

# **Rules & Responsibilities for Family Court Guardians Ad Litem**

**Judge Brittany Ranson Stonestreet**

**11<sup>th</sup> Family Court Circuit, Kanawha County**

**September 1, 2022**

## **I. WHEN ARE GUARDIANS AD LITEM APPOINTED IN FAMILY COURT?**

- a. Courts shall not routinely assign guardians ad litem for children in domestic relations cases.<sup>1</sup>
- b. Guardian Ad Litem for a child shall be appointed where the court is presented with **substantial allegations of domestic abuse, serious allegations of abuse and neglect, or serious issues relating to the child's health and safety.**<sup>2</sup>
- c. In paternity cases, a Guardian Ad Litem shall be appointed for the child where the case involves **disproving paternity.**<sup>3</sup>
  - 1) Where paternity is contested AND
    - a) There is a paternity affidavit on record acknowledging Respondent's paternity; OR
    - b) The child was conceived or born during the parties' marriage.
- d. As provided for in Trial Court Rule 21

## **II. ORDER OF APPOINTMENT**

- a. Should include specific terms regarding the appointment, including:<sup>4</sup>
  - 1) Guardian Ad Litem's Role<sup>5</sup>
  - 2) Duties<sup>6</sup>
  - 3) Scope of Authority<sup>7</sup>
  - 4) Issues to be Investigated<sup>8</sup>
  - 5) Specific Reasons for the appointment<sup>9</sup>
  - 6) Court's expectations for the GAL's written report, including due date.<sup>10</sup>
- b. Should require parties to fully cooperate with the GAL's investigation.<sup>11</sup>
- c. **Best practice:**
  - 1) Order should grant GAL access to court file, access to parent and child's medical records, CPS records, court records involving the parties, etc.
  - 2) Should also note any special needs of the child relevant for the interview
- d. If Order appointing GAL is unclear, the GAL should request clarification and/or modification of the order.<sup>12</sup>

### III. ROLE OF THE GUARDIAN AD LITEM

- a. *Independent fact finder, investigator, and evaluator* as to what furthers the best interests of the child.<sup>13</sup>
- b. Submit Written Report.<sup>14</sup>
- c. Available to Testify.<sup>15</sup>

### IV. INVESTIGATION

- a. Governed by W.Va. Code § 48-9-301, § 48-9-302 and Guidelines for GAL (Appendix B)<sup>16</sup>
  - 1) If guidelines conflict with other rules or statutes – **Guidelines apply!**<sup>17</sup>
- b. *Timing of Investigation*: Complete with sufficient time prior to the hearing to thoroughly analyze information gleaned, take appropriate actions and formulate meaningful arguments and written recommendations to the court.<sup>18</sup>
  - 1) *Sufficient time to report in a timely manner*
  - 2) *Do not wait to review/request documents or interview witnesses.*
- c. *What to do:*
  - 1) Create a **CHECKLIST** for each case. See APPENDIX #14.
  - 2) Obtain and review the Court file.<sup>19</sup>
  - 3) Immediately contact the child and parents/caretakers after appointment.<sup>1</sup>
    - a) **Practice Tip**:
      - i. Send a letter to parties **ASAP** (questionnaire, contact information, etc.)
      - i. Even better? Call parties to get an **e-mail address** (record of communications and faster than snail mail)
      - ii. Keep a log or list of attempts to contact (supporting documents!). Especially important with uncooperative parties.
    - b) **LETTER** - See APPENDIX #1.
  - 4) **Schedule face-to-face meeting with the child**<sup>20</sup>
    - a) Time and place that allows for “observation and private consultation” with the GAL (UNLESS!) the Court specifically determines that such a meeting would be inappropriate given the age, medical and/or psychological condition of the child.<sup>21</sup>

b) **Practice Tips:**

- i. Interview child at school, childcare provider, etc.
  - i. If school is in session, meet the child at school because it is usually an objective, safe location where parents and siblings will not overhear what they say.
- ii. Record interviews with the child so they are not distracted by taking notes.
- iii. Consider additional interviews at your office or other neutral locations where parents bring (observe changes and interaction between child and parent(s)).
- iv. Dress casual! Fancy suit or dress can be intimidating to a child.
- v. Consider unannounced visit/observation –
  - i. E.g. extracurricular activity or school event – how do parents interact with each other and with the child. How to third parties interact?

5) **Request and Review relevant copies of:**

- a) School records<sup>22</sup>
  - i. Attendance, discipline, grades, school contact forms
- b) Medical Records<sup>23</sup>
  - i. Child's records<sup>2</sup>
  - ii. Parent's records (especially mental health, if at issue)
- c) CPS records<sup>24</sup>
- d) Other records necessary to thoroughly understand and investigate the case.<sup>25</sup>
- e) **Practice Tip** - Other relevant records may include:
  - i. Metro 911 Records
  - ii. DMV records
  - iii. Board of Pharmacy Records (controlled substances report)
  - iv. Employment Records
  - v. Criminal Records
  - vi. Other Court Records
    - i. JA or JAA cases?
    - ii. DV records
    - iii. Civil proceedings/evictions?
  - vii. Records for third parties (see 48-9-209(f) –
  - viii. Co-Parenting App Records (i.e. OurFamilyWizard, AppClose)
  - ix. Drug rehabilitation records

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<sup>2</sup> "The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past **without obtaining the consent of the parent or the child's custodian**; but **the child must consent if the child has reached the age of 12**, unless the court finds that the child lacks the mental capacity to consent." W.Va. Code § 48-9-301(b).

- x. Social Media Records
      - i. Party can “download” their profile on some services
    - xi. “Google” each party<sup>3</sup> (and their known usernames or email addresses)<sup>4</sup>
  - f) **Practice Tip:** Request for records may need to include THIRD PARTY household members or significant others. See W.Va. Code § 48-9-209(f).
  - g) **Practice Tip:** **Requesting is not enough. MUST follow through!**
    - i. **Options:** Written Request (letter), Subpoena, Obtain Court Order
    - ii. **Calendar:** Give a due date (14 days for first request is probably reasonable) and then calendar to follow up! (keep records of attempts, including who you spoke with and when)
    - iii. **Quickly Address/Resolve noncompliance**
      - i. *Request party(ies) execute an authorization*
      - ii. *Petition for Contempt:* Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.<sup>26</sup>
      - iii. *Court Order:* The Court may require any person having information about the child or a parent to provide that information even in the absence of consent by a parent or by the child, except if the information is otherwise protected by law.<sup>27</sup>
  - h) See **APPENDIX– SAMPLE REQUESTS AND LETTERS.**
- 6) **When appropriate,**
- a) **Conduct home visits** of the child’s parents/caretakers to observe their living environments and interaction of parents/caretakers and child.<sup>28</sup>
    - i. Announced v. Unannounced?
    - ii. **Safety tips:**
      - i. Let someone know the address of where you’re going and when
      - ii. Ask the parent if there is cell service at their home if they live further out of town.
    - iii. See **APPENDIX #2 - HOME VISIT CHECKLIST.**

<sup>3</sup> Google name in quotes “Jane Smith” or “Jane Doe Smith” with WV (or state of residence) in the search bar.

