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MEMORANDUM

TO: All District, Circuit, and Appellate Court Judges

FROM: Ricky J. McKinney
Director, Office of Indigent Defense Services *Rjm*

RE: Clarifying information relating to compensation by the State of Alabama to attorneys who are appointed by courts as guardians ad litem (GALs) for children or minors in certain cases in the juvenile court's jurisdiction.

On October 25, 2010 State Comptroller Thomas White sent a memorandum specifically stating that effective November 1, 2010, the State Comptroller's Office would no longer accept attorney fee declarations for payment of GAL fees in DOMESTIC RELATIONS cases. The Office of Indigent Defense Services has not changed the policy relative to compensation of GALs in certain cases in the juvenile court's jurisdiction. The Office continues to pay fee declarations of attorneys appointed as GALs by a court in child-in-need-of supervision (CHINS), delinquency, dependency, and termination of parental rights cases as generally provided in Ala.Code § 15-12-21(b). This Office also continues to pay fee declarations of attorneys appointed as GALs in modification actions filed after an adjudication of dependency in juvenile court.

Additionally, the policy is, and always has been, that fees for GALs appointed by the court in paternity cases filed pursuant to the Alabama Uniform Parentage Act, Ala.Code § 26-17-1, et seq., domestic relations cases, and other civil cases generally are not payable out of the Fair Trial Tax Fund (FTTF), but should be taxed as costs to the parties, despite the fact that there was a period of time where these fees may have been erroneously paid from the FTTF. Ala.Code § 26-17-636(c)(1), part of the Alabama Uniform Parentage Act, specifically provides that "[t]he court may order reasonable...guardian ad litem fees...to be paid by the parties in such proportions as the court may direct." In the very limited circumstances where the court determines that parties (including the Department of Human Resources in cases in which they are involved) are not able to pay the GAL fees, the court may order the fees be paid, not from the Fair Trial Tax Fund, but the fund entitled "court costs not otherwise provided for." However, Ala.Code § 26-17-613 states that "nothing in this chapter shall be construed so as to guarantee court-appointed counsel at the state's expense to any party who is not otherwise entitled to court-appointed counsel under statutory or case law." Certainly, Section 26-17-612 authorizes a GAL to be appointed for a minor defendant in a paternity action, but the court must determine if the parties are not able to pay the GAL's fees before ordering it to be paid out of the "court costs not otherwise provided for" fund.

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Rule 17(d), Alabama Rules of Civil Procedure provides that “[i]n all cases which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for services rendered in such cause, to be taxed as a part of the court costs in such action, and which is to be paid when collected as other cost in the action, to such guardian ad litem.” This provision suggests that GALs appointed in civil cases, including domestic relations cases and custody disputes filed in circuit court, are not entitled to be paid at the state’s expense.

RJM:eme