

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 21st day of October, 2011, the following order was made and entered:

RE: REQUEST FOR COMMENT ON PROPOSED GUIDELINES FOR GUARDIANS AD LITEM IN FAMILY COURT; AMENDMENTS TO TRIAL COURT RULE 21; AND AMENDMENTS TO RULE 47 OF THE RULES OF PRACTICE AND PROCEDURE FOR FAMILY COURT

On this day came Lisa Tackett, Director of the Division of Family Court Services, and presented to the Court a proposal related to guidelines for guardians *ad litem* in family court, which was drafted in response to the following directive set forth by the Court in *Palmer v. Lacy*, __ W. Va. __, 710 S.E. 2d 526 (May 4, 2011)(McHugh, J.):

It is this Court's belief that guardians *ad litem* appointed to represent the best interests of minor children in family court cases should be given better direction as to the duties involved in making a full and independent investigation of the facts, *see* West Virginia Trial Court Rule 21.03, so that such children are adequately represented. Accordingly, by this opinion, we are directing the Division of Family Court Services of the West Virginia Supreme Court of Appeals to draft and submit to this Court for approval comprehensive guidelines that can be followed by guardians *ad litem* appointed in such cases to more fully ensure the best interests of the children for whom they are appointed are effectively represented.

Id. 710 S.E.2d at 534, fn. 19.

Upon consideration whereof, the Court is of the opinion to and does hereby approve a period of public comment on the proposed guidelines and rule changes, to conclude on December 31, 2011, with public comments to be filed with the Clerk of Court. Additions are indicated by underlining, deletions are indicated by strikethrough:

Rules of Practice and Procedure for Family Court

Rule 47. Guardians ad Litem and attorneys for children

(a) *Appointment of guardian ad litem.* - Rule 21 of the West Virginia Trial Court Rules for Trial Courts of Record shall govern the appointment of guardians ad litem in Family Court cases. The order appointing a guardian ad litem shall state the specific reasons for the

appointment and the expectations of the court for the guardian ad litem's report, including the date by which the written report is due.

(b) *Investigations by guardians ad litem.* - West Virginia Code §48-9-301 and the Guidelines for Guardians ad litem in Family Court set forth in Appendix B of these rules shall govern investigations by guardians ad litem.

(c) *Timing of written report.* - A guardian ad litem must submit a written report to the court and a copy of the report to all parties within 60 days of the date of entry of the order appointing the guardian ad litem.

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[Note by the Clerk: All material in Appendix B is new.
Underlining is omitted to improve readability.]

APPENDIX B: GUIDELINES FOR GUARDIANS *AD LITEM* IN FAMILY COURT

1. A Guardian *ad litem* appointment is a unique and complex assignment and, as such, requires education, training and experience with the regard to the needs of children. Every guardian *ad litem* shall have twelve (12) hours of continuing legal education credits every two years provided 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 the effects upon children; recognizing the signs and characteristics of domestic violence and effects upon children; recognizing 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; the preparation 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.
2. Courts shall not routinely assign guardians *ad litem* for children or require court-ordered investigations unless the court has reasonable cause to suspect the parenting issues involve a child's safety or the best interest of the child warrants further investigation by the court. Courts shall not routinely appoint guardians *ad litem* in cases where there is counsel for both parties unless the additional investigation required by the court cannot otherwise be accomplished by counsel for the parties. The Order appointing the guardian *ad litem* shall state the specific reasons for the appointment; require the parties to fully cooperate with the guardian *ad litem* in terms of the investigation; and the expectations of the court for the guardian *ad litem*, including the date by which the written report is due.
3. The Guardian *ad litem* (GAL) should accept an appointment only with a thorough understanding of the issues involved and the functions to be performed. If the GAL finds part of the appointment order to be confusing the GAL may request clarification and/or modification of the order.
4. The GAL shall obtain and review the court file, as well as, all relevant copies of school, medical, CPS, or other records necessary to thoroughly understand and investigate the case.