<sup>4</sup> If a party has a username for one account, likely to be the same for other accounts.

## b) Interviews

- i. Authority to consult any person who may have information about the child and the potential parenting or custodian arrangements.<sup>29</sup>
- ii. Child's caseworkers, therapists, school personnel and/or medical providers to obtain information about the child's needs and any concerns regarding the child.<sup>30</sup>
- iii. Relatives, neighbors or other individuals with relevant knowledge of the child or parents and the facts that gave rise to the allegations underlying the GAL appointment.<sup>31</sup>

### iv. Practice tips!

- i. Talk to the school secretary (he/she sees/hears all and often knows more about the family than the counselor)
- ii. Talk to the child's school counselor, teacher, or principal
  - Leave your card with the child's name and ask to have the teacher call you after school so you do not interrupt class. Gives the teacher time to prepare and is not in a hurry when speaking with you. Also – the teacher can contact you in something else comes up.
- iii. *Record Interviews*<sup>5</sup> –
  - You can go back and confirm exactly what was said when preparing your written report.
  - Resolves issue if dispute over what was said (i.e. "I never told the GAL [insert statement GAL was told]")
  - Recordings need to be made available to a party if requested.

## V. ADDITIONAL ACTIONS (Guardian's Discretion)

- a. ***Motion for additional evaluations of the child.*** Motion should clearly set forth the reasons why such evaluations are deemed necessary.<sup>32</sup>
  - 1) *Can include motion to refer child to professional personnel for diagnosis.*
  - 2) CAC interview
  - 3) Psychological evaluations
  - 4) Educational evaluations (IEP, reading evaluations, etc.)
  - 5) Drug testing, including *exposure* to drugs (i.e. child exposure testing)

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<sup>5</sup> W. Va. Code § 62-1D-3(e) – It is lawful for a person "to intercept a wire, oral or electronic communication where the person is a **party to the communication or where one of the parties to the communication has given prior consent to the interception** unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the US or the constitution or laws of this state." Federal law also permits recording telephone calls and in-person conversations with the consent of at least one of the parties. See 18 U.S.C. 2511(2)(d). However, if you are speaking with an out of state witness, be sure to confirm that state's requirements prior to audio recording without consent.

- b. ***Motion for additional evaluations of a party.*** Motion should clearly set forth the reasons why such evaluations are deemed necessary.<sup>33</sup> Services and tests may only be ordered if at no cost to the individuals involved or at a cost that is reasonable in light of the available financial resources.<sup>34</sup>
  - 1) Parental fitness evaluations
  - 2) Competency evaluations
  - 3) Psychological evaluations
  - 4) Sex offender-violent risk evaluations
  - 5) Day report assessments
  - 6) Drug testing
- c. See **APPENDIX #18 - Contact Information for Specific Resources**
- d. ***Motion for attorney to be appointed to serve as counsel for the child,*** if child's wishes are contrary to the GAL's assessment of the child's best interests or if a conflict of interest has arisen between GAL and the child.<sup>35</sup>
- e. ***Respond*** to all motions that will affect recommendations of the GAL or interest of the child during pendency of the case.<sup>36</sup>

## VI. WRITTEN REPORT

- a. Timing
  - 1) Report shall be submitted to the Court (copy to all parties) on date specified by the Court, **not to exceed sixty (60) days from entry of the order** appointing the GAL.<sup>37</sup>
  - 2) At least **10 days prior to the hearing,** unless a shorter time is ordered by the Court.<sup>38</sup>
    - a) *Your delay can cause court delay:* Hearing may not take place until after report is provided to the parties and "the completion of any discovery requested thereon."<sup>39</sup>
    - b) Court may grant a continuance, upon motion by a party showing good cause that discovery cannot be adequately completed within 10 days.<sup>40</sup>
  - 3) Parties **MUST** be given opportunity to review Guardian Ad Litem Report and opportunity to refute the allegations. *David S. v. Tammy S.*, 855 S.E.2d 885 (2021).

b. What to include in the Report:

1) ***Child's wishes: UNLESS GAL believes disclosure would jeopardize the child's safety.***<sup>41</sup>

- a) If the child's wishes are contrary to the GAL's assessment of the best interests, GAL may **request an attorney** be appointed to serve as counsel for the child.<sup>42</sup>

b) **Practice tip: Analyze using Rose Factors**

When a child is expressing a preference to live with one parent over the other, the Court should inquire about (1) the child's intelligence and maturity, and (2) the child's rational for the decision. *Rose v. Rose*, 176 W. Va. 18, 20 n.3, 340 S.E.2d 176, 179 n.3 (1985). In order to be accorded weight, a child's preference for one parent over the other ought to be based on good reason. *Id.* In determining how much weight to accord a child's preference, the Court is guided to look at the following factors:

1. The trial court should give greater weight to the wishes of a child which are expressed with strength, clearness, or with great sincerity.
2. A child's preference should be given less weight where it appears that the preference is based on a desire for less rigid discipline or restraint.
3. The trial court should investigate whether the statement of preference by the child was induced by the party in whose favor the preference was expressed. If so, said statement of preference should be accorded little, if any, weight.
4. Where an otherwise intelligent child makes an illogical decision based on unimportant factors, the trial court may disregard the child's statement of preference.

2) ***Date of Face-to-Face Contacts with child***<sup>43</sup>

3) ***Observations*** of the child with the parent/caretakers<sup>44</sup>

4) ***Outline of all records/documents reviewed***, plus summary of relevant portions<sup>45</sup>

5) ***Name of each person interviewed*** (manner – telephone, in person).<sup>46</sup>

6) ***Explain any special needs, medical and/or psychological conditions of the child***<sup>47</sup>

7) ***Explain the ability and willingness of each parent to provide for the child's needs.***<sup>48</sup>

8) **Specific recommendations for court action based on the findings of the interviews and independent investigation.**<sup>49</sup>

a) **Practice tip:**

i. Get creative, be detailed and be prepared!

i. If you recommend counseling for the child, have the name and contact information of a proposed counselor ready. *Bonus points* if you pick a counselor that is covered under the child's insurance.

ii. If you recommend supervised/monitored visitation – know the dates and times that the facility can accommodate the visitation. Know the cost.

iii. If you recommend psychological or parental fitness evaluations – know what professionals are available to provide and cost.

ii. Create List of Resources and Information to have information available when needed and keep it updated.

9) If case involves parenting responsibilities, recommendations shall **provide clear and concise requirements of both parents to accomplish the recommendations** of the GAL.<sup>50</sup>

a) See #8 above!

