GUIDELINES WITH COMMENTS FOR GUARDIANS AD LITEM IN DEPENDENCY AND TERMINATION-OF-PARENTAL RIGHTS CASES IN JUVENILE COURTS

STANDARD 1.0: Appointment of Guardians Ad Litem

When appointing a guardian ad litem for a child, who is a party, in a dependency or termination-of-parental rights (TPR) case, the juvenile court shall only appoint an attorney licensed by the Alabama State Bar who has completed the training required by these guidelines.

STANDARD 2.0: Caseloads

A guardian ad litem has a duty to comply with Office of Indigent Defense Services' Administrative Rule 355-9-1-.10 and the caseload standards set forth therein. A guardian ad litem has a duty to notify the juvenile court if the caseload reaches a level prohibited by Rule 355-9-1-.10 or if the caseload reaches a level bearing upon the guardian ad litem's ability to meet these guidelines or to comply with the ethical standards of the Alabama Rules of Professional Conduct.

Comment:

The appointing juvenile court is responsible for making certain each attorney appointed as a guardian ad litem is able to meet his or her obligations to the child. These obligations include those required under these guidelines and those required under the ethical and professional standards of an attorney.

In making guardian ad litem appointments, each juvenile court shall be familiar with its jurisdiction, being mindful of the amount of time that is necessary to perform the guardian ad litem's duties under these guidelines. Additionally, the juvenile court should take into account if a court appointed special advocate volunteer is available to assist in the performance of the guardian ad litem duties for the juvenile court.

STANDARD 3.0: Independent Judgment of Guardian Ad Litem

A guardian ad litem shall be guided by the best interests of the child and shall exercise independent judgment on behalf of the child in all relevant matters. See sections 12-15-304(a) and 12-15-308(c), Alabama Code 1975. A lawyer appointed as a guardian ad litem for a child is an officer of the court, appointed to protect the child's interest without being bound by the child's expressed preferences.

Comment:

The guardian ad litem shall recommend only what is in the best interests of the child on each issue and must maintain an objectivity that preserves a clear focus on the child's best interests. The roles of a guardian ad litem and a child's attorney are different and must be clearly distinguished. A guardian ad litem is not the attorney for the child and, therefore, advocates the best interests of the child rather than merely representing the child's preferences.

STANDARD 4.0: General Duties and Responsibilities

A guardian ad litem shall provide not only factual information to the juvenile court but also shall diligently advocate a position in the best interests of the child. See Alabama Code section §12-15-304(b)(3).

The guardian ad litem shall be prepared to participate fully in any proceeding and not merely defer to the other parties. The guardian ad litem may examine, cross-examine, subpoena witnesses, and offer testimony.

The guardian ad litem shall obtain copies of all relevant pleadings and notices, participate in depositions, negotiations, and discovery that are relevant to the child's best interests, and participate in all case management, pretrial or other conferences and hearings, unless excused by the court.

The guardian ad litem, when appropriate to represent the best interests of the child, shall file petitions, motions, responses, or objections. See Alabama Code section §12-15-304(b)(4).

The juvenile court shall assure that the guardian ad litem maintains independent representation of the best interests of the child. The juvenile court shall require the guardian ad litem to perform the guardian ad litem duties faithfully and, upon failure to do so, shall discharge the guardian ad litem and appoint another.

Comment

Prior to the commencement of a hearing, the guardian ad litem shall conduct all necessary interviews with persons having contact with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments, and attitudes. §12-15-304(b)(2), Ala. Code 1975. The guardian ad litem shall conduct interviews with the child except when the child is too young or some other legitimate circumstance prevents an interview.

In conducting the interviews, the guardian ad litem shall not communicate with a person the guardian ad litem knows to be represented by another lawyer in the matter unless the guardian ad litem has the consent of the other lawyer or is authorized to do so by law or by court order.

The guardian ad litem should relate to the child according to the child's stage of development and understand the child's sense of time in relation to the child's age. The guardian ad litem should conduct regular face-to-face meetings with the child, to the extent appropriate, to observe the child's physical, mental, social, educational, and familial well-being and to form opinions concerning the child's best interests. The guardian ad litem should not diagnose or work therapeutically with the child, but regular, face-to-face contact will ensure informed observations when conferring with other specialists.

STANDARD 5.0: Meetings Between a Guardian Ad Litem and Child

A guardian ad litem shall meet with his or her client at reasonable times and places, and this meeting shall not be restricted or limited by any agency or person without good cause. The guardian ad litem has the obligation to ascertain the location of the child, to initiate communication with the child, and to provide the child with contact information for the guardian ad litem promptly. The child's legal guardian or legal custodian shall provide the guardian ad litem with timely information regarding the current residence of the child and shall notify the guardian ad litem promptly of any change in placement of the child. See §12-15-304(b)(1), Ala. Code 1975.

Comment

Establishing and maintaining a relationship with the child is the foundation of effective guardian ad litem representation. Frequent communication between the guardian ad litem and the child is an important part of promoting the relationship. It is essential that the child be readily accessible to the guardian ad litem to ensure frequent communication and in order for the guardian ad litem to fulfill his or her duties. The guardian ad litem should be excluded from access with the child only in rare and extreme circumstances.

