remains in good standing pursuant to division (C)(1) of this rule and attest that they are unaware of any circumstances that would disqualify them from serving on the guardian ad litem list.
2. Commencing in 2022 and every five (5) years thereafter, provide, at the attorney's expense, an updated criminal and civil background check. Persons on the list for fewer than 3 years shall be exempt until the following quinquennial. Updated criminal and civil background checks may be requested in writing at any time by the court.
3. Attest that at least 50% of the applicant's practice for the last 2 years be in the areas of domestic relations and juvenile custody. If the applicant does not maintain 50% of their practice in these areas, the applicant may provide a statement detailing significant and/or complex domestic or juvenile experience which would show advanced knowledge of juvenile and domestic relations law and procedure.

Guardians ad litem shall submit the annual registration form [insert embedded link] or complete an electronic version (if provided) detailing the required information set forth in this division. This information shall be provided to the administrative magistrate or his/her designee no later than January 31 of each calendar year.

Failure to provide this annual report will result in loss of eligibility to serve on any new or recurring appointments until this requirement is satisfied. The attorney shall be removed from the guardian appointment list for purposes of receiving new or recurring appointments. The court may allow the attorney to serve on current, active appointments for up to three (3) months. At the conclusion of the three (3) month period, the attorney will be removed from all current, active cases if they have still failed to comply.

If a guardian ad litem fails to complete the ongoing continuing education requirements within any calendar year, the individual shall not be eligible to serve as a guardian ad litem on any new or recurring appointments until this continuing education requirement is satisfied. The attorney shall be removed from the guardian appointment list for purposes of receiving new or recurring appointments. The court may allow the guardian ad litem to serve on current, active appointments for up to twelve (12) months. At the conclusion of the twelve (12) month period, the attorney will be removed from all current, active cases if they have still failed to comply.

Should an attorney be removed from the appointment list, they shall not be eligible for reinstatement for six (6) months from the date they come current on all outstanding requirements under this Rule. If the person's gap is two (2) calendar years or less, the person shall qualify to serve after completing all required hours of continuing education and providing all other necessary information required in this division. If the gap is more than two (2) calendar years, that person must complete the pre-service requirements as set forth in Sup. R. 48 and shall complete the application process.

### **(I) Appointment**

The court may appoint a guardian ad litem upon its own motion or the motion of either party. When necessary, only the court may appoint an attorney to represent the child(ren). Private counsel shall not be hired to represent the child(ren) in allocation of parental rights proceedings.

Each judge or magistrate shall be responsible for appointing a guardian ad litem from the court approved list, as maintained and updated by the administrative magistrate, in accordance with Sup. R. 48.02 (H) and 48.07.

Each judge or magistrate may take into consideration the experience, skills, expertise, demeanor, current caseload and management thereof, and hourly rate of the guardian ad litem, as well as the nature and complexity of the case to be assigned, the parties and counsel to the case, and the children involved. In doing so, the assigned judge or magistrate may select a guardian ad litem to best serve the needs of the case.

Counsel for the parties may request a guardian ad litem they mutually agree upon from the court approved list based upon the factors set forth above, or any additional factors that warrant consideration, and the judge or magistrate shall consider the request in determining whether to appoint a guardian ad litem.

It shall be the responsibility of counsel in the case to copy the guardian ad litem with all pleadings, notices of hearings and depositions, entries, and any other necessary documents. Any additional expense incurred by the guardian ad litem as a result of counsel's failure to notify, including the costs of transcripts, shall be charged to the party (ies) responsible for such failure.

It is the preference of the Court that the same guardian ad litem be reappointed in any subsequent matters involving the same case or child(ren).

#### **(J) Pro Bono or Reduced Fee Appointments**

A guardian ad litem may be appointed on a pro bono or reduced fee basis by the court upon sufficient showing that both parties are indigent or otherwise lack the appropriate funds to pay for the services of the guardian ad litem at the time of appointment. Sufficient showing may include, but is not limited to, those factors set forth in Sup. R. 48.02(H)(1), as well as either party filing an affidavit of indigency. The court shall have the discretion to waive initial deposits, all fees, or a portion of fees for the guardian ad litem, and shall indicate the portion of fees that are to be waived at the time of appointment. The court shall maintain jurisdiction to require fees or trial deposits to be paid after designated pro bono services have been exhausted, as well as to order payment or reimbursement of expenses incurred by the guardian ad litem. Should either party no longer qualify for indigency status during the pendency of the matter, fees may be ordered in the discretion of the court.

It shall be the responsibility of the guardian ad litem to report to the administrative magistrate or his/her designee all pro bono and/or reduced fee appointments. Failure to report pro bono appointments may result in additional pro bono appointments in a calendar year.

#### **(K) Fees / Deposit to Secure Fees**

The court shall require the parties to post a deposit to secure the fees of the guardian ad litem and shall apportion the fees between the respective parties in accordance with Sup. R. 48.02(H)(3). The total deposit shall be at least \$800.00 unless otherwise indicated by the guardian ad litem. All deposits and fees shall be paid directly to the guardian ad litem and processed through the guardian ad litem's IOLTA account.

The guardian ad litem shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and shall provide monthly billing statements to the parties and counsel for the parties. The guardian ad litem shall bill in increments of no greater than one-tenth (.1) hour. The parties shall pay all accrued guardian ad litem fees within 14 days of any request pursuant to the order allocating the guardian ad litem's fees.