10) GAL shall **review all relevant statutory provisions regarding allocation of custody and support the proposed allocation recommended to the Court.**

a) ***Don't forget 2022 custody changes!***

**§ 48-9-102a (2022) - Presumption in favor of equal (50-50) custody**

There shall be a presumption, rebuttable by a preponderance of the evidence, that equal (50-50) custodial allocation is in the best interest of the child. If the presumption is rebutted, the court shall, absent an agreement between the parents as to all matters related to custodial allocation, construct a parenting time schedule which maximizes the time each parent has with the child and is consistent with ensuring the child's welfare.

**§ 48-9-209 (2022) – Considerations to Rebut the Presumption of 50-50.**

b) ***Rose*** factors to analyze child's preference. *Rose v. Rose*, 176 W. Va. 18, 20 n.3, 340 S.E.2d 176, 179 n.3 (1985); See also *In re T. M.*, 242 W. Va. 268, 282, 835 S.E.2d 132, 146 (2019)



c. Attachments:

- 1) GAL may attach necessary documents to the written recommendation<sup>51</sup>
- 2) IF medical or mental health records of the parents/caretakers – shall be sealed and not “attached.”<sup>52</sup>
- 3) GAL shall ***make available*** to counsel and any pro se party the investigator’s file of underlying data and reports, records or documents reviewed or relied upon, complete text of diagnostic reports, and the names and addresses of all persons the GAL consulted.<sup>53</sup>

d. Who to provide report to:

- 1) Copy shall be provided to all parties.<sup>54</sup> (WV Code 48-9-302(c) requires distribution to counsel and any unrepresented parties, but GAL guidelines require “all parties”).
- 2) GAL may file written motion to **seal the report or redact information** that may place a child or other individual in danger.<sup>55</sup> Court’s discretion to grant.<sup>56</sup>
- 3) **Practice Tip:** If legitimate concerns about releasing to a party, consider requesting:
  - a) Provide only to the party’s counsel with opportunity for parties to review with counsel, but ordering that parties will not receive a copy.
  - b) For pro se parties, give opportunity to review at the courthouse (well in advance of the hearing)
  - c) Release GAL report to the parties with attached Order prohibiting dissemination of the report, discussion with the child, or any other harmful behavior.

e. Special Circumstances:

- 1) If appointed in inter-related cases (i.e. two guardianship cases with same mother, different fathers) - Prepare a separate report for each child.

## VII. PARENTING AGREEMENTS

- a. Review all parenting agreements and advise the court if any concerns.<sup>57</sup>
- b. **Dual Role Prohibited:** GAL may not serve as the “mediator.”<sup>58</sup>

## VIII. HEARINGS

- a. Be present at all hearings<sup>59</sup>
- b. Compulsory witness subject to full examination and cross-examination by the parties.<sup>60</sup>
- c. Be prepared to explain and advocate his/her assessments and recommendations.<sup>61</sup>
  - 1) **Practice Tip:** Call Witnesses, Cross Examine! Your role does not end after giving your report.

## IX. APPEAL

- a. **Must respond** to any appeal which affects your recommendations or interests of the child.<sup>62</sup>
- b. **NOTE: New interlocutory appeals of temporary custody orders where a parent seeks and is denied 50-50 custody or where no parenting time is awarded. 48-9-203(f).**

## **X. CASE MONITORING**

- a. Court may require GAL to monitor the case for a reasonable period of time set by the court to ensure the parties are complying with the court's order.<sup>63</sup> (appendix #18).
- b. Provide a **brief written progress report** consisting of whether the parties are following the court's order; whether recommendations made by the GAL are providing for the needs of the child; and any concerns the GAL may have regarding the child.

## **XI. CONFLICT OF RULES**

- a. If the Guidelines for Guardians Ad Litem in Family Court – Appendix B to WVRPPFC conflict with rules or statutes – **guidelines shall apply**.<sup>64</sup>

## **XII. PAYMENT**

- a. May be paid by non-indigent party ("private pay" case)<sup>65</sup>
- b. Governed by Trial Court Rule 21.
- c. **Heather Olcott's Payment Tips!**
  - 1) For private pay cases,
    - a) Insist that the Judge require at least \$1,000 - \$2,000 before starting the investigation because if/when a party disagrees with your recommendations, they don't want to pay you, even if they have the money.
    - b) Make sure to CYA in private pay cases by having a clear order at the end of the case about who owes you what amount and by what date. If the party fails to pay, file a Petition for Contempt and have it personally served. A capias can be issued if the party does not appear for a hearing.
  - 2) For WVSC pay cases (indigent parties),
    - a) Obtain copies of fee waivers and keep in your file just in case WVSC needs them when you submit your invoice;
    - b) Insist that every party who is not private pay submit a fee waiver at the beginning of the case, otherwise they're forgotten. People are hard to track down and less cooperative after a final order has been entered.
    - c) If a guardianship case is overlapped from Family Court to Circuit Court as a CIGR, and the GAL follows it to circuit, the invoice goes to the WVSC and not the public defender's office. This applies even when modifications are filed in the CIGR years later and you are reappointed by the circuit judge.
    - d) If the case is appealed and you are filing a response brief (required), then your services are still billed to the WVSC. Mail the invoice to the family court judge who initially appointed the GAL. The \$3k balance starts over when the case goes to WVSC (check on ICA).

## **XIII. EDUCATION:**

- a. Court shall only appoint GALs who have completed the required training provided by the WVSCA.<sup>66</sup>

- b. *Every GAL must complete 8 hours of CLE credits every 2 years by the West Virginia Supreme Court comprising of: understanding the stages of child development from early childhood through adolescence; recognizing the signs and symptoms of abuse and neglect and their effects upon children; recognizing the signs and characteristics of domestic violence and their effects upon children; recognizing the signs and symptoms of drug and/or alcohol abuse and addiction in both children and adults; recognizing the emotional effects of parental conflict on children; preparing of parenting plans that adequately safeguard the child's opportunity to have a relationship with both parents unless otherwise contraindicated by the facts; interviewing techniques for both children and adults; analyzing facts and making meaningful recommendations to ensure child safety; and preparing written guardian ad litem reports and recommendations.*<sup>67</sup>

**THANK YOU TO ALL THE GUARDIANS AD LITEM WHO PERFORM INVALUABLE WORK IN FAMILY COURT PROTECTING THE BEST INTERESTS OF THE CHILD.**

**SPECIAL THANK YOU TO THE FOLLOWING GUARDIANS AD LITEM WHO CONTRIBUTED TO THIS PRESENTATION BY PROVIDING FORMS IN THE APPENDIX AND/OR CONSULTATION ON BEST PRACTICES:**

- I. HEATHER OLCOTT, ESQ.,**
- II. D. RANDALL CLARKE, ESQ. AND**
- III. BRENDAN DONEGHY, ESQ.**

**END NOTES**

<sup>1</sup> Rule 47(a) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>2</sup> Rule 47(a) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>3</sup> Rule 47(a) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>4</sup> Rule 47(b) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>5</sup> Rule 47(b) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>6</sup> Rule 47(b) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>7</sup> Rule 47(b) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>8</sup> Rule 47(b) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>9</sup> Rule 47(b) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>10</sup> Rule 47(b) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>11</sup> Rule 47(b) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>12</sup> ¶12, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>13</sup> Rule 47(c) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>14</sup> Rule 47(c) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>15</sup> Rule 47(c) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>16</sup> Rule 47(c) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>17</sup> Rule 47(c) of the West Virginia Rules of Practice and Procedure for Family Court.

