

WSR 23-13-066
RULES OF COURT
STATE SUPREME COURT
[June 8, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1523
THE GUARDIAN AD LITEM RULES)
(GALR))

The Superior Court Judges' Association Guardianship and Probate Committee, having recommended the suggested amendments to the Guardian ad Litem Rules (GALR), and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2024.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2024. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 8th day of June, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

SUGGESTED AMENDMENTS TO SUPERIOR COURT
GUARDIAN AD LITEM RULES

(A) Name of Proponent: Superior Court Judges Association Guardianship and Probate Committee ("Committee")

(B) Spokesperson: Judge Diana Kiesel, Chair, Superior Court Judges Association Guardianship and Probate Committee

(C) Purpose: The suggested amendments principally incorporate updated terminology and statutory references in accordance with RCW 11.130, the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act ("UGA"). The UGA introduces the role of court visitor in both adult and minor guardianships. The amendments also revise non-inclusive language to replace such language with neutral words that do not change the substantive meaning of the rules.

Recommendations

The Committee considered these suggestions and voted to approve the suggested amendments.

(D) Hearing: None requested.

(E) Expedited Consideration: Is not requested.

SUGGESTED AMENDMENTS TO GALR 1
SCOPE AND DEFINITIONS

(a) Statement of Purpose and Scope of Rule. The purpose of these rules is to establish a minimum set of standards applicable to all superior court cases where the court appoints a guardian ad litem or any person to represent the best interest of a child, ~~an alleged incapacitated person~~ respondent in a guardianship, conservatorship or other protective arrangement proceeding, or an adjudicated incapacitated person individual subject to a guardianship, conservatorship or protective arrangement pursuant to Title 11, 13 or 26 RCW or appoints a court visitor in a guardianship, conservatorship or other protective arrangement proceeding pursuant to Title 11.

These rules shall also apply to guardians ad litem appointed pursuant to RCW 4.08.050 and RCW 4.08.060, if the appointment is under the procedures of Titles 11, 13 or 26 RCW. These rules shall not be applicable to guardians ad litem appointed pursuant to Special Proceedings Rule (SPR) 98.16W and chapter 11.96A RCW.

(b) Definitions. As used in this rule, the following terms have these meanings:

(1) *Court.* Court shall mean any superior court in the State of Washington and all divisions thereof.

(2) *Guardian ad Litem.* Guardian ad litem shall mean any person or program appointed in a Title 11, 13, or 26 RCW action under the Revised Code of Washington to represent the best interest of a child, ~~an alleged incapacitated person~~ respondent in a guardianship, conservatorship or other protective arrangement proceeding, or an adjudicated incapacitated person individual subject to a guardianship, conservatorship or protective arrangement. The term guardian ad litem shall not include an attorney appointed to represent a party.

(3) *Court Visitor.* Court Visitor shall mean any person or program appointed in a Title 11 action under the Revised Code of Washington to perform the functions of a court visitor pursuant to RCW 11.130. The term court visitor shall not include an attorney appointed to represent a party.

(4) *Judge.* Judge shall mean a judicial officer of the superior court, including commissioners and judges pro tempore.

(5) *Registry.* Registry shall mean the list of people authorized by the court to serve as guardians ad litem, court visitors or Court Appointed Special Advocates (CASA) programs authorized by RCW 26.12.175.

[Adopted effective November 27, 2001.]

SUGGESTED AMENDMENTS TO GALR 2
GENERAL RESPONSIBILITIES OF GUARDIAN AD LITEM
AND COURT VISITOR

Consistent with the responsibilities set forth in Titles 11, 13, and 26 of the Revised Code of Washington and other applicable statutes and rules of court, in every case in which a guardian ad litem or court visitor is appointed, the guardian ad litem or court visitor shall perform the responsibilities as set forth below. For purposes of these rules, a guardian ad litem is any person who is appointed by the court to represent the best interest of the child(ren), ~~an adjudicated incapacitated person~~ respondent in a guardianship, conservatorship or other protective arrangement proceeding, or an alleged incapacitated person individual subject to a guardianship, conservatorship or protective arrangement or to assist the court in determining the best interest of the child(ren), ~~an adjudicated incapacitated person individual subject to a guardianship, conservatorship or protective arrangement,~~ or an alleged incapacitated person respondent in a guardianship,

conservatorship or other protective arrangement proceeding, regardless of that person's title, except a person appointed pursuant to rule 6. For purposes of these rules, a court visitor is any person who is appointed by the court as a court visitor pursuant to RCW 11.130.