5. The GAL shall immediately contact the child and parents or caretakers upon appointment by the court.
6. The GAL shall schedule an in-person meeting with the child at a time and place that allows for observation and private consultation with the GAL.
7. The GAL shall thoroughly explain to a child capable of understanding, parents/caretakers and to the attorneys of record the role of the GAL and what the court has instructed the GAL to investigate and recommend to the court.
8. The GAL shall meet with both parents (if applicable) and/or caregivers to ascertain each party's concerns, needs, and responsibilities with regard to parenting the child. During the meeting with the parents and/or caregivers, the GAL shall ascertain each party's understandings of the needs and concerns of the child.
9. When appropriate, the GAL shall conduct home visits of parents or caregivers to observe the living environment of the parents or caregivers and the interaction of the parents/caregivers and the child.
10. The GAL shall interview when appropriate caseworkers, therapists, and school and medical personnel to obtain information about the child's needs and any concerns they have regarding the child. During any interview, the GAL should inquire about the roles and responsibilities each parent takes in the child's life and each parent's relationship with the child.
11. The GAL shall interview when necessary any relatives, neighbors or other individuals with relevant knowledge of the child or parents and the facts that gave rise to the allegations or need for the appointment of the GAL.
12. If the GAL believes that the parties and/or the child should undergo further evaluations, then the GAL may file a motion clearly setting out the reasons for additional evaluations and seek a court order with regard to any proposed evaluations.
13. The GAL shall complete his or her investigation with sufficient time between the interviews and court appearances for the GAL to thoroughly analyze the information gleaned, take appropriate actions and formulate meaningful arguments and written recommendations.
14. The GAL shall communicate to the Court the child's wishes, and if the child's wishes are contrary to the GAL's assessment of the child's interests and welfare, the GAL may request that an attorney be appointed to serve as counsel for the child.
15. The GAL shall provide in his or her written report: the number of face-to-face contacts with the child and any observations of the child with the parents or caregivers; an outline of all records and documents reviewed; the name of each person interviewed and the manner in which they were interviewed (i.e. whether by telephone or in person). The GAL shall also fully explain any special needs or medical conditions of the child and the ability and willingness of each parent to provide for the needs of the child. The GAL may attach any necessary documents to the written recommendation.

16. The GAL shall provide the court with sufficient information including specific recommendations for court action based on the findings of the interviews and independent investigation. In cases involving parenting responsibilities, the recommendations shall provide clear and concise requirements of both parents to accomplish the recommendations of the GAL.
17. The GAL shall be prepared to explain and advocate his or her assessments and recommendations in all proceedings before the court.
18. The GAL shall be present at all court hearings, mediation or negotiations of the parties and respond to all motions and appeals which affect the recommendations of the GAL or interests of the child during the pendency of the case. The GAL shall file appeals to rulings that are adverse to the best interests of the child.
19. The GAL shall monitor the case to ensure the parties are complying with the order of the court for a reasonable period set by the court. The GAL shall provide progress reports of the parties, and any concerns the GAL has regarding the child.

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WEST VIRGINIA TRIAL COURT RULES (T.C.R.)

Rule 21.01. Application Generally.

This Rule applies to all eligible guardian ad litem appointments in circuit court, family court and magistrate court. This rule does not apply to guardians ad litem appointed in abuse and neglect proceedings.

Rule 21.02. Appointments Generally.

A guardian ad litem shall be selected independently of any nomination by the parties or counsel. Appointed guardians ad litem may (a) serve on a voluntary basis without compensation, (b) be paid by a litigant or a litigant-parent of an infant for whom the appointment is made if the litigant or litigant-parent is not an indigent person, or (c) be paid by the Supreme Court of Appeals as provided in rule 21.05.

Rule 21.03. Duties Generally.

A guardian ad litem shall make a full and independent investigation of the facts involved in the proceeding and make recommendations to the court by testimony or in writing, unless otherwise ordered by the court.

