

GUIDELINES FOR CHILD ADVOCACY:
GUARDIANS AD LITEM AND
ATTORNEYS FOR THE MINOR CHILDREN
In Custody Cases

Child(ren): _____

Dates of Birth: _____

School: _____

Special Needs: _____

Parents: _____

Date Appointed: _____

Case Name and Number: _____

Use your judgment regarding whether each step is necessary in your case and what order of the steps is most appropriate, as one size does not fit all. These guidelines are designed to assist advocates with making judgment calls about the range of possible actions to take in order to be thorough, and are not intended to create a rigid approach to case management or to articulate a standard of care.¹

INITIAL CASE DEVELOPMENT

- **Purpose**
 - Introduce yourself and establish your role in this case

- **Process**
 - Obtain appointment order and ascertain exact nature of appointment (e.g. GAL or AMC)
 - Understand the difference between the roles
 - Understand that there may be times where the role is more of a hybrid. See, Carrubba v. Moskowitz, 274 Conn. 533 (2005).
 - Understand what your role is and the court's expectation of your role
 - Call other counsel
 - Establishing a rapport and working relationship for the attorneys in the case is essential. It will help you gain insight into the issues and the willingness of the parties and their counsel to resolve the issues short of court intervention.

¹ Several national organizations have established proposed sets of rules and practice standards. As of this date, Connecticut has not adopted any of the standards. Nonetheless, a review of the proposals and critiques of them offer useful guidance and food for thought about the role of a GAL and/or AMC.

- Confirm your court appointment and the expectation of the appointment as child advocate and ask for any relevant pleadings.
 - Are you to advocate the child's position or to engage in a best interest analysis?
- Ask for written permission to speak with their client outside of their presence
- Ask for overview of case from their client's perspectives
- Send out a retainer letter setting forth your hourly rate and required retainer including fees for other professionals and support staff [or your pro bono or state-rate status]
- Confirm appointment with Court Clerk or Court (if necessary) and the next time the case is to appear on the calendar
 - If you are not in court when appointed, the clerk may have additional information as to why you were appointed
 - You will also need to know if there is a report back date set by the court. Absent an exigency, the court will usually accommodate your schedule. If there are exigent circumstances and you cannot adequately perform your duties in the time required, you should notify the court.
- Clarify at first court appearance (or earlier if appropriate) with Judge the nature and scope of your appointment, if not clear from the Court Order
 - If you need, or believe it is in the best interest of the children, to expand the scope of your duties, you should request that the court do so
- Obtain copies of all other relevant pleadings if you have not received them from the parties
- Start a case timeline of family and case history
- Start a file
 - As a GAL, all portions of your file are discoverable. As AMC, the file is not discoverable.
- Start a list of needed actions and requests
 - Be careful in listing or starting to formulate recommendations without having all of the information you need.
- Have initial introductory conversation with each parent
 - Brief introduction to you and your role
 - Set in-person appointment time and date

MEETING WITH THE PARENTS

- Purpose
 - Obtain their version of the family and case history
 - Valuable information can be gained by determining how parents came together as a couple; the circumstances surrounding the birth of the child(ren); what led to the breakdown of the marriage, and why conflict has developed
 - Understand their relationship with the child
 - Assess where they are regarding the issue and the process and their ability to do what is in the children's best interests; also assess the parents' ability to meet the child's fundamental needs, including housing, education, healthcare, food, shelter and the like.
 - Start process of bringing the focus back to the child: consider how children feel about switching beds all the time, living out of suitcases, impact of distance and travel time between homes, etc. What is fair is what the child needs, not what the parent wants.
 - Educate parents, if necessary, on child's sense of time, developmental stage: infants and attachment; teens and independence, etc.

- Introduce metaphor that parents now in the “business” of Kids, Inc.: they just need to be business colleagues now
- Process
 - Meet with each parent in your office if possible.
 - If home visit is necessary, make sure to go to both homes
 - Explain your role, including lack of confidentiality
 - The parents need to know that you work for the children (and/or the court), but not them
 - The parents cannot instruct you to act to file motions, block access to certain information to the other parent, write letters to third parties such as schools, doctors, daycare and the like
 - Ensure they understand fee agreement
 - Obtain necessary authorizations and explain that they may be required to execute additional releases if necessary
 - Establish boundaries for your interaction with the family
 - Tell parents you will protect the child’s privilege with his/her therapist
- Possible topic to cover. Note: you should ask similar questions to both parents and compare their answers
 - History of parenting responsibilities
 - Questions raised by your investigation
 - Child’s strengths and challenges
 - Parent’s strengths and challenges
 - Spouse’s strengths and challenges as a person and as a parent
 - Why parents got together in the first place
 - Why their relationship failed
 - Favorite activities with and without the child
 - Current relationships and involvement with child
 - Child’s likes, dislikes, interests, etc. (This allows you to gain information about which to talk to the child when you first meet them)
 - Rules they have set for the children
 - How they handle it when child breaks rules
 - Parent’s concerns about child’s exposure to conflict/violence; what has child seen/heard
 - Parent’s concerns about areas of child’s functioning; school, emotional, social
 - Parent’s perception of child’s favorite activities/sports/television show/food/color
 - What each parent thinks is best for children
 - What each parent wants for the children in 20 years – consensus-building tool
 - What do they think child is concerned about
 - Parent’s view of what doctors, therapists and teachers say about the child
 - If relevant, obtain releases to speak with doctors which include their names, addresses and telephone numbers
 - Any plans to relocate
 - People they would like you to interview; people you want to interview
 - Name, address, telephone, relation to parties
 - Particular area or incident known of which they have knowledge
 - Signed releases as appropriate
 - Offer general information about effects of divorce on children and how to help
 - List or refer to bibliography
 - “Quiz” of the parents.

MEETING WITH, GETTING TO KNOW, AND GATHERING INFORMATION ABOUT THE CHILDREN

Cautions:

- Your most critical jobs are to promote a sense of security for the kids and to leave the child with two functioning parents – if at all possible
- Avoid putting the children in a vulnerable position or where they feel compromised
- Do not put a child in the position of having to choose one parent over the other
- Care should be taken talking about issues directly unless the child is of sufficient age and maturity. It may taint obtaining information in the future.
- Try to get information in a non-direct fashion; i.e., what do they do at each parent's home instead of which house do they want to live in; or, if they had three wishes what would they be; or, what would they like their life to look like
- Children should know that expressing an opinion (or even having a lawyer) does not give them voting rights in the outcome – it is not up to them!
- Beware of the child who comes in with a set and rehearsed agenda.

• Purpose:

- Develop rapport
 - Having previously talked to the parents, you will already have an idea of the children's likes and dislikes, hobbies, activities and other interests
- Try to understand the children's perspective, needs, how they are doing
- Child is not necessarily an investigative or definitive source
- Judgment call about how much to discuss the heart of the issues-consider age, maturity, personality, outside influences, and interest of the child in being involved

• Process:

- Contact the children as soon as possible after your appointment
- Consider viewing the child at daycare or school before meeting
- Meet with the child(ren) as soon as possible after first contact. First interview is to begin to establish relationship.
 - You don't have to discuss issues with them at the first meeting. Your goal is to put them at ease so that they will feel comfortable speaking with you
 - Consider just coloring, playing cards, getting a snack, etc.
 - Ask what they have been told about who you are – it is probably not accurate
- Explain court process and your role in developmentally appropriate manner
 - As AMC, explain confidentiality; as GAL, you may have to disclose
 - Conduct several meetings rather than one long one and assure privacy from parents.
- Consider whether child should have some control over where you meet, and whether the interviews should be held at:
 - Child's home
 - Meeting the child on his or her home turf may make them much more at ease than other places – or not
 - Other parent's home
 - Neutral setting (e.g., mall)

- At your office
 - Younger kids may associate an “office” with being bad/in trouble, or even getting a shot, etc.
 - Combination of the above
 - With meetings, maintain balance between the parents, the perception of your fairness, and your own boundaries; even consider which parent is transporting the child to which meetings.
 - Bear in mind that the information a child gives you may change based upon whether they are meeting you on “mom’s time” or “dad’s time”
 - May be due to explicit coaching by parent or child’s less conscious need to please
 - It is important that you keep everything in balance so that a child does not perceive a preference by you of one parent over the other.
 - If you see the children at one parent’s home, see them at the other parent’s home
 - Try to avoid talking alone with the parent after meeting with the child at that parent’s home—the child may think that you are reporting what they said to you to that parent
 - Consider whether to interview siblings separately or together
 - Explain confidentiality as AMC/no confidentiality as GAL
 - Let the children know they can ask questions
 - Keep cautioning the child that having a lawyer does not mean they are controlling the outcome
- Various topics for possible discussion
 - School/daycare/friends/activities/interests/pets (and who participates in these activities)
 - Siblings
 - Mom and dad
 - Daily routines in each home (as appropriate)
 - What makes them happy/sad
 - Favorite activities/sports/TV shows/movies/food/color/music, etc.
 - Who are the adults important to them in their lives
 - Life before separation
 - Life now; how do they feel/how is schedule working, do they understand what is happening
 - Who cares for them when sick
 - What does each parent do when they break a rule
 - What they would change if they could
 - Special issues not otherwise discussed: what they know and how they feel about it
 - What have they heard or seen when parents fight
 - Consider use of various games, artwork and other devices, esp. with children.

OTHER SOURCES OF INFORMATION

- Purpose
 - Gather information not previously obtained
 - Check accuracy of previously obtained information
 - Determine whether a professional evaluation is needed [private or Family Relations]

- Inspire confidence in the GAL/AMC process by using multiple sources in your investigation where appropriate
- Process
 - Review child's and family's records in the following areas, as appropriate (obtain court orders, or releases from parents or children where needed)
 - School, including schoolwork
 - Psychiatric/Psychological/Social service
 - Care should be taken to follow statutory mandates that prevent the dissemination of certain information
 - Drug/Alcohol
 - Medical
 - Law Enforcement
 - Review court files of other related cases (abuse and neglect, delinquency, guardianship, domestic violence) (obtain necessary releases or court orders)
 - Obtain any additional releases needed
 - Interview persons who would have particular knowledge (as appropriate and with sensitivity to confidentiality needs)
 - Teachers
 - School psychologist or social worker
 - Therapist
 - Physician, if child has particular medical problem or injury
 - Care-giver
 - Neighbor/ coach/ friends/extended family
 - Child's best friend's parent
 - Review relevant photographs, videotapes, and/or audio recordings
 - Review child's schoolwork, educational progress, and grades
 - Consider existence and impact of special issues or allegations such as
 - Domestic violence
 - Physical/Sexual abuse of child
 - Relocation
 - Chemical dependency
 - Mental health
 - Developmental, medical or educational needs of child
 - Determine need for additional evaluations and/or assessments (Family Relations or private) relating to custodial arrangements and/or parenting plan, domestic violence, child abuse, chemical dependency, mental health, developmental needs, educational needs, and/or medical needs. If necessary you may have to be the one to arrange for it, or get court order.
 - Research available resources to assist family
 - If evaluations or assessments are necessary, develop a working understanding of the measurement tools and scientific data included therein and the parties' ability to fund the same.
 - Consider whether the child's best interests require that the content of the child's treatment to be kept private and out of the court, to preserve on-going therapeutic relationship; develop tools for protecting child's privacy.