(a) Represent best interests. A guardian ad litem shall represent the best interests of the person for whom ~~he or she is~~ they are appointed. Representation of best interests may be inconsistent with the wishes of the person whose interest the guardian ad litem represents. The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney.

(b) Maintain independence. A guardian ad litem or court visitor shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

(c) Professional conduct. A guardian ad litem or court visitor shall maintain the ethical principles of the rules of conduct set forth in these rules and is subject to discipline under local rules established pursuant to rule 7 for violation.

(d) Remain qualified for the registry. Unless excepted by statute or court rule, a guardian ad litem or court visitor shall satisfy all training requirements and continuing education requirements developed for Titles 13 and 26 RCW guardians ad litem by the administrator of the courts and for Title 11 RCW guardians ad litem or court visitors as required by statute and maintain qualifications to serve as guardian ad litem or court visitor in every county where the guardian ad litem or court visitor is listed on the registry for that county and in which the guardian ad litem or court visitor serves and shall promptly advise each such court of any grounds for disqualification or unavailability to serve.

(e) Avoid conflicts of interests. A guardian ad litem or court visitor shall avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem or court visitor responsibilities. A guardian ad litem or court visitor shall avoid self-dealing or association from which a guardian ad litem or court visitor might directly or indirectly benefit, other than for compensation as guardian ad litem or court visitor. A guardian ad litem or court visitor shall take action immediately to resolve any potential conflict or impropriety. A guardian ad litem or court visitor shall advise the court and the parties of action taken, resign from the matter, or seek court direction as may be necessary to resolve the conflict or impropriety. A guardian ad litem or court visitor shall not accept or maintain appointment if the performance of the duties of guardian ad litem or court visitor may be materially limited by the guardian ad litem's or court visitor's responsibilities to another client or a third person, or by the guardian ad litem's or court visitor's own interests.

(f) Treat parties with respect. A guardian ad litem or court visitor is an officer of the court and as such shall at all times treat the parties and third parties associated with the case with respect, courtesy, fairness and good faith.

(g) Become informed about case. A guardian ad litem or court visitor shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem or court visitor shall examine material information and sources of information, taking into account the positions of the parties.

(h) Make requests for evaluations to court. A guardian ad litem or court visitor shall not require any evaluations or tests of the

parties except as authorized by statute or court order issued following notice and opportunity to be heard.

(i) Timely inform the court of relevant information. A guardian ad litem or court visitor shall file a written report with the court and the parties as required by law or court order or in any event not later than 10 days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem or court visitor and persons interviewed during the course of the investigation.

(j) Limit duties to those ordered by court. A guardian ad litem or court visitor shall comply with the court's instructions as set out in the order appointing a guardian ad litem or court visitor, and shall not provide or require services beyond the scope of the court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem or court visitor obtains additional instruction, clarification or expansion of the scope of such appointment.

(k) Inform individuals about role in case. A guardian ad litem or court visitor shall identify ~~himself or herself~~ themselves as a guardian ad litem or court visitor when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of a guardian ad litem or court visitor in the case at the earliest practicable time. A guardian ad litem or court visitor shall advise information sources that the documents and information obtained may become part of court proceedings.

(l) Appear at hearings. The guardian ad litem or court visitor shall be given notice of all hearings and proceedings. A guardian ad litem or court visitor shall appear at any hearing for which the duties of a guardian ad litem or court visitor or any issues substantially within a guardian ad litem's or court visitor's duties and scope of appointment are to be addressed. In Title 11 RCW proceedings, the guardian ad litem or court visitor shall appear at all hearings unless excused by court order.

(m) Ex parte communication. A guardian ad litem or court visitor shall not have ex parte communications concerning the case with the judge(s) and commissioner(s) involved in the matter except as permitted by court rule or by statute.