<sup>18</sup> ¶12, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>19</sup> ¶13, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>20</sup> ¶15, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>21</sup> ¶15, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>22</sup> ¶13, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>23</sup> ¶13, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>24</sup> ¶13, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>25</sup> ¶13, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>26</sup> Rule 45(f) of the West Virginia Rules of Civil Procedure.

<sup>27</sup> W.Va. Code § 48-9-302(d).

<sup>28</sup> ¶18, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>29</sup> W.Va. Code § 48-9-301(b).

<sup>30</sup> ¶19, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>31</sup> ¶10, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>32</sup> W.Va. Code § 48-9-301(b); and ¶11, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

<sup>33</sup> W.Va. Code § 48-9-301(b); and ¶11, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

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- <sup>34</sup> W.Va. Code § 48-9-301(d).
- <sup>35</sup> ¶13, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court and W.Va. Code § 48-9-302(b).
- <sup>36</sup> ¶17, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>37</sup> Rule 47(e) of the West Virginia Rules of Practice and Procedure for Family Court.
- <sup>38</sup> W.Va. Code § 48-9-301(c).
- <sup>39</sup> W.Va. Code § 48-9-301(c).
- <sup>40</sup> W.Va. Code § 48-9-301(c).
- <sup>41</sup> ¶13, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>42</sup> ¶13, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>43</sup> ¶14, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>44</sup> ¶14, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>45</sup> ¶14, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>46</sup> ¶14, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>47</sup> ¶14, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>48</sup> ¶14, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>49</sup> ¶15, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>50</sup> ¶15, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>51</sup> ¶14, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>52</sup> ¶14, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>53</sup> W.Va. Code § 48-9-301(c).
- <sup>54</sup> Rule 47(e) of the West Virginia Rules of Practice and Procedure for Family Court.
- <sup>55</sup> Rule 47(e) and ¶14, Appendix B (Guidelines for Guardians Ad Litem) of the West Virginia Rules of Practice and Procedure for Family Court.
- <sup>56</sup> Rule 47(e) of the West Virginia Rules of Practice and Procedure for Family Court.
- <sup>57</sup> ¶17, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>58</sup> Rule 45 of the West Virginia Rules of Practice and Procedure for Family Court.
- <sup>59</sup> ¶17, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>60</sup> W.Va. Code § 48-9-301(a).
- <sup>61</sup> ¶17, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>62</sup> ¶17, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>63</sup> ¶18, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.
- <sup>64</sup> Rule 47(c) of the West Virginia Rules of Practice and Procedure for Family Court.
- <sup>65</sup> Rule 47(f) of the West Virginia Rules of Practice and Procedure for Family Court.
- <sup>66</sup> Rule 47(g) of the West Virginia Rules of Practice and Procedure for Family Court.
- <sup>67</sup> ¶1, Appendix B (Guidelines for Guardians Ad Litem) to the W.Va. Rules of Prac. & Proc. for Family Court.

# **Rules & Responsibilities for Family Court Guardians Ad Litem**

## **APPENDIX DOCUMENTS**

- (1) **GAL Intake Form** (sent to parents to complete at the beginning of the case)
- (2) **GAL Home Visit Form** (to complete during home visit to each parent's home)
- (3) **Form Letter to Clerk of Court** (to request Case Summary Form/docket sheet to order records from the file).
- (4) **Form letter to Clerk of Court** (to request specific records from Court file)
- (5) **Form Letter to Petitioner and respondent** (to request each party complete and return GAL intake form and schedule parent & child(ren) interviews and home visits)
- (6) **Form letter to Child Protective Services** (to request CPS agency records)
- (7) **Form Request for NCIC background checks** (criminal, DV, and drivers license checks by Kanawha County Sheriffs Department through court staff)
- (8) **Form letter to Clerk, Kanawha County Magistrate Court** (to request court records)
- (9) **Form letter to Minor Child(ren's) Pediatrician** (to request medical records)
- (10) **Form letter to Minor Child(ren's) Dentist** (to request dental records)
- (11) **Form letter to Mental Health Provider** (to request mental health records of parent/child)
- (12) **Form letter to Substance Abuse Provider** (to request substance abuse treatment for of parent and/or child).
- (13) **Interview Questions for Parents/Caretaker**
- (14) **GAL FILE checklist**
- (15) **Circuit Court Permission Slip to Review JA/JAA file.**
- (16) **Motion and Order for Board of Pharmacy Records**
- (17) **Motion and Order for Employment Records**
- (18) **Contact Information & Resource Tips from Heather Olcott, Esq.**

**THANK YOU** to GALs D. Randall Clarke, Esq. and Heather Olcott, Esq. for providing the forms above!

- (19) **Summary Outline of West Virginia's 2022 Legislative Change - 50-50 Presumption**

**GUARDIAN AD LITEM INTAKE FORM**

Name: \_\_\_\_\_

(Including all other surnames and nicknames) \_\_\_\_\_

Address: \_\_\_\_\_

How long lived there? \_\_\_\_\_

Home No.: \_\_\_\_\_

Work No.: \_\_\_\_\_

Cell No.: \_\_\_\_\_

Driver's License No.: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Social Security #: \_\_\_\_\_

Employer: \_\_\_\_\_

How Long Employed: \_\_\_\_\_

Rate of Pay: \_\_\_\_\_

Other Income: \_\_\_\_\_

Full or Part Time: \_\_\_\_\_

Relationship to Child(ren) \_\_\_\_\_

Do the children have special needs? If so, Explain. \_\_\_\_\_

Is anyone else residing with you in your home? \_\_\_\_\_

**If yes, please complete the following:** \_\_\_\_\_

Name: \_\_\_\_\_

Work No.: \_\_\_\_\_ Cell No.: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security #: \_\_\_\_\_

Employer: \_\_\_\_\_ How Long Employed: \_\_\_\_\_

Rate of Pay: \_\_\_\_\_

**Child(rens) Physicians/Dentists/Ophthalmologist/Other Specialists**

Child's Name	Doctor's/Dentist's Name	Facility	Date of Last Appointment
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Child(rens) Medical Conditions/Diagnosis

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Child(rens) Schools**

Child's Name	School	Grade	Grades Earned	Attendance	Disciplinary Record
--------------	--------	-------	---------------	------------	---------------------


List all addresses where you have lived in the last 10 years.


