

State of Alaska, Department of Administration  
Office of Public Advocacy

GUIDELINES  
FOR STAFF GUARDIANS AD LITEM  
IN CHILD IN NEED OF AID PROCEEDINGS

October 2011

900 W. 5th Avenue, Suite 525  
Anchorage, Alaska 99501  
(907) 269-3500

515 E. Dahlia St., Ste. 130  
Palmer, Alaska 99645  
(907) 707-1740

100 Cushman St., Ste. 502  
Fairbanks, Alaska 99701  
(907) 451-5933

P.O. Box 110225  
Juneau, Alaska 99811  
(907) 465-4718

## TABLE OF CONTENTS

1.	NOTIFICATION OF CASE ASSIGNMENT .....	3
2.	QUALIFICATIONS.....	3
3.	TRAINING .....	4
4.	DUTIES .....	5
5.	RECORDKEEPING .....	7
6.	MINIMUM CONTACT WITH CHILD & OTHER PARTIES .....	7
7.	GAL DISPOSITION REPORTS .....	9
8.	CASE CONSULTATION.....	9
9.	LEGAL ADVICE/REPRESENTATION.....	10
10.	APPOINTMENT OF COUNSEL FOR THE CHILD .....	10
11.	TRANSPORTATION OF PARTIES IN GAL'S AUTOMOBILE .....	10
12.	SUPERVISION OF PARENT/CHILD VISITATION .....	10
13.	EX PARTE COMMUNICATIONS .....	10
14.	CONFIDENTIALITY.....	11
15.	INTERACTIONS WITH THE MEDIA .....	11
16.	INTERACTIONS WITH THE LEGISLATURE, GOVERNOR'S, OR OMBUDSMAN'S OFFICE .....	11
17.	RELATIONSHIP WITH CHILD CLIENT.....	12
18.	CINA RULE 9(b) - THERAPIST-PATIENT PRIVILEGE.....	12
19.	SUBPOENA OF GAL AND/OR GAL RECORDS.....	13
20.	SUBPOENA OF CHILD; CHILD'S TESTIMONY .....	13
21.	APPELLATE WORK.....	14
22.	DURATION OF GAL APPOINTMENT .....	14
23.	APPOINTMENT IN RELATED CASES .....	14
24.	WORKING WITH COURT APPOINTED SPECIAL ADVOCATES .....	14
25.	CHANGE OF VENUE.....	15
26.	SUBSTITUTION OF GAL .....	15
27.	PERFORMANCE REVIEWS .....	15
28.	COMPLAINTS .....	16
29.	DISCIPLINE, SUSPENSION, OR TERMINATION OF A GAL.....	17
30.	MODIFICATION OF OPA GUIDELINES .....	17

## **INTRODUCTION**

This manual is intended to serve as standardized guidelines for Office of Public Advocacy (OPA) staff attorney and staff non-attorney guardians ad litem (GALs) in Child in Need of Aid (CINA) cases. 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 confer with a supervisor to determine an appropriate course of action.

### **1. NOTIFICATION OF CASE ASSIGNMENT**

OPA will receive notice from the court of a GAL appointment and will assign a staff GAL to the case if the office does not have a conflict. Each OPA office has an internal system for equitable distribution of cases. The GAL shall immediately notify and discuss with a supervisor any legal or personal conflict that exists at the time the case is assigned or that arises as the case progresses. The supervisor will determine whether a conflict exists, whether the GAL should notify the other parties of the conflict, or if another GAL should be assigned to the case.

Within seven days of appointment, the GAL must file an entry of appearance with the court certifying that the GAL has completed training through OPA and indicating whether or not the GAL is an attorney.

### **2. 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. Staff 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.

### **3. TRAINING**

**Initial training.** A new non-attorney GAL (Associate Attorney I) must complete CASA core training or the GAL Independent Study version within 90 days of hire as the

first step in obtaining sufficient knowledge to satisfy CINA Rule 11. OPA may waive the initial training requirement for a new non-attorney GAL at the Associate Attorney II level depending on background or experience. OPA may require a new attorney GAL to complete CASA core training or the GAL Independent Study manual within 90 days of hire or OPA may waive this requirement depending on background or experience.