A guardian ad litem may file a motion and include a proposed order or entry for additional fees at any time if either party fails to pay accrued fees in a timely manner. The court may grant any such motion *sua sponte* in accordance with Sup. R. 48(H)(4). Any motion for fees shall be accompanied by an affidavit setting forth the following: (1) all accrued and all outstanding fees; (2) a record of monthly billing statements provided to the parties; and (3) when each request for additional fees was made to the parties.

The court shall retain jurisdiction to reallocate the guardian ad litem's fees along with all costs of the proceedings upon motion and / or at the conclusion of the case, and in accordance with Sup. R. 48.02(H). Each party shall be responsible for paying all fees as ordered until such time as a motion for reallocation has been decided. The filing of a motion for reallocation of fees shall not act as a waiver of that party's obligation to pay fees in accordance with the current order.

If not provided at the time of final hearing, the guardian ad litem shall file a motion for fees within seven (7) days after final hearing (or as otherwise directed by the court). The final request for fees shall be in accordance with Sup. R. 48.02(H).

Failure by either party to pay guardian ad litem fees or additional deposits as ordered by the court may result in the limiting of evidence at time of trial or other sanctions as the court may deem appropriate. A request for sanctions may be made upon motion of any party or upon the court's own motion. The choice of sanction shall be in the sole discretion of the court. The court may enforce the payment of fees as set forth in Sup. R. 48.02(I). Any existing order for fees, and all fees as ordered pursuant to the order/entry appointing the guardian ad litem, shall remain due and payable to the guardian ad litem regardless of whether any action remains pending or whether either party withdraws or dismisses their motions.

#### **(L) Reports and Court Appearances**

The guardian ad litem may prepare and file written interim reports detailing observations and recommendations, but in all cases shall be present at all hearings pertaining to the children.

A guardian ad litem shall prepare a written final report that complies with the requirements of Sup. R. 48.06 as to content, the time with which it shall be filed, and to whom it shall be provided.

Any guardian ad litem who makes a recommendation or conducts an investigation concerning the best interests of a child in a proceeding in which the guardian has been appointed shall be immune from civil or criminal liability as to that investigation or recommendation unless the guardian ad litem has acted in bad faith or with malicious purpose.

#### **(M) Filing Fees and Court Costs**

All filing fees and court costs are waived as to guardians ad litem.

#### **(N) Termination of Appointment**

The guardian ad litem appointment shall remain in effect until discharged by order of the court. At the conclusion of the proceedings for which the appointment was made, the guardian ad litem shall submit a

motion and entry for withdrawal as the guardian ad litem and for dismissal of the child(ren) as party(ies) to the case.

#### **(O) Complaints Regarding Guardians ad Litem; Motions to Remove Guardians ad Litem**

Comments or complaints regarding the performance of a guardian ad litem appointed pursuant to this rule shall be in writing and shall be directed to the Administrative Magistrate, Franklin County Common Pleas Court, Division of Domestic Relations and Juvenile Branch. Only signed comments and/or complaints will be added to the guardian ad litem's record and considered by the court. Anonymous comments and/or complaints will not be considered and will be destroyed.

A copy of comments and complaints submitted to the court shall be provided to the guardian ad litem who is the subject of the complaint or comment. The administrative magistrate may forward any comments and complaints to the administrative judge of the court for consideration and appropriate action. The administrative magistrate shall maintain a written record in the guardian ad litem's file regarding the nature and disposition of any comment or complaint and shall notify the person making the comment or complaint and the subject guardian ad litem of the disposition.

Motions to remove a guardian ad litem shall be scheduled for hearing before the judge or magistrate assigned to hear the allocation of parental rights and responsibilities.

#### **(P) Annual Review**

The administrative magistrate shall appoint a committee of not less than five domestic and juvenile magistrates and/or staff attorneys to review all individuals on the guardian ad litem list on an annual basis, as well as new applicants to the appointment list. The court shall determine that all individuals are in compliance with the training and education requirements of this rule; that they have performed satisfactorily on all assigned cases during the preceding calendar year; the nature of any complaints contained in their file and their response thereto; and that they are otherwise qualified to serve. The committee may also schedule an interview with any current guardian ad litem or applicant to resolve any questions relating to compliance, performance, or complaints. Upon completion of any review, the administrative magistrate may recommend removal of any guardian ad litem to the judges of the court. The guardian may provide a written response in a timely manner to any recommendation for removal prior to the issue being submitted to the judges of the court.

The administrative magistrate may temporarily suspend any guardian ad litem from the list based on concerns that may arise related to their performance, including, but not limited to, persistent failure to appear or submit timely GAL reports, or failure to submit reports that comply with standards enumerated in Local Rules and Rule of Superintendence 48.01, *et. seq.*, or the nature of any complaint that requires further investigation but serves to diminish the court's confidence in the performance of the guardian ad litem. Thereafter, the administrative magistrate shall investigate the concerns and reinstate the guardian ad litem recommend removal of the guardian ad litem from the appointment list to the judges of the court.

**(Q) Removal**

Guardians ad litem may be removed from the court appointment list with the approval of a majority of the judges of the court, or upon failing to meet criteria for ongoing eligibility as set forth in §(H) above.

If a guardian ad litem is removed by the judges of the court, the attorney may not seek reinstatement of eligibility for one year and thereafter must submit a new application and comply with all requirements set forth in this rule, including pre-service requirements.

Proposed Effective May 10, 2021