List of relatives who reside in West Virginia (include name-address-telephone number)


Please describe your current health: \_\_\_\_\_


Are you on any medications? \_\_\_\_\_ If yes, please state:

Medication Name	Name of Prescribing M.D.	Condition
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Please describe the health of anyone residing with you: \_\_\_\_\_

--



Are they on any medications? If yes, please state:

Medication Name

Condition

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How often do the children have parenting time with you in your home or other locations? Explain.

---

---

What activities do you and the children enjoy when they are in your home?

---

What chores do the children have when they are in your home?

---

How do you discipline the children?

---

---

List of your most important witnesses: (include name-address-telephone number)

Name	Relationship	Telephone Number/Address	Substance of Testimony
------	--------------	--------------------------	------------------------


What evidence you have to support your allegations in your Petition/Counter petition filed in this case?:

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Have you or anyone residing with you ever been arrested for any **criminal offense**? \_\_\_\_\_  
If yes, please complete the following. (Attach additional pages if needed).

Name	Date	Location	Charge	Disposition of Case
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Have you or anyone residing with you ever been a party to a **Domestic Violence Petition**? \_\_\_\_\_  
If yes, please complete the following: (Attach additional pages if needed).

Name	Date	Location	Outcome
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Have you or anyone residing with you ever been investigated by **Child Protective Services**? \_\_\_\_\_  
If yes, please complete the following: (Attach additional pages if needed).

Name	Date	Location	Outcome
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Have you or anyone residing with you ever abused **drugs or alcohol**? \_\_\_\_\_  
If yes, please complete the following: (Attach additional pages if needed).

Name of person: \_\_\_\_\_ Was treatment sought for the addiction? \_\_\_\_\_

Name of M.D./Name and address of Office/Facility where treated? Was the program completed?  
\_\_\_\_\_

Have you or anyone residing with you ever been treated for **mental health** issues? \_\_\_\_\_  
If yes, please complete the following. (Attach additional pages if needed).

Name of person seeking treatment: \_\_\_\_\_

Name of M.D./Name and address of Office/Facility where treated/Dates of Treatment  
\_\_\_\_\_

Diagnosis of condition/ Reason for discharge/Discharge Instructions from M.D.  
\_\_\_\_\_  
\_\_\_\_\_

The following is for you to describe what you know about **the opposing party's following histories:**

Criminal Charges/Convictions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Domestic Violence: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Drugs/Alcohol: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CPS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mental Health: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## GUARDIAN AD LITEM HOME VISIT

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Home No.: \_\_\_\_\_ Cell No.: \_\_\_\_\_

Date of Visit \_\_\_\_\_

Home Description: \_\_\_\_\_

Size: \_\_\_\_\_ sq. ft.

\_\_\_\_\_ Small \_\_\_\_\_ Medium \_\_\_\_\_ Large

Total # of rooms \_\_\_\_\_

# of Bedrooms \_\_\_\_\_

Does each child have a Bedroom ? \_\_\_\_\_

# of Bathrooms \_\_\_\_\_

Kitchen \_\_\_\_\_

Living Room \_\_\_\_\_

Any Visible conditions to be corrected \_\_\_\_\_

Firearms present in home \_\_\_\_\_ yes \_\_\_\_\_ no

Safeguards: \_\_\_\_\_

Acreage: \_\_\_\_\_ Outside facilities: \_\_\_\_\_

Which children reside there? \_\_\_\_\_ Since what date? \_\_\_\_\_

Rents from \_\_\_\_\_ since \_\_\_\_\_ Rent: \$ \_\_\_\_\_ per month

Utilities: Electric \$ \_\_\_\_\_ per month

Gun cabinet-safe \_\_\_\_\_

Gas \$ \_\_\_\_\_ per month

Smoke/CO2 detectors \_\_\_\_\_

Water \$ \_\_\_\_\_ per month

Cabinet locks \_\_\_\_\_

Sewer \$ \_\_\_\_\_ per month

TV \$ \_\_\_\_\_ per month

Telephone \$ \_\_\_\_\_ per month

June 30, 2022

Kanawha County Circuit Clerk  
Via Facsimile (304) 357-0473

RE: xxxxx v. xxxxxx  
Civil Action No.

Dear Clerk:

I have been appointed as Guardian Ad Litem for a minor child in the above pending civil action.

I am requesting that the Case Docket Entries in above-referenced case be forwarded to me as soon as possible.

Thank you for your time and assistance. If you have any questions, please contact me.

Very Truly Yours,

D. Randall Clarke

\_\_\_\_\_, 2022

Cathy Gatson, Clerk  
 Kanawha County Circuit Court  
 FAX (304) \_\_\_\_\_

RE: \_\_\_\_\_  
 Civil Action No: \_\_\_\_\_

**Hand delivered**

Dear Sir or Madam:

I have been appointed by the Kanawha County Family Court as Guardian Ad Litem for the minor child(ren) in the above pending civil action by Order of the Court dated \_\_\_\_\_, 2022.

**Request for Copy of Court File**

As Guardian Ad Litem, it is my duty to investigate the history of this civil action, to review and summarize this information and make a Report to the Court which promotes the safety, welfare and best interests of the minor child. I request the following records relating to the minor child(ren), the Petitioner(s) \_\_\_\_\_ and the Respondent(s) \_\_\_\_\_ in the above civil action:

**Pleadings:** All Petitions, responsive pleadings and motions which have been filed by any party in this case.

**Orders:** All Temporary, Status, Interlocutory and Final Orders entered in this case.

**Financial Statements:** All Financial Statements filed by any party in this case.

**Parenting Plans:** All Parenting Plans filed by any party in this case.

Thank you for your time and assistance, if you have any questions, please contact me at your convenience.

Very Truly Yours,

D Randall Clarke

May 14, 2021

Party Name  
Party Address

RE: Xxx v. Xxx  
Civil Action No. xxxxx

Dear Mr. Xxx:

As you know, I have been appointed by the Kanawha County Family Court as the Guardian Ad Litem for the minor children in the above-styled action.

**By this letter, I ask that you both provide the following written documentation to me before my initial meeting:**

- (a) Complete the enclosed "**Guardian Ad Litem Intake Form**" and return the form to me so I may review the information prior to my meeting with you.
- (b) Prepare a **brief chronology of the events** leading up to the filing of this case, including the grounds for the "Petition" filed; a description of each parties' past involvement in the care and nurturing of the child; any evidence in support of his/her position; and the specific request for parenting time with the minor children.
- (c) Provide a true and complete copy of your **2019 and 2020 Federal and State Income Tax Returns, and a current 2021 paystub** reflecting your year-to-date income.

Please forward the documents to me and schedule an appointment with Vickie, so I can speak with you and the children and schedule a home visit. Thank you for your prompt attention to these matters. If you have any questions, please feel free to contact me.

