

Guardian Ad Litem Brochure

INTRODUCTION

For some reason you are wondering what is a Guardian Ad Litem, what does this strange name mean, and what does he or she do. Perhaps one has been assigned to you or a family member. The name "Guardian Ad Litem" in and of itself is confusing to many. Some states call them Advocates. A quick internet search defines "Ad Litem" as "for the law" or literally "for the lawsuit." New Hampshire courts also appoint and recognize Guardians in some legal proceedings. A Guardianship appointment is not the same as a person acting as a Guardian Ad Litem.

This brochure was developed by a varied group of individuals in the hope of providing some clarity to the Guardian Ad Litem's role. Those who helped write and edit this brochure included a District Court Judge who also serves in the Family Division, an attorney GAL, a CASA Attorney/GAL, an attorney advocate for children and families, someone who answers the phone and gets the questions, a District Court Clerk, a former State Senator, someone representing the public and the members of the Guardian Ad Litem Board.

DEDICATION

This brochure is dedicated to all who are involved in the very difficult cases whereby decisions must be made for and about other individuals, especially our children and vulnerable adults. This includes all of the judges, masters, court clerks and staff before whom you appear; the Guardians Ad Litem from the CASA Program and those certified by the Board; the attorneys, law enforcement officials, prosecutors and employees from DCYF and other agencies who defend and bring forward the cases; and most of all, the children, disabled and elderly and their family members who are served. Whatever your role in these vital cases, please always remember that at the end of the day, the bottom line is not about winning or losing . . . it's not about proving that someone was wrong . . . but it's about acting in the best interest (now and in the future) of the individuals being served and protected by the system. Thank you for whatever your role is in these life-affecting and life-altering cases.

NOTE: Much of the discussion in this brochure deals with the appointment of Guardians Ad Litem for children. There are cases in our state where children are not involved and yet Guardians Ad Litem may be appointed. Guardians Ad Litem are also appointed in some criminal cases. Because children are involved in the majority of the cases, we have focused this brochure toward those situations.

What is a Guardian Ad Litem?

In a sense, one way to think of the GAL's role would be as the "eyes and ears of the court." The Guardian Ad Litem is appointed to protect the interests of persons who are either the subject of the litigation or who have an interest in the litigation and are unable to speak for themselves. Most often, Guardians Ad Litem are appointed to consider and express the interests of children, missing or incapacitated adults. It is the duty of the GAL to conduct an evaluation and then to make recommendations to the Court in the best interest of the person whom they have been appointed to serve.

How does one become a Guardian Ad Litem?

Guardians Ad Litem in New Hampshire include CASA volunteers who are not paid by the parties for their services and Board-certified GALs who are paid based on the services provided. With the exception of CASA volunteers who are required to complete the CASA training program, Guardians Ad Litem in the State of New Hampshire who are appointed by the Courts of our State have to be certified by the New Hampshire Guardian Ad Litem Board. A complete listing of Board-certified Guardians Ad Litem in New Hampshire is available at www.nh.gov/gal. Each Board-certified GAL must have completed course instruction in both general and specific court areas, pass a criminal background check, not be listed on NH's DCYF registry of founded cases of abuse and neglect, complete specified application forms, submit an essay regarding why they feel they should be a GAL as well as provide positive personal references. All Board-certified GALs and CASA GALs are bound by ethical rules and standards of practice. The GAL Board administrative rules were adopted after much work and public deliberation and with the approval of the Joint Legislative Committee on Administrative Rules (JLCAR). The complete set of Board rules can be accessed through the GAL website: www.nh.gov/gal/rules.htm or obtained directly at <http://www.gencourt.state.nh.us/rules/gal.html>.

When and why does the Court appoint Guardians Ad Litem?

The legal system can at times be very contentious. Each party presents the evidence which it wishes the Court to hear. Often that information is contradictory and inevitably favors the party for whom it was offered, so the Court may need someone to conduct an independent evaluation of the circumstances and to make an impartial evaluation of the circumstances. The report of a GAL can assist the Court in making informed decisions. In certain cases such as abuse and/or neglect, the Courts are required by law to appoint Guardians Ad Litem. In other circumstances, the Court may elect to appoint a GAL when it deems appropriate; for example, in

determining parenting rights and responsibilities in divorce proceedings. The Court appoints GALs because it wants objective information to assist in decision-making. This said, courts are not obligated and sometimes do not accept a GAL recommendation.

The Guardian Ad Litem may need to speak with personal references and may ask for names and contact information. However, the GAL should not be expected to contact every person provided. It is entirely possible that by the time the GAL has contacted one or two references, as well as met with the parties and the children or spoken with school or medical personnel, they have been able to learn what they need to know.

Guardians Ad Litem may be appointed in all of the courts of New Hampshire. The CASA Program (Court Appointed Special Advocates) is contracted by the State to provide CASA GALs in most abuse and neglect cases in the Family Division or District Court. However, when a CASA volunteer is not available, the Court appoints a Board-certified GAL.

For whom do they work?