In interviewing the child, the guardian ad litem shall:

1) think of a genuine way to explain to the child the reason why the GAL does what he or she does and let the child know why it is important for the GAL to be able to help the child;

2) spend time with the child, helping the child relax and be comfortable by talking about things the child finds interesting such as school, friends, hobbies or sports;

3) keep language at a level the child can understand and use the child's language and terms whenever possible;

4) use open and non-leading questions whenever possible and allow the child to tell his or her story; and

5) use attending behaviors such as posture, position and eye contact to show interest and put the child at ease.

It is equally important that the guardian ad litem be easily accessible to the child. The child should be provided with the name, telephone number, and address of the guardian ad litem immediately upon the appointment of the guardian ad litem and the opportunity, at reasonable times, to initiate contact with the guardian ad litem.

STANDARD 6.0: Guardian Ad Litem Access to Reports and Records

A guardian ad litem is entitled to all records, reports, and information acquired or generated in juvenile court pursuant to Section 12-15-133(c)(4), Ala. Code 1975.

Comment

The guardian ad litem shall have complete access to all relevant information related to the child and the child's situation. The order appointing the guardian ad litem may include an order directing the release of confidential information and records about the child to the guardian ad litem.

A key aspect of representing a child is to obtain and review all documents to be submitted to the court as well as relevant agency and party case files, educational records, medical records, mental health records, and law enforcement reports. The information contained in such records may provide a more complete context for the current problems experienced by the child and family, may suggest additional professional and lay witnesses that can provide testimony necessary to a full hearing of the issues before the court, and may reveal alternate potential placement resources. It is essential that the guardian ad litem personally review the available information rather than relying upon descriptions, summaries, or characterizations of the evidence provided by others.

STANDARD 7.0: Confidentiality and Privilege

A guardian ad litem shall comply with all statutes, rules, and regulations relating to the receipt of confidential or privileged information received as guardian ad litem. A guardian ad litem shall not disclose any confidential or privileged information without valid court order or as required by law.

The records, reports, and information acquired or generated in juvenile courts concerning children shall be confidential and shall not be released to any person, department, agency, or entity, except as provided in Alabama Code section 12-15-133(c) and (d).

Comment

During the course of fulfilling the duties and obligations of serving as the guardian ad litem for a child, the guardian ad litem will have access to and receive confidential and

privileged information. This information will apply not only to the child but also may pertain to a parent or other guardian for the child or others involved in the case. This information includes but is not limited to children's division reports, educational records, and medical, psychological, and substance abuse treatment records.

The guardian ad litem has a duty to maintain confidentiality of all the information received. Discussion among the parties about confidential or privileged information is allowed. However, it is generally not permissible to disclose any of this information to any person not a participant to the case.

The guardian ad litem should maintain a file on the child-client's case. The child is not the owner of that file. Only the court has the authority to rule on any request concerning the handling or disposition of the file and order its release or early destruction or to rule on any request concerning the handling or disposition of the file. The guardian ad litem should not provide the file to anyone, including the child, without the consent of the court.

STANDARD 8.0: Progress of the Case through the Court Process

A guardian ad litem shall review the progress of a child's case through the court process and advocate for timely hearings, provision of necessary services, and compliance with court orders.

Comment

The harmful effects of prolonged foster care and a lack of permanency planning for children are serious and well documented. (Foster Children in the Courts, edited by Mark Hardin, 1983; Addressing the Impact of Foster Care on Biological Children and Their Families, by Maha Younes, 2007.)

Children need permanence, absent compelling reasons to the contrary. The guardian ad litem shall advocate for a timely, permanent resolution of the case. The guardian ad litem has a duty of diligent and prompt representation and a duty to expedite litigation, especially where placement of a young child is at issue. The guardian ad litem shall attempt to reduce case delays and promote permanency for the child. While it is recognized that delays are usually harmful, there may be some circumstances when delays may be beneficial to the child and should be utilized.

Representing the best interests of a child should reflect the passage of time and the changing needs of the child. The guardian ad litem should stay in touch with the child, third party caretakers, case workers, and service providers throughout the term of appointment to ensure the child's needs are met and the case moves quickly to an appropriate resolution. The guardian ad litem should monitor the implementation of the court's orders and communicate any noncompliance to the responsible agency and, if necessary, to the court. The guardian ad litem should ensure services are provided and the court's orders are implemented in a complete and timely fashion.

STANDARD 9.0: Relating the Court Process to the Child

The guardian ad litem shall explain, when appropriate, the court process and the role of the guardian ad litem to the child. The guardian ad litem shall ensure that the child is informed of the purpose of each court proceeding. The guardian ad litem shall explain, in terms understandable to the child, what is expected to happen before, during and after each juvenile court hearing. Alabama Code Section 12-15-304(b)(1).

Comment

To decrease the trauma to the child, the guardian ad litem shall explain to the child what is happening and what is expected of the child in all proceedings involving the child. All communications should be adapted to the child's age, level of education, cognitive development, cultural background, and degree of language acquisition, using an interpreter if necessary. The guardian ad litem should make a diligent effort to ensure that the child understands the nature of the proceedings, the placement or services that may result, and the possibility of future modifications in placement or services.