Very Truly Yours,

D. Randall Clarke

April 29, 2021

Department of Health and Human Resources  
VIA EMAIL:

RE: Xxx v. Xxx  
Civil Action No. 20-D-948

Dear :

I have been appointed by the Kanawha County Family Court as Guardian Ad Litem for minor child, in the above pending civil action. Attached you will find a copy of the "Order Appointing Guardian Ad Litem".

I would greatly appreciate it if you would please forward to me any and all Child Protective Services incident reports, complaints and the dispositions relating to the following:

Xxx	(D.O.B: 00/00/00; S.S. # )
Xxx	(D.O.B. 00/00/00; S.S. #)
Xxx	(D.O.B: 00/00/0000)

If you have any questions, please contact me at your earliest convenience.

Very Truly Yours,

D. Randall Clarke



## KANAWHA COUNTY SHERIFF'S DEPARTMENT

DATE: 03/05/2022

**Last Name:**

First Name:

**Middle Name:**

Date of Birth:

SSN:

Driver's #:

The above record check is required in regards to Family Court Case Number: # 22-D-\_\_\_\_\_

**FAX reply to: (304) 558-4237**

Attention: Information obtained from NCIC is for official use by the intended recipient only. Not to be disseminated to any other party and this information should be placed under seal after its use by the Court. Upon final disposition of this case NCIC information is to be destroyed by shredding.

Signed: \_\_\_\_\_, Judge

April 29, 2021

Kanawha County Magistrate Clerk  
FAX (304) 357-0431

RE: Xxx v. Xxx  
Civil Action No. 20-D-948

Dear Ms. :

I have been appointed by the Kanawha County Family Court as Guardian Ad Litem for a minor child, in the above pending civil action. Attached you will find a copy of the "Order Appointing Guardian Ad Litem".

Request for Copy of Civil and Criminal Records

As Guardian Ad Litem, it is my duty to investigate the civil and criminal backgrounds of the parties, to provide this information and make a Report to the Court which promotes the safety, welfare and best interests of the minor children. I request all such records relating the following individuals:

Xxx	(D.O.B: 00/00/000; S.S. # )
Xxx	(D.O.B. 00/00/000; S.S. # )

**Domestic Violence: All Complaints/Indictments, pleas, exhibits and Orders in each case.**

**Criminal: All Complaints/Indictments, pleas, exhibits and Orders in each case.**

**Civil: All pleadings, exhibits and Orders in each case.**

Thank you for your time and assistance, if you have any questions, please contact me at your convenience.

Very Truly Yours,

D. Randall Clarke

Dr. Jordan Nash, MD  
3729 Teays Valley Road #100  
Hurricane, WV 25526

Via Facsimile (304) 760-6042

RE:        v.  
Civil Action No. xxxxxx

Dear Dr. Nash:

I have been appointed by the Kanawha County Family Court as Guardian Ad Litem for a minor child, in the above pending civil action. Attached you will find a copy of the "Order Appointing Guardian Ad Litem".

I would greatly appreciate your forwarding to me copies of the most recent records including but not limited to reports, records, medical reports, evaluations, notes, notations, memoranda, assessments and testing of xxxxxx(D.O.B: / /) and xxx (D.O.B: / /).

If you have any questions, please contact me at your earliest convenience.

Very Truly Yours,

D. Randall Clarke

August 24, 2021

Dr. , DDS

RE: Xxxx v. Xxxx  
Civil Case No.

Dear Sir or Madam:

I have been appointed by the Family Court of Kanawha County, West Virginia as a Guardian Ad Litem to represent a minor children with regard to a pending domestic action. Enclosed is a copy of the "Order Appointing Guardian Ad Litem".

I would greatly appreciate your speaking with my staff briefly or forwarding to me copies of all records in your possession regarding Xxxx (D.O.B.: 00/00/2005), Xxxx (D.O.B.: ) and ah Xxxx (D.O.B.: 00/00/2000) including but not limited to medical records, medical reports, evaluations, notes, notations, memoranda, assessments and testing of the minor children for the Court's review. Thank you in advance for forwarding to me copies of the medical records and reports.

If you have any questions, please contact me at your earliest convenience.

Very Truly Yours,

D. Randall Clarke

November 10, 2020

Attention: Medical Records Clerk  
xxxxxx

RE: Xxx v. Xxx  
Civil Action No. xxx

Dear Sir or Madam:

As you know from my October 29, 2020 letter, I have been appointed by the Family Court of Kanawha County, West Virginia as a Guardian Ad Litem to represent a minor child with regard to a pending domestic action. Enclosed you will find release endorsed by Mr. Xxx.

I would greatly appreciate your forwarding to me copies of all records in your possession regarding Xxx (D.O.B.: 00/00/000; SS #: ) including but not limited to medical records, medical reports, evaluations, notes, notations, memoranda, assessments and testing of Mr. Xxx for the Court's review. Thank you in advance for forwarding to me copies of Mr. Xxx's medical records and reports.

If you have any questions, please contact me at your earliest convenience.

Very Truly Yours,

D. Randall Clarke

May 12, 2021

Facility Name  
Address

RE: Xxx v. Xxx  
Civil Action No.

Dear Sir or Madam:

I have been appointed by the Family of Kanawha County, West Virginia as a Guardian Ad Litem to represent a minor child with regard to a pending domestic action. Enclosed is a copy of an "Order Appointing Guardian Ad Litem".

Please forward to me copies of all medical records and reports regarding Xxx's (D.O.B: 00/00/0000; S.S. # 00-00-0000) substance abuse treatment for the Court's review. Thank you in advance for forwarding to me copies of Xxx's substance abuse records.

Thank you for your assistance with this matter. If you have any questions, please contact me at your earliest convenience.

Very Truly Yours,

D. Randall Clarke

### **ATTACHMENT #13: QUESTIONS FOR PARENTS/CARETAKER**

1. Full name, bday, social, driver's license number
2. Who all living in the home; name, bday for each
3. Significant other, name and bday, when begin dating/married
4. Where working, hours, how long at job or why not working.
5. List all children, names, ages, custody arrangement for each.
6. History with other parent in case
  - a. When get together, split up
  - b. Where lived
  - c. Why split
  - d. Any DV during relationship
  - e. Any drug use during relationship
7. Recent custody arrangement regarding this child
8. What school does child go to, and/or daycare
9. What dr does child see; any health concerns or delays
10. Why in court now
11. Main concerns
12. Other parent's living arrangement safe? Other parent have a bf or gf?
13. What outcome do you want

## ATTACHMENT #14: GAL FILE CHECKLIST

\_\_\_\_\_ Set up file; scan in Order; Calendar Due for GAL Report

\_\_\_\_\_ Contact Petitioner      \_\_\_\_\_ Contact Respondent

\_\_\_\_\_ Send initial contact letters [    ] Petitioner    [    ] Respondent - date sent: \_\_\_\_\_