(n) Maintain privacy of parties. As an officer of the court, a guardian ad litem or court visitor shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem or court visitor. A guardian ad litem or court visitor shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's, person's, or child(ren)'s safety. The guardian ad litem or court visitor may recommend that the court seal the report or a portion of the report of the guardian ad litem or court visitor to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

(o) Perform duties in timely manner. A guardian ad litem or court visitor shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

(p) Maintain documentation. A guardian ad litem or court visitor shall maintain documentation to substantiate recommendations and con-

clusions and shall keep records of actions taken by the guardian ad litem or court visitor. Except as prohibited or protected by law, and consistent with rule 2(n), this information shall be made available for review on written request of a party or the court on request. Costs may be imposed for such requests.

(q) Keep records of time and expenses. A guardian ad litem or court visitor shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment. The court shall make provisions for fees and expenses pursuant to statute in the Order Appointing Guardian ad Litem or Court Visitor or in any subsequent order.

[Adopted effective November 27, 2001.]

SUGGESTED AMENDMENTS TO GALR 4
AUTHORITY OF GUARDIAN AD LITEM
OR COURT VISITOR

As an officer of the court, a guardian ad litem or court visitor has only such authority conferred by the order of appointment. Consistent with the roles and responsibilities set forth in rules 2 and 3, and the grievance procedures set forth in rules 5 and 6, a guardian ad litem or court visitor shall have the following authority:

(a) Access to party. Unless circumstances warrant otherwise, a guardian ad litem or court visitor shall have access to the person(s) for whom a guardian ad litem or court visitor is appointed and to all information relevant to the issues for which a guardian ad litem or court visitor was appointed. The access of a guardian ad litem or court visitor to the child or ~~alleged incapacitated person~~ respondent in a guardianship, conservatorship or other protective arrangement proceeding and all relevant information shall not be unduly restricted by any person or agency. When the guardian ad litem or court visitor seeks contact with a party who is represented by an attorney, the guardian ad litem or court visitor shall notify the attorney in advance of such contact. The guardian ad litem's or court visitor's contact with the represented party shall be as permitted by the party's attorney, unless otherwise ordered by the court.

(b) Timely receipt of case documents. Until discharged by court order a guardian ad litem or court visitor shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them.

(c) Timely notification. A guardian ad litem or court visitor shall be timely notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case by the person or agency scheduling the proceeding.

(d) Notice of proposed agreements. A guardian ad litem or court visitor shall be given notice of, and an opportunity to indicate ~~his or her~~ their agreement or objection to any proposed agreed order of the parties governing issues substantially related to the duties of a guardian ad litem or court visitor.

(e) Participate in all proceedings. Consistent with rule 2(1), a guardian ad litem or court visitor shall participate in court hearings through submission of written and supplemental oral reports and as otherwise authorized by statute and court rule.

(f) Access to records. Except as limited by law or unless good cause is shown to the court, upon receiving a copy of the order appointing a guardian ad litem or court visitor, any person or agency,

including but not limited to any hospital, school, child care provider, organization, department of social and health services, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or law enforcement agency, shall permit a guardian ad litem or court visitor to inspect and copy any and all records and interview personnel relating to the proceeding for which a guardian ad litem or court visitor is appointed.

(g) Access to court files. Within the scope of appointment, a guardian ad litem or court visitor shall have access to all superior court and all juvenile court files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's or court visitor's report shall inform the court and parties if the report contains information from sealed or confidential files. The clerk of court shall provide certified copies of the order of appointment to a guardian ad litem or court visitor upon request and without charge.

(h) Additional rights and powers under RCW 13.34 or RCW 26.26. In every case in which a guardian ad litem is a party to the case pursuant to RCW 13.34 or RCW 26.26, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable statutes and court rules.

(1) *File documents and respond to discovery.* A guardian ad litem shall have the right to file pleadings, motions, notices memoranda, briefs, and other documents, and may, subject to the trial court's discretion engage in and respond to discovery.

(2) *Note motions and request hearings.* A guardian ad litem shall have the right to note motions and request hearings before the court as appropriate to the best interests of the person(s) for whom a guardian ad litem was appointed.

(3) *Introduce exhibits, examine witnesses.* A guardian ad litem shall have the right, subject to the trial court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross-examination of witnesses.

(4) *Oral argument and submission of reports.* A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports, and, may with the consent of the trial court present oral argument.

(i) Additional rights and powers in other cases. For good cause shown, a guardian ad litem may petition the court for additional authority as set forth in rule 2(j).

