

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on October 21, 2024, the following order was made and entered:

**RE: REQUEST FOR PUBLIC COMMENT ON PROPOSED CHANGES TO
THE APPENDIX A AND APPENDIX B OF THE RULES OF PROCEDURE
FOR CHILD ABUSE AND NEGLECT PROCEEDINGS, No. 24-601**

On October 16, 2024, the Court considered proposed amendments to Appendix A and the proposed abrogation of Appendix B of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings. The Court has jurisdiction of court rules under Article VIII, §§ 1 and 3 of the West Virginia Constitution.

Upon consideration and review, the Court is of the opinion that the following amendments to Appendix A and the proposed abrogation of Appendix B of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings should be published for a period of public comment for 30 days. Comments may be filed in writing with the office of the clerk on or before November 20, 2024. The proposed amendments to Appendix A are as follows:

Rules of Procedure for Child Abuse and Neglect Proceedings

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APPENDIX A GUIDELINES FOR CHILDREN’S GUARDIANS AD LITEM IN CHILD ABUSE AND NEGLECT CASES

Introduction

The purpose of the following Guidelines is to provide each guardian ad litem (GAL) with guidance in representing a child in an abuse and neglect proceeding under W.Va. Code § 49-4-601, et seq. These guidelines provide objective, measurable standards for a GAL’s representation of a child’s best interests. Practice consistent with these guidelines will satisfy a GAL’s responsibilities, and a GAL has discretion to decline additional responsibilities not otherwise directed by a court. Judges shall require these practice standards, when appropriate, and report repeated failures to comply to the Administrative Office’s Division of Children’s Services for educational correction and/or recommended limitations on future appointments.

A. Role of GAL; education and training; competency

1. Role of GAL. The GAL in a child abuse and neglect case has a dual role, both as an attorney, and to represent the best interests of the child. A GAL has broad discretion in determining what is necessary to protect the best interests of a child. The age, maturity level, intellectual functioning, and developmental status of the child are all factors that will affect a GAL's discretion. The safety, well-being, and permanency of a child in an abuse and neglect proceeding are central to all aspects of a GAL's representation.
2. Education and training. A GAL shall complete a minimum of eight (8) hours of continuing legal education training every two years in child abuse and neglect practice and procedure as provided by the Supreme Court of Appeals of West Virginia.
3. Duty of competency regarding best practices. A GAL shall obtain and maintain an active and working knowledge of Chapter 49 of the West Virginia Code, established case law, Rules of Procedure for Child Abuse and Neglect, and the West Virginia Benchbook for Child Abuse and Neglect Proceedings to ensure best practices in representing the best interests of the child.

B. Ethical considerations in representation

1. Rules of Professional Conduct. The Rules of Professional Conduct apply to a GAL's representation of a child in an abuse and neglect proceeding.
2. Duty of confidentiality. A GAL owes a duty of confidentiality to the child, but this duty is not absolute. A GAL has a duty to disclose a child's confidential communication to the court when the communication implicates a high risk of probable harm to the child.
3. Conflicts of interest. Conflicts of interest may arise during the course of a GAL's representation of a child or children. Conflicts of interest commonly arising in abuse and neglect proceedings include the following:
 - a. A GAL determines that there is a conflict of interest in performing both roles as GAL and the child's attorney. In such instance, the lawyer should continue to represent the child as the child's attorney and withdraw as GAL. A mere disagreement regarding the best interests of the child does not in itself constitute a basis for withdrawing as counsel.
 - b. A conflict of interest often arises when siblings represented by the same GAL have opposing interest. If the GAL discovers the conflict before commencing representation of the siblings, the GAL shall only accept appointment of one sibling or non-conflicting siblings. If the GAL discovers the conflict of interest after accepting appointment to represent the siblings, the GAL shall request that the court appoint a new GAL to represent the interests of the conflicting sibling or siblings. A GAL should request the appointment of an additional guardian ad litem when a conflict between or among siblings arises.

c. A conflict of interest may arise when a GAL subsequently represents a child's parent, relative, caregiver, foster parent, or pre-adoptive parent in another matter, including an adoption or a guardianship.

4. Except for testimony regarding the factors set forth in Section C.1. herein, the GAL is precluded from testifying in the present case regarding any aspect of the GAL's representation.

5. As provided in Rule 52(g) of the Rules of Procedure for Child Abuse and Neglect Proceedings, a GAL's representation of the child continues until such time as permanent placement of the child has been achieved, or as determined by the Court.

C. Duties of GAL during representation

1. When applicable, while representing and advocating on behalf of a child's best interest, safety, well-being, and permanency, the GAL shall:

- a. Address and make recommendations for the most appropriate placement of the child following removal and continuing until permanency is achieved;
- b. Assess visitation with parents, grandparents, and siblings, including recommendations for post-termination visitation;
- c. Determine and report the child's position regarding termination of parental rights;
- d. Determine and report the child's position regarding adoption;
- e. Determine and report whether the Department of Human Services (DHS) is meeting the child's educational, medical, psychological, therapeutic, and financial needs;
- f. Make a recommendation as to whether it is appropriate for the child to undergo one or more physical or psychological examinations, including Child Advocacy Center or forensic interviews;
- g. Actively participate in the MDT and case planning process;
- h. Make a recommendation regarding sibling separation;
- i. Make a recommendation regarding child support; and
- j. Make a recommendation regarding the child's testimony or appearance at hearings and the child's appearance or participation in MDT meetings.

2. Upon filing the petition, DHS is responsible for promptly notifying the GAL of the child's location and providing contact information of the child's caregiver. Upon receipt, the GAL shall contact the child and caregiver, inform them of the appointment, and provide the GAL's reliable contact information. During this initial communication, the GAL shall schedule a face-to-face meeting with the child at a time and place that allows for consultation with the GAL. The face-to-face meeting should occur as soon as practicable, but must be completed prior to adjudication. The GAL may request permission from the Court to conduct this meeting by videoconference based on the unique circumstances of the case.

3. Upon appointment, the GAL shall initiate contact with the caseworker and obtain a copy of the caseworker's file. The GAL shall review the caseworker's file for information necessary to thoroughly understand and evaluate the case, including, but not limited to, copies of school, medical, social service, and/or other relevant records.

4. As an ongoing responsibility throughout the representation, the GAL shall review available information and be adequately informed to represent the child's best interests, including ascertaining the child's wishes and noting whether the child receives appropriate services. The GAL shall be prepared to provide meaningful status updates to the Court at each hearing.

5. At the disposition hearing, the GAL shall provide an oral report on the applicable items contained in Paragraph C.1 above to the Court, unless a written report is required by the Court or deemed necessary by the GAL. When deemed necessary by the GAL, the GAL may petition the court to seal or redact information contained in a written report as provided in Rule 18a of the Rules of Procedure for Child Abuse and Neglect Proceedings.

6. The GAL shall actively participate and timely file a response in any appeal, extraordinary writ, modification, or action ancillary to the abuse and neglect proceeding including proceedings to address the disruption of a permanent placement which affect the recommendations of the GAL. Where deemed appropriate, the GAL shall timely file and actively participate in an appeal or petitions for extraordinary relief. If an appeal is filed by another party in an abuse and neglect case, the GAL is required to file a respondent's brief or summary response that adheres to the requisite provisions of Rule 11 of the Rules of Appellate Procedure.

APPENDIX B
[Abrogated]

A True Copy

Attest: /s/ C. Casey Forbes
Clerk of Court