Records Requested	Date Requested	Date Received	Notes
Docket Sheets from Circuit Clerk (DVPs too)			
Docs/Pleadings from Circuit Clerk			
CPS Records			
CIBs (criminal background check)			
Magistrate Ct. Criminal Check			
School Records			
Child's Medical Records			

Persons Interviewed (full name)	Witness Description	Phone Number	Date(s) of interview	Notes
	Petitioner			
	Respondent			
	Child			

\_\_\_\_\_ Prepare GAL REPORT. **DUE DATE:** \_\_\_\_\_

\_\_\_\_\_ Subpoena Witnesses in advance of hearing (if applicable)

\_\_\_\_\_ Attend Hearing. **DATE:** \_\_\_\_\_



**ATTACHMENT #15: Circuit Court Permission Slip to Review JA/JAA file.**

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**In re:** \_\_\_\_\_ (minor child)      **Civil Action No.:** \_\_\_\_\_

**TO THE CIRCUIT CLERK:**

**This is permission for \_\_\_\_\_, Esq. (Guardian Ad Litem for the minor child)**

  **X**      **To have copies of the above-styled case**

  **X**      **To review the above-styled case**

**NOTES:**

**XXXXX**, is appointed as guardian ad litem for the minor child named above in a Kanawha County Family Court matter before Judge XXXXXXXX and needs to review this JA/JAA as part of the investigation.

**ATTACHMENT #16: Motion and Order for Board of Pharmacy Inquiry**

**IN THE FAMILY COURT OF KANAWHA COUNTY, WEST VIRGINIA**

*In re the child(ren) of:*

**XXXXXXXXXXXXXXXXXX,**

**Petitioner,**

**and**

**CIVIL ACTION NO.: XXXXX**

**XXXXXXXXXXXXXXXXXX,**

**Respondent.**

**MOTION FOR BOARD OF PHARMACY INQUIRY**

Now comes the Guardian Ad Litem, XXXXXX and requests that this Court enter an order authorizing a West Virginia Board of Pharmacy Inquiry to release records related to XXXXXXXXXXXX (maiden name XXXXXXXX, dob: XXXXXXXX) to this Guardian Ad Litem due to allegations that Petitioner/Respondent has or is abusing prescription medication.

WHEREFORE, for the reasons set forth above, this Guardian Ad Litem respectfully requests that this Court enter said order which is attached hereto.

Dated: \_\_\_\_\_

**XXXXXXXXXXXXX,**  
**Guardian Ad Litem**

\_\_\_\_\_  
**XXXXXXX**

Law Office

Phone

Fax

IN THE FAMILY COURT OF KANAWHA COUNTY, WEST VIRGINIA

*In re the child(ren) of:*

XXXXXXXXXXXXXXXXXX,

**Petitioner,**

**and**

**CIVIL ACTION NO.: XXXXX**

XXXXXXXXXXXXXXXXXX,

**Respondent.**

**ORDER AUTHORIZING BOARD OF PHARMACY INQUIRY**

On this day came XXXXXXXX, Guardian Ad Litem for the minor child XXXXXXXX, born XXXX, XX, XXX, and requested access to West Virginia Board of Pharmacy, Controlled Substance Monitoring records related to XXXXXXXX (maiden name XXXX, date of birth XXXX).

Accordingly, finding good cause to be shown, the Court **ORDERS** that the West Virginia Board of Pharmacy, Controlled Substance Monitoring Program shall produce copies of all prescriptions obtained and/or dispensed within the last XXXX years to XXXXXXXX (maiden name XXX), (DOB: XXXX, SS#: XXXX) to Guardian Ad Litem, XXXXX, within (7) seven from the receipt of this Order.

Entered: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE XXXXX

Prepared by:

\_\_\_\_\_  
XXXXXXXX

Law Office

Phone

Fax

**ATTACHMENT #17: Motion and Order for Release of Employment Records**

**IN THE FAMILY COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**IN RE THE MATTER OF:**

**XXXXXXXXXXXXXXXXXX, Petitioner,**

**CIVIL ACTION NO.: XXXXX**

**And**

**XXXXXXXXXXXXXXXXXX, Respondent.**

**MOTION FOR RELEASE OF EMPLOYMENT RECORDS**

Now comes the Guardian Ad Litem, XXXXXXXX, and requests that this Court enter an order directing the XXXemployerXXXXXX to release employment records and/or information related to XXXXXXXX to this Guardian Ad Litem due to conflicting information provided to the Guardian Ad Litem by the parties about Ms. XXXX's date and reason for termination from her employment at XXXXXXXXX.

WHEREFORE, for the reasons set forth above, this Guardian Ad Litem respectfully requests that this Court enter said order which is attached hereto.

Dated: \_\_\_\_\_

**XXXXXXXXXXXXX,  
Guardian Ad Litem**

---

XXXXXX

Law Office

Charleston, WV 25339

IN THE FAMILY COURT OF KANAWHA COUNTY, WEST VIRGINIA

*In the child(ren) of:*

XXXXXXXXXXXXXXXXXX, Petitioner,

CIVIL ACTION NO.: XXXXX

And

XXXXXXXXXXXXXXXXXX, Respondent.

**ORDER DIRECTING RELEASE OF EMPLOYMENT RECORDS**

On this day came the XXXXX, Guardian Ad Litem for the minor children, XXXX, XXXXX, and XXXXX, and requested the release of employment records from the XXXXX relating to XXXXXX employment as a XXX position XXX.

Accordingly, the Court **ORDERS** that the XXXXemployerXXX release any and all employment records for XXXXX (maiden XXXX, former name XXX, DOB: XXXX) to Guardian Ad Litem, XXXXX, **within five (5) days** from the receipt of this Order.

If this entity unreasonably or intentionally fails to comply with this Order, it shall be subject to appropriate sanctions, including contempt of Court. The Guardian Ad Litem is directed to file a Petition for Contempt related to any willful failure to comply with this Order.

ENTERED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE XXXXXXXXXXXXX

Prepared by:

\_\_\_\_\_  
XXXXXX  
Law Office  
Charleston, WV 25339  
Phone  
Email:

## **ATTACHMENT #18: Contact Information & Resource Tips from Heather Olcott, Esq.**

- Request records from Kanawha County Metro 911 [mfannin@metro911.org](mailto:mfannin@metro911.org)
- Request records from Bd of Pharmacy [victoria.r.guerra@wv.gov](mailto:victoria.r.guerra@wv.gov) (attached form motion and order)
- Request employment records, attached form motion and order
- Highland Hospital records, Melanie Ferrell, [mferrell@highlandhosp.com](mailto:mferrell@highlandhosp.com)
- Kanawha Board of Education records, [records@mail.kana.k12.wv.us](mailto:records@mail.kana.k12.wv.us)
- Reliant in Hurricane does hair follicle testing for children that shows ANY exposure to drugs; it's much more sensitive than the adult ones (excellent contact there is Cathy Crabtree, [cathy@reliantdrugtestsolutions.com](mailto:cathy@reliantdrugtestsolutions.com). she knows/will find an answer to any drug test related question you have on the new kid's hair testing exposure test); The cost of the test is about the same as an adults hair follicle test, in the \$150 range.
- Appalachian Reading Center – especially if suspect dyslexia (dyslexia usually appears as bright kid with problems reading, often in 1<sup>st</sup> or 2<sup>nd</sup> grade before anyone realizes there's a real problem); (304) 744-8188. They will accept any amount, even \$10, as an application fee and have grants to cover the rest if someone cannot afford it. They also work with the kids via Zoom.