Rule 21.04. Definitions.

For purposes of this Rule, the following definitions shall apply:

- (a) "Indigent person" person who qualifies for a waiver of fees pursuant to the provisions of W. Va. Code § 59-2-1.
- (b) "Infant" person under the age of eighteen (18) years.
- (c) "Incarcerated person" any person who is being held against the person's will in any facility operated under the authority of any governmental authority in the United States.
- (d) "Incompetent person" any person who is admitted to a mental health facility or has been found by the court to be incompetent.
- (e) "Active Duty Servicemembers" any person entering the military, called to active duty in the military, or deployed servicemembers, including Reservists and members of the National Guard while on active duty.

Rule 21.05. Eligibility for a Supreme Court-Paid Guardian Ad Litem.

To be eligible for Supreme Court payment, an attorney must serve as the appointed guardian ad litem, and the person for whom the guardian is appointed must be:

- (a) an infant-party who is indigent;
- (b) an infant of a party who is indigent or parties who are indigent, provided however, if both parents are parties to the action, both parents must be indigent;
- (c) an incarcerated person who is indigent; or
- (d) an incompetent person who is indigent; or
- (e) an active duty servicemember;

provided however, in a domestic relations case the cost of a guardian ad litem for a party may be ordered to be paid by a non-indigent party and a guardian ad litem for an infant of the parties may be ordered to be paid by the Supreme Court regardless if one or both parties are indigent. The appointment shall end automatically when a person for whom a guardian ad litem has been appointed either (a) is no longer indigent, or is an infant of a party or parties who are no longer indigent, (b) reaches the age of eighteen (18) years, (c) is no longer an incarcerated person, (d) is released from a mental health facility, or (e) is found by the court to have regained competency, or (f) is no longer afforded the protections under the Servicemembers' Relief Act. The guardian ad litem shall notify the appointing court when an appointment has been automatically terminated.

Rule 21.06. Compensation for a Supreme Court-Paid Guardian Ad Litem.

Payment shall be made from Supreme Court funds.

Supreme Court-paid guardians ad litem shall be compensated at ~~\$45~~ 80 per hour for out-of-court services, and ~~\$65~~ 100 per hour for in-court services.

The total compensation paid to a guardian ad litem appointed pursuant to the provisions of this rule shall not exceed ~~\$1,200 ("One Thousand Two Hundred")~~ \$2,200 ("Two Thousand Two Hundred") per appointment as of ~~July 1, 2007~~ March 1, 2012. The Court will not reimburse the cost of office expenses including but not limited to copying costs, postage, long distance telephone calls and/or fees charged for invoice preparation; provided, however, that the costs of

obtaining and copying court records, medical records, school records, and child protective services records will be reimbursed. Mileage will be reimbursed at the standard rate per mile as approved by the Supreme Court. ~~The total compensation paid to a guardian ad litem appointed on behalf of a child for services provided between July 1, 2001 through October 7, 2004 shall not exceed \$500 ("Five Hundred Dollars").~~

Requests for payment shall be made on forms provided by the Administrative Director of the Court and shall follow all West Virginia State and West Virginia Supreme Court billing regulations, policies and procedures. Requests for payment shall be reviewed and ~~approved~~ recommended by order of the appointing court prior to submission to the Administrative Director of the Court for payment. The Administrative Director of the Court — or the Administrative Director's designee — shall review and approve all submissions for payment of fees to guardians ad litem.

The Administrative Director of the Court shall have the authority to approve and pay compensation in excess of the amounts stated above in exceptional cases and for good cause shown. Requests for excess compensation shall be made by the appointing judge and sent to the Administrative Director of the Court.

As circumstances may warrant, the court in its discretion may at any time during the proceedings tax the costs of the appointment of a guardian ad litem to the parties and require that any compensation previously paid from court funds be refunded to the Administrative Director of the Court."

A True Copy

Attest: //s// Rory L. Perry II
Clerk of Court