(j) Additional training requirements. The Administrative Office of the Courts shall amend the current guardian ad litem mandatory training so that Titles 13 and 26 RCW guardians ad litem are prepared to carry out the additional requirements of this rule.

[Adopted effective November 27, 2001.]

SUGGESTED AMENDMENTS TO GALR 5
APPOINTMENTS OF GUARDIAN AD LITEM
OR COURT VISITOR

(a) Equitable distribution of workload. Each court shall promulgate local rules providing a system of appointing and reasonably compensating guardians ad litem and court visitors which ensures an equitable distribution of the work load among the guardians ad litem and court visitors on the registry.

(b) Procedure to address complaints. The local rules shall provide a procedure to timely address complaints made by any guardian ad litem or court visitor regarding registry or appointment matters.

[Adopted effective November 27, 2001.]

SUGGESTED AMENDMENTS TO GALR 6
LIMITED APPOINTMENTS

There may be situations where the court wishes to appoint a person in addition to, or instead of, a guardian ad litem or court visitor to fulfill very limited roles. This will help avoid conflict of interest situations for guardians ad litem or court visitors serving in a case and will limit the time and expense spent on cases which do not require a guardian ad litem or court visitor. A person appointed pursuant to this rule is strictly limited to the duties of the role below selected by the court. If the order of appointment does not specifically designate a limited appointment as listed below, the person appointed is presumed to be a guardian ad litem or court visitor, subject to the Guardian ad Litem and Court Visitor Rules. The court may make the following limited appointments:

(a) Mediator. The court may either appoint or refer to a person or agency whose role is to assist the parties in reaching an agreement about any or all contested issues in the case.

(b) Evaluator. The court may appoint or refer to a person or agency for evaluation and findings regarding a specific issue or issues including but not limited to mental health, substance abuse, issues of abuse or neglect, cultural factors, and sexual deviancy.

(c) Visitation supervisor. The court may appoint or refer to a person or agency to supervise visits and report findings to the court.

(d) Settlement of minors' claims. The court may appoint a person for the limited purpose described in Special Proceedings Rules (SPR) 98.16W.

(e) Other. Under exceptional circumstances, upon good cause shown, the court may make other limited appointments as it deems necessary.

[Adopted effective November 27, 2001.]

SUGGESTED AMENDMENTS TO GALR 7
GRIEVANCE PROCEDURES

Each court shall promulgate rules that set out or refer to policies and procedures establishing and governing the filing, investigating, and adjudicating grievances made by or against guardians ad litem and court visitors under Titles, 11, 13, and 26 RCW. The rules shall, at a minimum, comply with and address the following:

(a) Clear and concise. The rules shall be clear, and concise and easily understood by both attorneys and non attorneys.

(b) Separate procedures. The rules shall establish separate procedures addressing grievances or complaints filed during the pendency of a case, and grievances or complaints filed subsequent to the conclusion of a case.

(c) Fair treatment of grievances. The rules shall establish procedures providing for fair treatment of grievances including appearance-of-fairness and conflict issues.

(d) CASA grievance procedures. Where applicable, local rules shall accommodate the grievance procedures of Court Appointed Special Advocate(s) (CASA) or other volunteer program(s).

(e) Confidentiality. The rules shall provide for confidentiality of complaints until merit has been found.

(f) Response to complaint. The rules shall provide a procedure for any guardian ad litem or court visitor who is the subject of a complaint to respond to the complaint.

(g) Complaint resolution time standards. The rules shall include a time limit during which a complaint must be resolved. The limit shall not be longer than 25 days for complaints filed while a case is pending or 60 days for complaints filed subsequent to the conclusion of a case.

(h) Records of grievances. For its own reference purposes, the court shall maintain a record of grievances filed and of any sanctions issued pursuant to local court grievance procedure.

(i) Removal from registry. When a guardian ad litem or court visitor is removed from a county's registry pursuant to the disposition of a grievance, the court of that county shall send notice of such removal to the Office of the Administrator of the Courts, who shall on a regular basis, but not less than biannually, forward the information to the superior courts of each county in the state of Washington.

(j) Implementation. Local court rules establishing a grievance procedure shall be filed in the manner provided in GR 7.

[Adopted effective November 27, 2001.]

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.