Older youth should be encouraged to attend hearings and should be aware of their role during proceedings. Older youth should be provided with information about their rights, services, and permanency options, including the possibility of remaining in care until their 21st birthday. The guardian ad litem shall assure the child that the child's opinion and feelings will be made known to the court even when not consistent with the recommendations of the guardian ad litem.

STANDARD 10.0: Participation in Case-Related Activities

A guardian ad litem should participate in the development and negotiation, including mediation, of any plans or orders that affect the best interests of the child. The guardian ad litem shall participate, when appropriate, in the development and negotiation of any individualized service plans, proposed orders, and staffings that affect the best interests of the child as they relate to the case at hand.

The guardian ad litem shall monitor implementation of individualized service plans and court orders while the case is pending to determine whether services ordered by the court are being provided in a timely manner.

A guardian ad litem should advocate for appropriate services (by motion for court order if necessary) to access entitlements, to protect the child’s interests and to implement a service plan. See Alabama Code section 12-15-304(b)(3).

Comment

The guardian ad !item should be present and actively participate in staffings and meetings including, but not limited to, individualized service plans, meetings affecting the safety and well-being of the child and the accomplishment of any court approved permanency goal.

STANDARD 11.0: Participation in Court Proceedings

A guardian ad litem shall appear at all juvenile court proceedings in which the guardian ad litem is appointed. The guardian ad litem shall not waive the presence of the child at court proceedings without good cause. The guardian ad litem shall participate actively and fully in all court proceedings. The guardian ad litem shall actively contribute to the hearing by protecting and advocating for the best interests of the child. The guardian ad litem shall present evidence, file pleadings, and call witnesses when appropriate to ensure all information relevant to the child's best interests is presented to the court for consideration.

Comment

A guardian ad litem may testify to particular facts and issues before the court relating to the child's best interests or the guardian ad litem's recommendation, if any. Under such circumstances, the guardian ad litem may be subject to cross-examination. It is within the discretion of the court whether or not to receive testimony from the guardian ad litem in custody proceedings.

The guardian ad litem may attend other proceedings involving the child's best interests. The guardian ad litem should ensure the court's receipt of all information relevant to the child's best interests.

STANDARD 12.0: Protecting the Child as Witness

A guardian ad litem in a pending case shall protect the interests of the child who is a witness in any judicial proceeding in which the guardian ad litem has been appointed. The guardian ad litem may advocate for special procedures, including, but not limited to, special procedures to protect the child witness from unnecessary psychological harms resulting from the child’s testimony, with or without the consent of other parties.

In matters for which the guardian ad litem is appointed, the guardian ad litem shall be present during any conferences between the counsel for a party and the child. The guardian ad litem should be notified of all proceedings or meetings involving the child.

Comment

The guardian ad litem shall endeavor to protect the child from multiple depositions and repetitive examinations that are not in the child's best interests.

STANDARD 13.0: Recommendations to the Court

A guardian ad litem shall present a recommendation to the court when authorized by law or requested by the court on the basis of the evidence presented and consistent with the best interests of the child.

During the proceedings, the guardian ad litem must inform the court of the child's wishes and preferences even though different from the guardian ad litem's recommendation.

Comment

To make a recommendation to the court that serves the child's best interests, the guardian ad litem should have knowledge of the child's circumstances from all sources, which may include, but are not limited to, the parents, custodians, caseworkers, juvenile probation officers, teachers, treatment providers, and others who may have relevant information regarding the child.

If the guardian ad litem determines there is conflict between advocating for the best interests of the child and representation of the child's preferences, the guardian ad litem shall continue to perform as the guardian ad litem for the child and may request that the court appoint another lawyer to represent the child's preferences.

STANDARD 14.0: Training

The court shall not appoint a lawyer to serve as guardian ad litem until the lawyer has completed at least six hours of continuing legal education devoted to guardian ad litem training pursuant to Alabama Code section 12-15-304(c) and the Alabama Administrative Office of Courts. Thereafter, to continue to be appointed as a guardian ad litem, a lawyer shall complete three hours of continuing legal education devoted to guardian ad litem training annually as provided by the Administrative Office of Courts.

Comment

Guardian ad litem practice is unique and complex and, as such, requires specialized education, training, and experience. The specialized training may include the following topics:

(a) Dynamics of child abuse and neglect issues;

(b) Factors to consider in determining the best interests of the child, including the required permanency planning and the child's right to be with his or her family;

(c) Inter-relationships between family system, legal process and the child welfare system;

(d) Federal, state and local legislation and case law affecting children;

(e) Cultural and ethnic diversity and gender-specific issues;

(f) Family and domestic violence issues;

(g) Available community resources and services;

(h) Child development issues; and

(i) Guardian ad litem standards.

The guardian ad litem is not expected to make diagnostic or therapeutic recommendations. The guardian ad litem must have a working knowledge of family dynamics and be able to compare and relate this concept to the observations, reports, and documentation received regarding the child and the child's family.