

State of Alaska, Department of Administration
Office of Public Advocacy

**GUIDELINES
FOR CONTRACT AND COURT-APPOINTED
GUARDIANS AD LITEM
IN CHILD IN NEED OF AID PROCEEDINGS**

Amended
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OFFICE OF PUBLIC ADVOCACY
900 W. 5th Avenue, Suite 525
Anchorage, Alaska 99501
(907) 269-3500

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INTRODUCTION

This manual is intended to serve as standardized guidelines for guardians ad litem (GALs) in Child in Need of Aid (CINA) cases assigned by or through the Office of Public Advocacy (OPA). These guidelines amend the August 1, 1989 "Protocols, Standards of Conduct and Policies for Contract and Court-Appointed Guardians ad Litem" and the "Guidelines for Contract and Court-Appointed Guardians ad litem in Child in Need of Aid Proceedings," amended May 2003. Separate guidelines for cases other than CINA cases may be adopted at a later date.

The term "GAL" as used in these guidelines refers to any contractor providing guardian ad litem services on an on-going basis for OPA or any person who has been court-appointed as guardian ad litem in an individual case and is authorized by OPA. These guidelines do not apply to OPA staff GALs or to court appointed special advocates (CASAs), who are volunteers directly supervised by OPA.

A GAL's primary duty is to the best interests of the child. Nothing in these guidelines is intended to require any action contrary to those interests. In the event of a perceived conflict between these guidelines and a child's best interests, a GAL should contact an OPA regional coordinator (the supervising attorney in the Anchorage, Fairbanks or Juneau OPA offices) or the Public Advocate to determine an appropriate course of action.

1. STATUS AS INDEPENDENT CONTRACTORS

Contract and court-appointed GALs are independent contractors with OPA, and are expected to act as independent professionals and to exercise their independent judgment. Contract and court-appointed GALs are also expected to have their own

offices, with their own supplies and administrative staff. Many GALs also serve as GALs in private cases.

By virtue of the independent contractor status, OPA does not have direct supervisory responsibility or authority over the GALs. Rather, OPA has limited oversight responsibility and authority over the GALs, as set forth in the following sections. In carrying out its oversight function, OPA shall have the right to request at any time the original or a complete copy of a GAL's case file.

2. NOTIFICATION OF CASE ASSIGNMENT

GALs receive notice of case assignments differently in different parts of the state. Some GALs will be notified directly by the court of their case assignments. In some situations, the Anchorage or Fairbanks OPA offices will notify the GAL that the GAL has been assigned to a case. In those situations where OPA has notified the GAL of a case assignment, OPA will provide the court with the name of the assigned GAL.

Pursuant to Child in Need of Aid Rule 11(a)(3), within seven days of the court's appointment, the designated GAL must file an entry of appearance indicating whether or not the GAL is an attorney and certifying that the GAL has completed guardian ad litem training through OPA. Sample entry of appearance forms are available from the OPA-Anchorage office. See Section 4 below regarding training requirements.

3. QUALIFICATIONS

At a minimum, a non-attorney GAL should have a bachelor's degree in a related field. Relevant experience and/or training may be substituted for a degree. An attorney GAL must have a law degree and, preferably, work experience in a related field. GALs must pass a criminal and child protection background screening.

Pursuant to Child in Need of Aid Rule 11(c), a GAL should possess knowledge, skill, experience, training, or education that allows the GAL to conduct an independent, thorough, and impartial investigation, and to advocate effectively for the best interests of the child.

In addition, the GAL should have an understanding of the following as appropriate to the case:

- a. child development from infancy through adolescence;
- b. the impact of child abuse and neglect on the child;
- c. the impact of CINA proceedings, including out-of-home placement and the restriction or termination of parental rights, on the child;
- d. unique issues related to families involved in CINA proceedings, including such issues as substance abuse, domestic violence and disabilities;
- e. community and other resources available for placement, treatment, and other necessary services for abused or neglected children;
- f. the ethnic, cultural and socio-economic backgrounds of the population to be served;
- g. the Indian Child Welfare Act and the prevailing social and cultural standards of the Indian community where the child, parent, Indian custodian or extended family resides or maintains social and cultural ties;
- h. Alaska statutes, rules, and supreme court decisions relating to CINA proceedings; and
- i. the ability to research and develop special areas of knowledge as appropriate or necessary in a given case.