**Ongoing training.** GALs are encouraged to attend local conferences and trainings on subject matters related to a GAL's job performance. From time to time, OPA may pay for an out-of-state training. In addition, OPA will offer regional or statewide training for GALs on an annual basis. A minimum of 15 hours of continuing education per year is required for a staff GAL. Each staff member is responsible for documenting continuing education hours in consultation with a supervisor. An attorney GAL is required to have at least 5 hours of continuing education in non-legal child welfare subject matter.

#### **4. 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 investigations, 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, family contact, 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. (See Paragraph 10 below.)

#### **5. RECORDKEEPING**

GALs shall keep legible and accurate records of their work in individual cases, including written notes of phone conversations, home visits, meetings, and court hearings. GALs are expected to use OPA's management information system and follow the Public Advocate's or section supervisor's guidelines regarding its use.

#### **6. MINIMUM CONTACT WITH CHILD & OTHER PARTIES**

**The Child.** When the Department of Health and Social Services (Department) files an emergency petition on a child, the GAL shall have face-to-face contact with the child within five working days after receiving the case assignment. When a non-emergency petition is filed by the Department, the assigned GAL will have face-to-face contact with the child by as soon as practicable. A face-to-face visit in the child's placement shall occur prior to the pretrial conference stage of court proceedings and another in-home visit shall occur before the disposition hearing. The GAL is encouraged, however, to have as much face-to-face contact with the child as possible prior to disposition.

After disposition, the GAL shall have a face-to-face, in-home contact with the child at least every six months until the case is closed. The GAL shall, however, have a face-to-face contact with the child before the permanency hearing regardless of having met the post-disposition contact requirement. In addition, the GAL shall, if possible, communicate with the child prior to major decisions being made (such as placement changes, permanency determinations, and extension of custody). In cases where the

child has been placed out of the home, the GAL shall attempt to consult with the child's foster parents or other care providers at least every two months.

If a child has been returned to his or her parent(s)' home on a trial home visit at any legal stage of the case, the GAL must visit the child in the home within one month of the beginning of the trial home visit.

If a Court Appointed Special Advocate (CASA) has been assigned to the child's case, the GAL shall have face-to-face contact with the child and CASA on the CASA's first or second visit with the child. If a CASA volunteer gives advance notice of intent to leave a case, the GAL and CASA shall do a joint closing visit. If a CASA leaves a case without advance notice to the GAL or the local CASA program, the GAL shall have contact with the child as soon as practicable, but must have contact with the child within two months after the CASA closes his or her case.

These minimum contacts may be waived by the GAL's supervisor 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 outside of the GAL's immediate area must be approved by the Public Advocate or his or her designee prior to the travel.

### **Other Parties.**

Parents/Indian Custodians. The GAL shall have at least one contact, either by telephone or in person, with the child's parents or Indian custodian prior to the disposition hearing unless the parents' or Indian custodian's whereabouts are unknown. If a parent or Indian custodian is represented by counsel, the GAL shall obtain the attorney's permission prior to contacting the parent or Indian custodian. The GAL may,



however, have incidental contact with or contact a parent or Indian custodian 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.

#### Case Worker and Assistant Attorney General.

The GAL shall maintain regular contact with the child's case worker and with the assistant attorney general assigned to the child's case as necessary.

### **7. GAL DISPOSITION REPORTS**

GALs shall file written disposition reports as required by the court. The reports should be filed and served no later than ten days prior to the disposition hearing, unless a different timeframe is established by the court.

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

### **8. CASE CONSULTATION**

A GAL may 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.

## **9. LEGAL ADVICE/REPRESENTATION**

Non-attorney GALs are encouraged to contact their supervisor or another OPA staff attorney for legal advice as the need arises.

## **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. 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 transports a child or other party, it shall be solely for purposes related directly to the GAL's involvement in the case.

## **12. SUPERVISION OF PARENT/CHILD FAMILY CONTACT**

Supervision of parent/child family contact is not the responsibility of the GAL. The OCS case worker or designee is responsible for supervising parent/child family contact. 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.

## **13. 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.

#### **14. 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 is charged with a crime concerning the alleged abuse or neglect, or if there has been a fatality or near fatality of a child. A GAL shall not disclose information to the public without the consent of a supervisor or the Public Advocate.

#### **15. INTERACTIONS WITH THE MEDIA**

GALs shall not provide information regarding an individual case to the media without prior approval of the Public Advocate. Pursuant to state statute, OPA may release limited confidential information to the public, including the media.

