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Newly approved Uniform Superior Court Rule on GALs

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Rule 24.9. Appointment, Qualification and Role of a Guardian Ad Litem. (Approved 4-9-09; Effective 4-23-09)

1. Appointment. The Guardian Ad Litem ("GAL") is appointed to assist in a domestic relations case by the superior court judge assigned to hear that particular case, or otherwise having the responsibility to hear such case. The appointing judge has the discretion to appoint any person as a GAL so long as the person so selected has been trained as a GAL or is otherwise familiar with the role, duties, and responsibilities as determined by the judge. The GAL may be selected through an intermediary.

2. Qualifications. A GAL shall receive such training as provided by or approved by the Circuit in which the GAL serves. This training should include, but not be limited to, instruction in the following subjects: domestic relations law and procedure, including the appropriate standard to be applied in the case; domestic relations courtroom procedure; role, duties, and responsibilities of a GAL; recognition and assessment of a child's best interests; methods of performing a child custody/visitation investigation; methods of obtaining relevant information concerning a child's best interest; the ethical obligations of a GAL, including the relationship between the GAL and counsel, the GAL and the child, and the GAL and the court; recognition of cultural and economic diversity in families and communities; base child development, needs, and abilities at different ages; interviewing techniques; communicating with children; family dynamics and dysfunction, domestic violence and substance abuse; recognition of issues of child abuse; and available services for child welfare, family preservation, medical, mental health, educational, and special needs, including placement/evaluation/diagnostic treatment services.

3. Role and Responsibilities. The GAL shall represent the best interests of the child. The GAL is an officer of the court and shall assist the court and the parties in reaching a decision regarding child custody, visitation and child-related issues. Should the issue of child custody and/or visitation be tried, the GAL shall be available to offer testimony in accordance with provisions 6 and 7 herein.

The GAL holds a position of trust with respect to the minor child at issue, and must exercise due diligence in the performance of his/her duties. A GAL should be respectful of, and should become educated concerning, cultural and economic diversity as may be relevant to assessing a child's best interests. A GAL's appointment, unless ordered otherwise by the Court for a specific designated period, terminates upon final disposition of all matters pertaining to child custody, visitation and child-related issues. The GAL shall have the authority to bring a contempt action, or other appropriate remedy, to recover court-ordered fees for the GAL's services.

4. Duties. By virtue of the order appointing a GAL, a GAL shall have the right to request all records relating to the minor child maintained by the Clerk of the Court in this and any other jurisdiction, other social and human service agencies, the Department of Family and Children Services, and the Juvenile Court. Upon written release and/or waiver by a party or appropriate court order, the GAL

shall have the right to examine all records maintained by any school, financial institution, hospital, doctor or other mental health provider, any other social or human services agency or financial institution pertaining to the child which are deemed confidential by the service provider. The GAL shall have the right to examine any residence wherein any person seeking custody or visitation rights proposes to house the minor child. The GAL may request the court to order examination of the child, parents or anyone seeking custody of the child, by a medical or mental health professional, if appropriate. The GAL shall be entitled to notice of, and shall be entitled to participate in all hearings, trials, investigations, depositions, settlement negotiations, or other proceedings concerning the child.

5. Release to GAL of a Party's Confidential Information from Nonparties.

A GAL's right to request and receive documents and information from mental health professionals, counselors, and others with knowledge of a confidential nature concerning a party is conditional upon the party agreeing to sign a release allowing the GAL access to such records and information.

6. Written Report. Unless otherwise directed by the appointing judge, the GAL shall submit to the parties or counsel and to the Court a written report detailing the GAL's findings and recommendations at such time as may be directed by the assigned judge. At trial, the report shall be admitted into evidence for direct evidence and impeachment purposes, or for any other purposes allowed by the laws of this state. The court will consider the report, including the recommendations, in making its decision. However, the recommendations of the GAL are not a substitute for the court's independent discretion and judgment, nor is the report a substitute for the GAL's attendance and testimony at the final hearing, unless all parties otherwise agree.