4. TRAINING

Initial training. A new GAL must complete CASA core training or the GAL Independent Study version of this training prior to receiving a case assignment as the first step in obtaining sufficient knowledge to satisfy CINA Rule 11. OPA may waive all

or part of the initial training requirement for a new GAL depending on background or experience. Training certification forms are available from the Anchorage OPA office.

Ongoing training. GALs are encouraged to attend local conferences on subject matters related to a GAL's job performance. From time to time, OPA may reimburse the GAL for conference tuition or other expenses; any such reimbursement must be approved in advance by the Public Advocate. In addition, from time to time OPA may offer regional or statewide training for GALs, and will attempt to cover expenses associated with attending the trainings.

5. DUTIES

Pursuant to CINA Rule 11(f), the GAL represents the best interests of the child. The GAL determines and advocates for the best interests of the child given the child's situation, taking into account the child's age, maturity, culture and ethnicity, and public laws and policies regarding family preservation and timely permanency planning. The GAL has a duty to the child and to the court. As part of the duty to the child the GAL shall:

- a. Conduct ongoing independent investigation, including, as reasonable and appropriate: (1) in-person visits with the child; (2) a review of all relevant records; (3) interviews with parents, social workers, teachers, and other persons as necessary to assess the child's situation; and (4) observations of the child's interactions with parents or other potential long-term caregivers;
- b. Identify relatives, family friends, or other persons who are potential placement options, and take such steps as may be necessary to offer such persons to the Department and/or to the court for placement determinations;
- c. Advocate for early tribal identification and paternity determinations;
- d. Consult professionals as necessary to determine the child's best interests;

- e. Participate in the case planning process;
- f. Monitor the provision and utilization of family support services;
- g. Determine whether to seek appointment of a GAL or attorney in related proceedings;
- h. Monitor services to the child provided by educational, medical, mental health, and other community systems and ensure these services are promoting the best interests of the child;
- i. When appropriate, seek cooperative solutions to the child's situation that serve the child's best interests;
- j. Explain the court proceedings, the role of the GAL, and the child's rights to the child, when appropriate, in the language and terms the child can understand; encourage older children to attend and participate in court hearings as appropriate; and determine whether and under what conditions younger children should attend court hearings; and
- k. Determine whether to call the child as a witness or determine appropriate action if others seek the child's testimony, and provide orientation of the child to the process.

As part of the GAL's duty to the court, the GAL shall:

- a. Appear at all hearings, present appropriate witnesses to testify at hearings, and present relevant information about the child's status and needs to the court;
- b. Provide timely written reports as required by court order or rule;
- c. Request specific court orders for evaluation, services, visitation, treatment for the child and the child's family, and placement of the child;
- d. Take appropriate and timely action when services are not being made available to the child, the family or both; when the child or family fails to take advantage of such services; or when services are not achieving their purpose;
- e. Take appropriate action when informed of any violations of orders, new developments, or material changes in the child's circumstances; and
- f. Advise the court promptly if appointment of counsel for the child should be considered.

6. RECORDKEEPING

GALs shall keep legible and accurate records of their work in individual cases. Accurate record keeping in individual cases is necessary for GALs in their representation of children and preparation of court reports, and to assist a successor GAL in the event a case is transferred. Accurate records are also necessary to assist OPA in its periodic performance reviews of GALs. Please also refer to Section 21 below regarding disclosure of GAL files.