The Guardian Ad Litem provides services for the Court. Guardians Ad Litem are appointed by the Court but are not court employees. They are qualified for appointment because of their background and training. While many GALs are attorneys, one is not required to be an attorney to become a GAL. Some GALs are independent and work in their own offices; others are affiliated with a law office, the CASA Program or another group.

What is the role of the Guardian Ad Litem?

What can they do?

The Guardian Ad Litem performs an investigation that is based upon the information in the Court's Order of Appointment, if there is one. In some cases, the GAL's role is established through protocols and recognized practice. The GAL is to provide an evaluation of a certain set of circumstances and to provide feedback to the Court and other parties based on the best interest of the child (or missing or incompetent adult) to assist the Judge or Marital Master in making decisions. If a child is involved, the GAL may be speaking with people at the child's school or daycare and contacting medical personnel or others who can provide information and insight. The GAL may visit in the home and observe how the child interacts with his or her parents and other family members.

The GAL may, from time to time, respond to or file a motion with the court to protect the child's best interest.

In some cases, state and/or federal statutes spell out specific time frames during which the Court must hold hearings and deal with certain matters, unless the Court orders otherwise. Guardian Ad Litem reports are to be submitted by the date imposed by the court or a particular statute (copies also must be supplied to all parties in a case). Failure on the part of a Guardian Ad Litem to file a report in a timely manner may result in sanctions being ordered by the Court against the GAL.

What can they not do?

The GAL is not an attorney for the child or for other individuals in a case. Even though the GAL may be an attorney, the GAL does not provide legal advice. The GAL does not prosecute a case and is not there to attempt to prove or disprove whether certain charges are true or not. The GAL is not paid to take a particular position, like an attorney in the attorney-client relationship. Neither is the GAL appointed to mediate a divorce or to settle a case.

Who pays for the Guardian Ad Litem?

When Board-certified Guardians Ad Litem are appointed to cases, there are a number of ways that they may be paid for their services. When the Court determines that a party is financially eligible, the Court Fund pays for the GAL. In some instances, the party must contact the State's Office of Cost Containment to arrange for reimbursement as the party will be held financially responsible for these costs. In parenting matters, the Court may order that one parent must pay privately for a percentage of the GAL's services and the other parent may qualify for the Court-funded payment. Occasionally, one party must pay for all of the GAL's services. Payment is based on the individual circumstances in each case. Detailed information is available on the Office of Cost Containment's web site at: www.admin.state.nh.us/occ/gal.asp or you may call them at (603) 271-1416.

The Court must approve the Guardian Ad Litem's bill. If the GAL is going to exceed the amount estimated for his or her services, a Motion must be filed with the Court (and a copy provided to the parties) clearly stating the reasons why the original amount needs to be exceeded. There are issues that may arise during an investigation that had not been foreseen at the beginning of the case.

In privately funded cases, discussing fees, the hourly rates and the estimated cost is totally appropriate. While this may seem a difficult topic to approach, Guardians Ad Litem realize that they need to keep separate their role in investigations from questions relative to billing. However, please remember that every contact with the Guardian Ad Litem is billable and will increase the cost of the case.

A party may help to keep costs down by cooperating as much as possible. In parental rights and responsibility cases, the GAL will have a written stipulation which will address the fees and other parameters of the case. Once approved by the Court, it is an enforceable order.

Where can I ask questions?

If any parties have questions regarding the Guardian Ad Litem and what he or she is doing in the case you are involved with, the first place to look is the Court Order of Appointment or Petition. This outlines exactly what the GAL is to accomplish. If the Order or Petition is not clear to you, the appropriate way to question it would be to file with the court a Motion for Clarification within 10 days of the order. Please do not hesitate to ask the Guardian Ad Litem or your own legal counsel.

In abuse and neglect cases, there are no Orders of Appointment. In cases where a CASA volunteer has been appointed, you may contact the volunteer or the volunteer's supervisor. CASA can be reached at their central New Hampshire office in Manchester (603) 626-4600 or at their website for general program information (www.casanh.org). Inquiries may also be directed to: speakup@casanh.org.

The Guardian Ad Litem Board

The Guardian Ad Litem Board web site is <https://www.nh.gov/gal> provides information regarding the certification of Guardians Ad Litem. Every Board-Certified GAL in New Hampshire is listed on this web site. The GAL Board meets monthly at a public location. Their meeting times and dates are posted on the web site. All meetings are generally open to the public except for personnel matters that may need to be discussed during non-public session. The web site also lists upcoming training session dates and other relevant information.

Correspondence for the Guardian Ad Litem Board can be sent to the Office of Professional Licensure and Certification, Technical Professions - 121 South Fruit Street, Concord, New Hampshire 03301-8681. Phone: 603-271-2219

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Please note that this brochure cannot serve to answer in full every question you may have. Hopefully it will provide you with a basic knowledge of the process and where you may go for further information.

*This Brochure is provided and approved by the Guardian Ad Litem Board
for the State of New Hampshire.*