**ATTACHMENT #19: Relevant Portions of 2022 Legislative Change –  
“50-50” Parenting Time Presumption**

**§ 48-9-102 (2022). Objectives; best interests of the child.**

- (a) The primary objective of this article is to serve the child’s best interests by facilitating:
- (1) Stability of the child;
  - (2) Collaborative parental planning and agreement about the child’s custodial arrangements and upbringing;
  - (3) Continuity of existing parent-child attachments;
  - (4) Meaningful contact between a child and each parent, and which is rebuttably presumed to be equal (50-50) custodial allocation of the child;
  - (5) Caretaking and parenting relationships by adults who love the child, know how to provide for the child’s needs, and who place a high priority on doing so;
  - (6) Security from exposure to physical or emotional harm;
  - (7) Expeditious, predictable decision making and avoidance of prolonged uncertainty respecting arrangements for the child’s care and control; and
  - (8) Meaningful contact between a child and his or her siblings, including half-siblings.
- (b) A secondary objective of this article is to achieve fairness between the parents consistent with the rebuttable presumption of equal (50-50) custodial allocation.

**§48-9-102a. Presumption in favor of equal (50-50) custodial allocation.**

There shall be a presumption, **rebuttable by a *preponderance of the evidence***, that **equal (50-50) custodial allocation is in the best interest of the child.**

*If the presumption is rebutted, the court shall, absent an agreement between the parents as to all matters related to custodial allocation, **construct a parenting time schedule which maximizes the time each parent has with the child** and is **consistent with ensuring the child’s welfare.***

**§48-9-209 (2022). Considerations** (summarized, in part)

- (a) **[formerly knowing as “limiting factors”]** When entering an order approving or implementing a temporary or permanent parenting plan order, including custodial allocation, the court shall consider whether a parent:
1. Has **abused, neglected, or abandoned a child**, as defined by state law;
  2. Has **sexually assaulted or sexually abused a child** as those terms are defined in [§61-8B-1](#) et seq. and [§61-8D-1](#) et seq. of this code;
  3. Has **committed domestic violence**, as defined in [§48-27-202](#) of this code;
  4. Has **overtly or covertly, persistently violated, interfered with, impaired, or impeded the rights of a parent or a child with respect to the exercise of shared authority, residence, visitation, or other contact with the child, except** in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, *pending adjudication of the facts underlying that belief*; or

5. Has made one or more fraudulent reports of domestic violence or child abuse: *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.
- (b) If a parent or another person regularly in the household of the parent is found to have engaged in any activity specified by subsection (a), the COURT SHALL IMPOSE LIMITS that are reasonably calculated to protect the child or child's parent from harm. [list of limits to apply]
- (c) If a parent or person regularly in the home of the parent is found to have engaged in any activity in subsection (a), the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. BURDEN OF PROOF: The parent engaged in the limiting factor behavior has to prove that that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.
- (f) In determining whether the presumption for an equal (50-50) allocation of physical custody has been rebutted, a court shall consider all relevant factors including [editor's note: but not limited to??] any of the following:
1. Existence of Limiting Factors - Factors set forth in subsection (a);
  2. Whether the CHILD:
    - A. Was conceived as a result of sexual assault or sexual abuse by a parent as set forth in §48-9-209a;
    - B. Has special needs, a chronic illness, or other serious medical condition and would receive more appropriate care under another custodial allocation;
    - C. Is a nursing child less than six months of age, or less than one year of age if the child receives substantial nutrition through nursing: *Provided*, That the child reaching one year of age shall qualify as a substantial change in circumstances per §48-9-401 (modification); or
    - D. Will be separated from his or her siblings or the arrangement would otherwise disrupt the child's opportunities to bond with his or her siblings;
  3. Whether a PARENT:
    - A. Is willfully noncompliant with a previous order of the court regarding payment of child support payments for a child or children of the parties;
    - B. Is unwilling to seek necessary medical intervention for the child who has a serious medical condition;
    - C. Has a chronic illness or other condition that renders him or her unable to provide proper care for the child;
    - D. Has intentionally avoided or refused involvement or not been significantly involved in the child's life prior to the hearing, *except when the lack of*



*involvement is the result of actions on the part of the other parent which were, without good cause, designed to deprive the parent of contact and involvement with his or her child or children without good cause;*

- E. **Repeatedly causes the child or children to be in the care of a third party** rather than the other parent when he or she [other parent?] is available;
  - F. Does **not have a stable housing** situation: *Provided*, That a parent's temporary residence with a child in a domestic violence shelter shall not constitute an unsafe housing situation; or
  - G. Is **unwilling or unable to perform caretaking functions** for the child as required by [§48-1-210](#);
4. **Whether a PARENT, PARTNER, or OTHER PERSON LIVING, OR REGULARLY IN THAT PARENT'S HOUSEHOLD:**
- A. Has been **adjudicated in an abuse and neglect proceeding** to have abused or neglected a child, or has a **pending abuse and neglect case**;
  - B. Has been **judicially determined** to have **committed domestic violence** or has a **pending domestic violence case**;
  - C. Has a **felony criminal record**;
  - D. Is **addicted to a controlled substance or alcohol**;
  - E. Has **threatened** or **has actually detained the child** with the intent to retain or conceal the child from the other parent or from a third person who has legal custody: *Provided*, That a parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the parent's intent to retain or conceal the child from the other parent; or
  - F. Has been **involuntarily committed to a mental health facility**, or suffers from a serious mental illness;
5. **WHETHER AN EQUAL (50-50) PHYSICAL ALLOCATION IS:**
- A. Impractical because of the **physical distance between the parents' residences**;
  - B. **Impractical due to the cost and difficulty of transporting the child**;
  - C. **Impractical due to each parent's and the child's daily schedules**;
  - D. Would **disrupt the education of the child**; or
  - E. **Contrary to the firm and reasonable preferences of a child** who is 14 years of age or older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;
6. **Whether the parents cannot work cooperatively and collaboratively** in the best interest of the child; or
7. **Whether a parent will encourage and accept a positive relationship between the child and the other parent**, including which parent is more likely to keep the other parent involved in the child's life and activities.