#### **16. INTERACTIONS WITH THE LEGISLATURE, GOVERNOR'S, OR OMBUDSMAN'S OFFICE**

A GAL shall inform a supervisor and the Public Advocate if contacted by a legislator, the governor's office, or the ombudsman's office. Pursuant to state statute, a staff GAL may release confidential information from a CINA case to the legislator, the governor's office, or the ombudsman's office. However, no action should be taken in response to the inquiry without direction from the GAL's supervisor or the Public Advocate.

## **17. 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.

## **18. 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 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, including through discovery, without obtaining a waiver from the GAL or child. 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. If you have questions regarding 9(b) issues in a particular case, contact a supervisor or staff attorney.

## **19. SUBPOENA OF GAL AND/OR GAL RECORDS/TESTIMONY**

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 staff attorney or supervisor 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.

CINA Rule 11(f) provides that the GAL may only be called to testify by a party 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.

## **20. 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 a supervisor or staff attorney, 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.

## **21. APPELLATE WORK**

If a GAL is not satisfied with a court's decision in a case, the GAL should consult with a lawyer or supervisor about the possibility of appealing the decision. If another party appeals a decision, the GAL should notify a staff attorney who will decide whether to participate in the appeal.

## **22. 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.

## **23. 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. 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.

## **24. WORKING WITH COURT APPOINTED SPECIAL ADVOCATES**

GALs are required to participate in training provided by CASA program staff regarding supervision of Court Appointed Special Advocate (CASA) volunteers. The CASA program has developed Standards for GALs Working with CASA Volunteers. GALs should be familiar with the basic requirements for becoming a CASA volunteer, the expectations for a CASA volunteer, and the policies and procedures of the CASA

program. A GAL may supervise one or more CASA volunteers as part of his or her job duties.

## **25. CHANGE OF VENUE**

If venue of a case is changed to another court, the GAL shall contact OPA Administration to determine to whom the case should be transferred. If the case is transferred to another GAL, the newly assigned GAL will file and serve a Notice of Substitution of GAL. The GAL shall transfer the case files to the newly assigned GAL and prepare a transfer memorandum that 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.

## **26. SUBSTITUTION OF GAL**

Under extraordinary circumstances, a supervisor may reassign a case to another GAL. The supervisor will designate a substitute GAL and will file a Notice of Substitution of GAL. 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.

## **27. PERFORMANCE REVIEWS**

OPA will conduct periodic performance reviews of GALs, which may be through case reviews or through interviews with other participants in the CINA system. The

results of the performance reviews will be made available to the GAL upon request and considered as part of the GAL's annual performance evaluation.

## **28. COMPLAINTS**

A person who has a complaint regarding the work of a staff GAL will be referred to the GAL's supervisor. For all complaints, the supervisor will conduct a prompt investigation. The supervisor will attempt to resolve the complaint informally, which may include communicating by phone with the complainant. Any information given to the complainant as the result of an informal investigation will be consistent with confidentiality required for personnel records under AS 39.25.080 and with the provisions of AS 47.10.092, AS 47.10.093

If the complaint cannot be resolved informally, the GAL supervisor will request that the complainant submit a signed written complaint (if one was not previously submitted). Upon receipt of a written complaint (and after a determination that the complaint cannot be resolved through informal communication), the supervisor will prepare a written report regarding the investigation of the complaint within 15 working days.

The report will be provided to the GAL who is the subject of the complaint, and the report may be placed in the GAL's supervisory file. Dissemination of the report will be consistent with confidentiality required for personnel records under AS 39.25.080 and with the provisions of AS 47.10.092, AS 47.10.93.

For all complaints, the party making the complaint will be notified that it will be promptly investigated. However, the GAL and GAL supervisor must determine whether any case or child specific information should be provided to the complainant. No



information will be provided to the complainant about a specific case or a child unless it is a person who is entitled to the information and consistent with the provisions of AS 47.10.092, AS 47.10.093.

If the complaint is regarding a supervisor, it must be referred to the Administrative Section

**29. DISCIPLINE, SUSPENSION, OR TERMINATION OF A GAL**

A GAL is a partially exempt employee and may be disciplined, suspended, or terminated in compliance with state personnel policy. GALs serve at the pleasure of the Public Advocate.

**30. 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.