a. Contents of Report. The report shall summarize the GAL's investigation, including identifying all sources the GAL contacted or relied upon in preparing the report. The GAL shall offer recommendations concerning child custody, visitation, and child-related issues and the reasons supporting those recommendations.

b. Release of Report to Counsel and Parties. The Report shall be released to counsel (including counsel's staff and experts) and parties only, and shall not be further disseminated unless otherwise ordered by the Court.

c. Release of GAL's File to Counsel. If ordered by the Court, the parties and their counsel shall be allowed to review and/or copy (and shall pay the cost of same) the contents of the GAL's file.

d. Unauthorized Dissemination of GAL's Report and Contents of File. Any unauthorized dissemination of the GAL's Report, its contents or the contents of the GAL's file by a party or counsel to any person, shall be subject to sanctions, including a finding of contempt by the Court.

e. Sealing of Written Report. If filed, the Report shall be filed under seal by the Clerk of Superior Court in order to preserve the security, privacy, and best interests of the children at issue.

7. Role at Hearing and Trial. It is expected that the GAL shall be called as the Court's witness at trial unless otherwise directed by the Court. The GAL shall be subject to examination by the parties and the court. The GAL is qualified as an expert witness on the best interest of the child(ren) in question. The GAL may testify as to the foundation provided by witnesses and sources, and the results of the GAL's investigation, including a recommendation as to what is in a child's best interest. The GAL shall not be allowed to question witnesses or present argument, absent exceptional circumstances and upon express approval of the Court.

8. General and Miscellaneous Provisions.

a. Requesting Mental Fitness and Custody Evaluations. Based upon the facts and circumstances of

the case, a GAL may request the Court to order the parties to undergo mental fitness and/or custody evaluations to be performed by a mental health expert approved by the Court. The Court shall provide for the parties' responsibility for payment of fees to the appointed experts.

b. Filing Motions and Pleadings. If appropriate, the GAL may file motions and pleadings if the GAL determines that the filing of such motion or pleading is necessary to preserve, promote, or protect the best interest of a child. This would include the GAL's right to file appropriate discovery requests and request the issuance of subpoenas. Upon the filing of any such motions or pleadings, the GAL shall promptly serve all parties with copies of such filings.

c. Right to Receive Notice of Mediations, Hearings and Trials. Counsel shall notify the GAL of the date and time of all mediations, depositions, hearings and trials or other proceedings concerning the child(ren). Counsel shall serve the GAL with proper notice of all legal proceedings, court proceedings wherein the child(ren)'s interests are involved and shall provide the GAL with proper and timely written notice of all noncourt proceedings involving the child(ren)'s interests.

d. Approval of Settlement Agreements. If the parties reach an Agreement concerning issues affecting the best interest of a child, the GAL shall be so informed and shall have the right and opportunity to make objections to the Court to any proposed settlement of issues relating to the children prior to the Court approving the Agreement.

e. Communications Between GAL and Counsel. A GAL may communicate with a party's counsel without including the other counsel in the same conversation, meeting or, if by writing, notice of the communication. When communicating with the GAL, counsel is not required to notify opposing counsel of the communication or, if in writing, provide opposing counsel with a copy of the communication to the GAL.

f. Ex Parte Communication Between GAL and the Court. The GAL shall not have ex parte communications with the Court except in matters of emergency concerning the child's welfare or upon the consent of the parties or counsel. Upon making emergency concerns known to the Court, the GAL may request an immediate hearing to address the emergency. Notification shall be provided immediately to the parties and counsel of the nature of the emergency and time of hearing.

g. Payment of GAL Fees and Expenses. It shall be within the Court's discretion to determine the amount of fees awarded to the GAL, and how payment of the fees shall be apportioned between the parties. The GAL's requests for fees shall be considered, upon application properly served upon the parties and after an opportunity to be heard, unless waived. In the event the GAL determines that extensive travel outside of the circuit in which the GAL is appointed or other extraordinary expenditures are necessary, the GAL may petition the Court in advance for payment of such expenses by the parties.

h. Removal of GAL from the Case. Upon motion of either party or upon the court's own motion, the court may consider removing the GAL from the case for good cause shown.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from

the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto