

Title X: Special Magistrates: Guardians Ad Litem - Order of Reference

10.0 Procedure/Appointed Attorney or Special Magistrate

Whenever an application has been filed, or the Court sua sponte determines the necessity for:

- a. The appointment of an attorney for one of the parties or child(ren) of the parties; or
- b. The appointment of a special Magistrate,

The Court may, when it deems such appointment appropriate, tax the costs of the action as an expense.

10.1 Qualifications – Amended 7-06-99

A Guardian Ad Litem shall be an attorney in good standing with the Supreme Court of Ohio. He/she shall have engaged in the practice of law in excess of three years and in addition shall have tried at least three custody cases, either in the Hamilton County Court of Domestic Relations, or in the Hamilton County Juvenile Court. An applicant for the role of Guardian Ad Litem shall agree to accept one pro bono case per year.

10.2 Role/Responsibilities – Amended 7-06-99

The role of the Guardian Ad Litem is to act for the benefit of the child or children. The Guardian is not a mediator, an arbitrator, a facilitator or an intermediary.

The responsibilities of the Guardian Ad Litem include:

- A. Determination of the reasoning ability of the child(ren);
- B. Submission of written recommendations (upon request by the Court to the attorneys and the Court as to the best interest of the child(ren).
- C. If mediation occurs after the Guardian is appointed, the investigation of the Guardian Ad Litem is stayed. The Guardian may participate in the mediation process upon request of the mediator if such participation appears to be beneficial. Any agreement reached in mediation which is reviewed by the attorneys for the parties shall also be reviewed by the Guardian before submission to the Court.

The Guardians role remains the same whether the case involves shared parenting or residential parent with custodian rights issues.

10.3 Guardian Ad Litem - Request for Appointment

All requests for the appointment of a Guardian shall be made within fourteen (14) days of the date that the parenting report is available, but in no event later than the pre-trial.

10.4 List Qualifications – Amended 7-06-99

Attorneys are invited to submit their names to the Court for consideration as Guardian Ad Litem. An application form (form 10.1) is provided for the convenience of those who wish to be considered as a Guardian Ad Litem. Three members of a committee comprised of the Judges, Administrative Magistrate, Supervisors of the Parenting and Family Counseling Departments and the Chair of the Domestic Relations Committee of the Cincinnati Bar Association shall screen all applications for experience and suitability and recommend to the Administrative Judge their inclusion on the Court's list. The list of Guardian Ad Litem will be maintained and administered by the Domestic Relations Court Docket Office.

Each application indicates that the attorney is willing to accept one pro bono case per year. In such cases, the attorney will be contacted by Court personnel prior to the assignment to ascertain whether that person is willing to accept that particular assignment.

If a Guardian Ad Litem is to be appointed by the Court at no cost to the parties, the Court shall determine whether the Guardian Ad Litem will be asked to perform the services at no cost or whether the Guardian Ad Litem's fees will be paid by the Court. The Court will so inform the Guardian Ad Litem by entry and this determination shall be subject to further modification by the Court.

10.5 Procedure for Appointment – Contested or Agreed – Amended 7-06-99

- A. One party files a request that the Court interview the child(ren), use Form No. 10.2 (Request for Interview). That form also contains a Request for the Appointment of a Guardian Ad Litem. It is not mandatory that a party requests a Guardian Ad Litem. However, once a request has been filed by one party to have the Court interview the child, the other party may request the appointment of a Guardian Ad Litem.
- B. File the Request for Interview form with the Clerk of Courts. Send a copy to the other party/attorney.
- C. Complete the case caption of Form No. 10.5 (Entry Appointing Guardian Ad Litem). Deposit eight hundred seventy-five (\$875.00) dollars with the Clerk of Courts and have the Clerk stamp the entry "costs paid". Do not complete the rest of the form.
- D. Bring a copy of the Request for Interview form, the original Entry Appointing Guardian Ad Litem and the original completed GAL Information Sheet (Form No. 3) to the Domestic Relations Docket Office.
- E. The motion does not require a hearing and no additional action is necessary.

- F. The Court will select a Guardian Ad Litem and complete the entry. Court personnel will file the original entry (form No. 10.5) and send copies of the entry to the parties/attorneys, and the Entry and Information Sheet to the Guardian Ad Litem (Form Nos. 10.3, 10.4 and 10.5). The Guardian will have five (5) days from the date of appointment to accept or reject the appointment by filing written notice with the Clerk of Courts and delivering a copy to the parties/attorneys and to the Domestic Relations Court Docket Office. This notice shall state the name(s) of the party or child(ren) for whom the Guardian Ad Litem has accepted or rejected appointment as Guardian Ad Litem. No specific reasons need be given if appointment is rejected. The Docket Office will then select another Guardian and repeat the process.
- G. If an attorney for a part objects to the appointment of a particular Guardian Ad Litem, a motion supported by affidavit which states with specificity the objection must be filed and a hearing held before the assigned Magistrate.

The above described procedure may also be used in those cases in which both parties/attorneys agree to the appointment of a specific Guardian.

THE COURT, AT ALL TIMES, RESERVES THE RIGHT TO APPOINT A GUARDIAN AD LITEM UPON ITS OWN MOTION AND UPON SUCH TERMS AND CONDITIONS AS ARE APPROPRIATE.

All requests for the appointment of a Guardian Ad Litem shall be made within fourteen (14) days of the date that the parenting report is available, but in no event later than the pretrial.

In all parenting time/other parenting cases in which a party is not by statute (§3109.04(B)(2) Child to be interviewed) entitled to the appointment of a Guardian Ad Litem, a motion must be filed and a hearing held before the assigned Magistrate unless otherwise agreed.

10.6 Report of Guardian Ad Litem

A written report of the Guardian Ad Litem shall be made available to the parties/attorneys no later than thirty (30) days prior to trial. The Court's copy shall be placed in the Court's family file (not legal jacket) and will be filed with the Clerk of Courts only upon agreement of the parties/attorneys and G.A.L. or order of the Court.

10.7 Fees and Payment – Amended 12-09-04

With the exception of pro bono cases, Guardians will be paid at the rate of One Hundred Seventy Five (\$175.00) Dollars per hour for both in and out of Court time.

Generally, the person who requests the appointment of a Guardian Ad Litem must deposit the sum of Eight Hundred Seventy Five (\$875.00) Dollars with the Clerk of Courts at the time that the request is made, unless a poverty affidavit has been previously filed in the case. The Court reserves the right to order both parties to make a contribution to the initial deposit for the Guardian Ad Litem and reserves the right to apportion the final expense of the Guardian Ad Litem in any manner it deems fit. All Guardian Ad Litem must keep accurate time sheets.

A Guardian Ad Litem shall submit a quarterly billing statement to the Court with copies to both parties/attorneys. If a Guardian Ad Litem is appointed and requested to perform duties without compensation, he or she shall only be expected to perform these services at no charge up to twenty hours. After the Guardian Ad Litem has expended twenty hours, he or she may petition the Court for fees which shall be left to the discretion of the Court. The Court will determine if an award of fees will be made. If not, the Guardian Ad Litem shall have the right at that time to withdraw after issuing a status report. If the Guardian Ad Litem is appointed at a cost to the parties, or is to be paid by the Court, upon the Guardian Ad Litem determining that his or her fees may likely exceed \$2,000.00, the Guardian Ad Litem shall request, by motion to the Court, the authority to charge in excess of \$2,000.00. The motion shall set forth an estimate of the additional hours contemplated by the Guardian Ad Litem and the reason that the fee will exceed \$2,000.00. The Court will determine if additional fees are warranted. If not, the Guardian Ad Litem shall have the right at that time to withdraw after issuing a status report.

Whenever an application has been filed, or the Court sua sponte determines the necessity for the appointment of a Guardian Ad Litem for one of the parties or the child(ren), or for the appointment of a special Magistrate, the Court may, when it deems such appointment appropriate, tax the costs of the actions and expense.

It is expected that an appointed Guardian Ad Litem will be compensated for the reasonable time expended on behalf of the appointment. In cases of unusual length and/or complexity, the Guardian may file a request for interim fees and/or additional deposits. The parties to the action should be advised of, and should be prepared for, this additional cost which may in some instances far exceed the initial deposit.

The Guardian Ad Litem is to bring his/her Fee Affidavit (itemized statement) to the Court hearing in a form suitable for filing.

10.8 Agreed Entries Appointment Guardian

Forms 10.2, 10.3 and 10.5 may also be used in those cases in which both parties/attorneys *agree* to the appointment of a specific Guardian. Complete all the

forms. File Form No. 10.3 (Motion) with the Clerk of Courts. Deposit the required costs and have the entry (Form No. 10.5) stamped "Costs Paid" and bring the original entry and the information sheet (Form No. 10.3) to the Docket Office. The Court will assume responsibility for processing thereafter.

10.9 Payment of Guardian Ad Litem Fees

- A. It is expected that an appointed Guardian Ad Litem will be compensated for the reasonable time expended on behalf of the appointment. The parties to the action should be advised of, and should be prepared for, this additional cost which may in some instances far exceed the initial deposit.
- B. Guardian to bring fee affidavit/itemized statement to Court hearing in a form suitable for filing. (*Continued...page 36*)

Possibilities

1. Agreed Entry
 2. Judge's Order, without attorney signature
 3. Magistrate's Order or Decision
- C. If case is settled without hearing:
1. Agreed Entry
 2. Guardian submits documents (fee requested) to assigned Magistrate with courtesy copy to parties/attorneys.
 - a. Magistrate drafts *proposed* fee entry (Form No. 10.6) and sends a copy to the attorney for the parties and the Guardian.
 - b. If there is no request for a hearing within fourteen (14) days, the entry is journalized as a final order of the Court.
 - c. All requests for hearing must be in writing, filed with the Clerk of Courts and a hearing obtained from the Domestic Relations Docket Office (Room 3-46). A copy of the request for hearing must be given to the Docket Office and a copy with the date and time of hearing sent to the other party/attorney *and* the Guardian Ad Litem.
- D. In cases of unusual length and/or complexity, the G.A.L. may file a request for interim fees and/or additional deposits. These requests will be processed in the same fashion as 3(A) and (B) immediately above.

10.10 All Other Cases in Which a Guardian Ad Litem is Requested

In all parenting time/other parenting cases in which a party is *not* by statute (§3109.04(B)(2) *Child to be interviewed*) entitled to the appointment of a Guardian Ad Litem, a motion *must be filed and hearing had* before the assigned Magistrate unless otherwise agreed. Deposit will be assessed by the Magistrate and the

Magistrate will charge one of the parties/attorneys with the responsibility of returning the "Costs Paid" Entry (Form No. 10.5) and Information Sheet (Form No. 10.3) to the Docket Office (Room 3-46). Thereafter, the case will be processed in the same fashion as set forth above with the responsibilities of the Guardian Ad Litem tailored to the particular issues being raised.

THE COURT AT ALL TIMES RESERVES THE RIGHT TO APPOINT A GUARDIAN AD LITEM UPON ITS OWN MOTION AND UPON SUCH TERMS AND CONDITIONS AS ARE APPROPRIATE TO ANY PENDING CASE.

10.11 Forms - Guardian Ad Litem

Forms relevant to Guardians Ad Litem are available in the Domestic Relations Docket Office (Room 3-46). The following forms are relevant to Guardian Ad Litem:

Form No. Title

10.1	Application for Appointment
10.2	Request for Interview/Appointment of G.A.L.
10.3	Information Sheet
10.4	Letter to Guardian
10.5	Entry Appointment Guardian Ad Litem
10.6	Letter Re Proposed Fee Entry
10.7	Entry Fixing Fee of G.A.L.
10.8	Entry - Payment of G.A.L.
10.9	Supplement to Entry