7. MINIMUM CONTACT WITH CHILD & OTHER PARTIES

The Child. Whenever practicable, the GAL shall have a face-to-face contact with the child within five working days after receiving a case assignment. A minimum of one more face-to-face visit shall occur prior to the disposition hearing, but the GAL is encouraged to have as much face-to-face contact with the child as possible prior to disposition. After disposition, the GAL shall visit with the child at least every six months until the case is closed. The GAL shall, if possible, communicate with the child prior to major decisions being made (such as placement changes, permanency determinations and extensions of custody). In cases where the child has been placed out of the home, the GAL must consult with the child's foster parents or other care providers at least every two months. These minimum contacts may be waived by the Public Advocate or by the regional coordinator if the child resides more than fifty (50) miles from the GAL, if the child's residence is not accessible by automobile, and in other extenuating circumstances. Travel costs for visiting children must be approved by the Public Advocate prior to the travel.

Other Parties.

Parents. The GAL shall have at least one contact, either by telephone or in person, with the child's parents prior to the disposition hearing unless the parents' whereabouts are unknown. If a parent is represented by counsel, the GAL shall obtain the attorney's permission prior to contacting the parent. However, the GAL may have incidental contact with or contact a parent for the purpose of scheduling home visits or in-person visits with a child or making unannounced or unscheduled visits with the child.

Tribe. The GAL shall have at least one contact, either by telephone or in person, with the child's tribe (with prior approval of its attorney, if represented) prior to the disposition hearing, even if the tribe has not formally intervened in the case. If a tribe has not formally intervened and the child has more than one tribal affiliation, the GAL shall contact the tribe with the most significant contacts with the children.

Social Worker and Assistant Attorney General. The GAL shall maintain regular contact with the child's social worker and with the assistant attorney general assigned to the child's case as necessary.

Indian Custodian or Other Intervenor. The GAL shall maintain regular contact with an Indian Custodian or any other intervenor in a child's case as necessary.

8. GAL DISPOSITION REPORTS

GALs shall file written disposition reports as required by the court. The reports should be filed and served no later than five days prior to the disposition hearing, unless a different time frame is established by the court. A sample format and sample disposition report are available from the OPA-Anchorage office.

GALs are encouraged to file disposition reports even if the court does not require it. If no disposition report is filed, the GAL shall prepare a short file memorandum outlining the GAL's disposition recommendations, the individuals and materials relied upon in making those recommendations, and the outcome of the disposition hearing.

9. CASE CONSULTATION

OPA cannot direct a GAL to follow a particular course of action in a case. GALs are encouraged, however, to contact their regional coordinator, an OPA staff GAL, or another contract GAL for case consultations as the need arises. A GAL may also wish to consult with a professional (e.g. a child psychologist, psychiatrist or pediatrician) regarding a case; the GAL must obtain approval from the Public Advocate prior to contracting for payment for such services.

10. APPOINTMENT OF COUNSEL FOR THE CHILD

CINA Rule 12(b)(3) provides that a child is entitled to a separate attorney when the interests of justice require such an appointment. For example, a GAL might ask for an attorney appointment when an older child's stated wishes differ from the GAL's best interest position on a substantive issue such as placement.

11. LEGAL ADVICE/REPRESENTATION

GALs are encouraged to contact their regional coordinator or another OPA staff attorney for legal advice as the need arises. A GAL must obtain approval from the Public Advocate prior to any formal consultation with a private attorney. In the event that a non-attorney GAL is in need of legal representation, arrangements to secure representation should be coordinated with the Public Advocate.

12. TRANSPORTATION OF PARTIES IN GAL'S AUTOMOBILE

The transportation of children or other parties connected to a case by a GAL is permitted provided the GAL has appropriate automobile insurance, a driver's license, and car seats if transporting young children. In the event a GAL does transport a child or other party, it shall be solely for purposes related directly to the GAL's involvement in the case.

13. SUPERVISION OF PARENT/CHILD VISITATION

Supervision of parent/child visitation is not the responsibility of the GAL. The Office of Children's Services social worker or designee is responsible for supervising parent/child supervision. If the GAL wishes to observe the interaction between a parent and child, and the visitation has been ordered by the court to occur only under supervision, the GAL can coordinate with the social worker to observe such a visit.

14. EX PARTE COMMUNICATIONS

Unless all parties to a case consent, a GAL shall not communicate to the judge about the substance of a case, but may communicate with the judge concerning a pending case for scheduling and other administrative purposes when circumstances require.

15. CONFIDENTIALITY

CINA cases are confidential and information obtained in such cases normally cannot be released for any purpose without prior court approval. Under state law, certain CINA hearings are open to the public. Records, however, remain confidential. The duty of confidentiality extends even after a case is closed. Some limited information may be released by OCS or OPA to the public if the parent or guardian has

made a public disclosure about the state's involvement, if the alleged perpetrator has been charged with a crime, or if there has been a fatality or near fatality of a child. However, the law allowing OPA to release information does not extend to OPA contractors.

16. INTERACTIONS WITH THE MEDIA

GALs shall not provide information regarding an individual case to the media without prior approval of OPA and an appropriate court order. Prior approval shall be arranged through the Public Advocate or the regional coordinator.

17. INTERACTIONS WITH THE LEGISLATURE, GOVERNOR'S, OR OMBUDSMAN'S OFFICE

A GAL shall inform a regional coordinator or the Public Advocate if contacted by a legislator, the governor's office, or the ombudsman's office. Pursuant to state statute, OPA may release confidential information from a CINA case to a legislator, the governor's office, or the ombudsman's office. However, this law does not extend to OPA contractors.

18. RELATIONSHIP WITH CHILD CLIENT

A GAL, including an attorney GAL, does not have a confidential or attorney/client privilege with the child whose best interests the GAL represents. A GAL may, however, seek a protective order if the GAL believes that it would be harmful to the child to have information the child has shared with the GAL released to other parties in a case.

19. DISCLOSURE OF CONFLICT OF INTEREST

The GAL shall promptly disclose any relationships or associations between the GAL and any party which might reasonably cause the GAL's impartiality to be questioned.

20. CINA RULE 9(b) - THERAPIST-PATIENT PRIVILEGE

CINA Rule 9(b) provides that communication between a child and his or her therapist is privileged in the context of CINA cases and cannot be disclosed without a waiver or a court order. The rule is intended to preserve and promote the therapist/child relationship by protecting information relayed in therapy from further disclosure to other parties. For children under 12, the GAL may agree to claim or waive the privilege. For children 12 and over, waiver must be given by the child after consulting with an attorney, if one has been appointed, or with the GAL. OPA's position is that OCS can obtain records and information from the child's therapist based on its role as legal custodian for the child. However, OCS may not further disclose such information without obtaining a waiver from the GAL or child or a court order. Other parties may seek disclosure via a court order, but must show that the need for the requested disclosure outweighs the child's interest in confidentiality. Professionals within the system may have different views about the interpretation and application of this rule. Questions regarding 9(b) issues in a particular case should be directed to a regional coordinator.

21. SUBPOENA OF GAL AND/OR GAL RECORDS

In the event that a GAL is subpoenaed for a deposition or to testify as a witness or the GAL's records are subpoenaed, the GAL should immediately contact a regional coordinator to review the matter.

Discovery from a GAL is governed by CINA Rule 8(f). Another party may obtain documents in possession of the GAL if the documents are discoverable under Civil Rule 26(b)(1). Trial preparation materials are only discoverable as permitted by Civil Rule

26(b)(3). Disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning litigation are not generally subject to disclosure. Other discovery, such as depositions, may be obtained only as permitted by the court upon a showing of good cause. A party may question a GAL about the GAL's professional qualifications and experience or the GAL's performance in a case. This inquiry must be conducted in the presence of the court.

22. SUBPOENA OF CHILD; CHILD'S TESTIMONY

If a child is subpoenaed or asked to testify in a CINA court proceeding, the GAL should determine, with the assistance of the regional coordinator, whether to seek a court order to prevent the child from testifying or to modify conditions in the courtroom during the child's testimony. If a child is required to testify, the GAL shall familiarize the child with the process of testifying.

23. APPELLATE WORK

A GAL must consult with the Public Advocate or regional coordinator prior to appealing a Superior Court decision or filing any pleadings in an appellate proceeding initiated by another party.

24. DURATION OF GAL APPOINTMENT

The GAL appointment in a CINA case continues until the case is completed with a court order dismissing the case, releasing custody, granting a petition for adoption, guardianship or emancipation, terminating the GAL appointment, or by the expiration of custody.

25. APPOINTMENT IN RELATED CASES

In some instances, it may be in the child's best interests for the GAL to be appointed for the child in a related case (delinquency, custody, domestic violence, criminal, guardianship or adoption). A separate GAL appointment order should be issued in each case. A separate appointment is not required, but pursuant to CINA Rule 11(f)(2)(G) a GAL must determine whether to seek such an appointment. Appointments in related proceedings are encouraged and are generally in the child's best interests.

26. ILLNESS AND/OR EXTENDED LEAVE

In the event a GAL will be on leave or unavailable to work on cases due to illness, vacation or other circumstances, it is the responsibility of the GAL to arrange coverage for all cases by another approved GAL. If requested, the regional coordinator will assist the GAL in securing such coverage. The GAL shall forward the name, address and telephone number of the GAL providing coverage to the regional coordinator, the Court, and the parties involved in the GAL's case(s) prior to the departure of the GAL.

27. SUBSTITUTION OF GAL

Should a GAL find it necessary to withdraw from a case prior to dismissal of the GAL appointment, the GAL shall contact the regional coordinator. The regional coordinator will designate a substitute GAL, will file a Notice of Substitution of GAL and will seek issuance of an amended GAL appointment order. Within five days of the substitution notice, the GAL shall transfer all case files or a complete copy of the files to the newly designated GAL. The GAL shall prepare a transfer memorandum to

accompany the file, which shall include the following minimum information: (a) names, addresses and phone numbers of all parties and counsel; (b) names, addresses and phone numbers of the child's caregiver; (c) names, addresses and phone numbers of other significant contacts, such as the child's teacher, therapist and doctor; (d) brief history of the case; (e) legal status of the case; (f) dates, times, and locations of any scheduled meetings, administrative reviews or court hearings; and (g) suggested action for the newly assigned GAL.

28. CHANGE OF VENUE

If venue of a case is changed to another court, the GAL shall contact the regional coordinator to determine whether or to whom the case should be transferred. If the case is transferred to another GAL, the regional coordinator will file and serve a Notice of Substitution of GAL and will request the issuance of an amended GAL appointment order. The GAL shall transfer the case files to the newly assigned GAL and prepare a transfer memorandum containing the information described in Section 27 above.

29. RETENTION OF RECORDS

A GAL shall maintain the GAL's files for a period of not less than three years from the date the GAL appointment is terminated.

30. PERFORMANCE REVIEWS

OPA will conduct periodic performance reviews of GALs, which may be through submission of questionnaires to be filled out by the GALs, through on-site case reviews (including file review), or through interviews with other participants in the CINA system. The results of the performance reviews will be made available to the GALs upon request.

31. COMPLAINTS

A person who has a complaint regarding the performance of a GAL may present the complaint to the regional coordinator or the Public Advocate. The regional coordinator or Public Advocate will attempt to resolve complaints informally by phone or through a meeting with the complainant. If a complaint cannot be resolved informally, the regional coordinator may request a written complaint. Upon receipt of a signed, written complaint regarding the performance of a GAL, the regional coordinator or Public Advocate will promptly conduct an investigation into the merits of the complaint. The regional coordinator or Public Advocate shall prepare a written response describing the nature of the complaint, the nature and extent of the investigation conducted, and any action taken. A copy of the response shall be provided to the person making the complaint and to the GAL.

32. SUSPENSION OR TERMINATION OF A GAL

The Public Advocate, by written notice, may suspend or terminate a GAL's contract, in whole or in part, or suspend or terminate a GAL's involvement in individual cases, when it is in the best interest of the State. OPA is liable only for payment of services rendered before the effective date of suspension or termination.

33. MODIFICATION OF OPA GUIDELINES

These guidelines will remain in effect until further notice by OPA. The guidelines may be modified in whole or in part from time to time in order to incorporate changes in the law and practice.