DEVELOPING AND ASSERTING POSITIONS

- Purpose
 - Bring it all together
 - Attempt to avoid case delays
 - While you need to be prepared, you need to know that the time involved in a litigated case is magnified in the life of a child. An adult's sense of time and a child's sense of time differ greatly.
 - Move case to a close
 - Do not assume there is only one correct plan, or that the plans are etched in stone
 - Burdens of travel, communication and scheduling should be on parents, not on kids
- Process
 - Develop an understanding of the timelines of the case, and the timing that this child needs, taking into account the child's compressed sense of time
 - Determine whether certain services are appropriate for the children and/or the parents
 - Mental health
 - Physical medical attention
 - Financial assistance
 - Form position as to parenting responsibilities which are in the best interest of each child and articulate reasons
 - Recognize subjectivity and personal biases
 - Know the preferences of the tribunal
 - Stay in your role as either GAL or AMC, and know the difference that makes to confidentiality and child's preferences, etc.
 - Assure that plan is child-centered- meets child's needs, not parents' desires
 - Focus on nature and quality of time with each parent, not the quantity
 - Parents tend to count overnights; try "contact days" instead
- Formulate a detailed plan to:
 - Propose to parents/attorneys or to respond to their proposals
 - Visual aids and calendars are helpful
 - Assist in settling matter
 - Make suggestions or draft an agreement-do not be wed to the parenting plan or resolution of issues as you have set it; think in terms of "acceptable range" of plans
 - Assure that you are meeting the best interests of the child and do what you can to prevent future conflict even if that means not settling the case.
 - Participate in mediation or negotiations
 - Present to court
 - You need to know whether the judge you are appearing before wants a recommendation or only facts
 - Where there is difficulty arriving at a solution, let the court know what you're thinking is and why
 - Let the court know what concerns you have with the proposals of either parent
 - Consider timing of presentation, including not until all other testimony is presented at trial; do not show cards too early. Case needs to be "ripe."

COURT PROCEEDINGS

- Purpose
 - Advocate and effectuate positions
 - Respond to other parties' positions
 - Make sure that disputes are resolved expeditiously whether by hearing or agreement
- Process
 - Know your tribunal
 - Determine whether your court requires the GAL to submit written reports and/or recommendations, act as a witness, etc.
 - Determine how court prefers that the AMC advocate
 - Determine whether you need to be involved in financial issues
 - Attend all relevant status and motion hearings
 - Play active role in contested hearings on issues impacting the children
 - Bring own motions or raise concerns to court's attention, as appropriate
 - Discovery motions
 - Interim orders on custody and visitation
 - Services for children and/or parents
 - Quash subpoenas to the children, therapists, as necessary
 - Bar in camera interviews
 - Orders to prohibit detrimental behavior by parents toward children
 - Pretrial preparation for case (if necessary)
 - On issues not related to the children: remain neutral
 - On issues related to the child: remain independent
 - Define the issues yourself
 - Decide on witnesses
- Trial
 - Determine your role as either advocate (AMC) or witness (GAL)
 - Present own witnesses
 - Cross-examine other's witnesses
 - Consider opening and closing statements, if permissible
 - If GAL and unable to present case, determine other means of assuring the necessary information gets to the judge.

FOLLOW UP

- Compliance
 - Where the court has ordered counseling, co-parent counseling, therapy, etc., follow up to ensure compliance and that the professionals have the information that they need
- Explain result to the child(ren)
- Coordinate between parents on implementing the orders
- Pay attention to whether your appearance continues for 180 days, like other counsel, or ends at judgment

ON-GOING SELF PROTECTION

- Determine if the appointment of counsel for the guardian is appropriate
 - The GAL may petition the court for an attorney when such appointment is necessary to protect the legitimacy of the GAL's role

- Develop and implement a file maintenance system, remembering that GAL files are discoverable
- Inform office staff of the importance of careful record keeping in case of grievances, including spurious accusations by an angry parent, intended to disqualify you from the case
- Network with other individuals who are acting as child advocates so as to have a community in which to bounce ideas off of, to draw from similar experience, to discuss grievances or ideas you have in a particular case and act as in a supervision capacity
- Maintain appropriate boundaries with clients and other parties at all times
- Fees
 - Some cases qualify for state-payment – if parents are found to be indigent and you are on the list of approved child advocates to be paid by the state
 - Debate: are you free to bill paying parents periodically, or does judge have to approve payments?
 - Not every payment allocation will or should be 50-50 between the parents
 - Make sure you are not inadvertently letting who is paying the bills affect your independence
- “Taking care of yourself”
 - Avoid “internalizing”
 - Learn to diffuse hostile situations
 - Learn to “shake it off” and to recognize the effects of vicarious trauma
- Accept your professional limitation: you cannot fix every family, and neither can the judge.