

# August 2020

## Newsletter



# Roanoke City Juvenile & Domestic Relations Court

The Clerk's Office employs a group of dedicated people whose mission is to serve with integrity, professionalism, and compassion. We take our responsibilities seriously because we understand that justice is the mission of the court and the public has a right to expect the highest quality service we can provide.

For so long as Virginia's judicial system remains under a state of emergency, the Clerk's Office window will be closed for in-person business. Forms are available outside the Clerk's Office, as is a drop box for completed forms and filing fees. Appointments for in-person assistance may be made by calling the Clerk's Office.

Location: 315 W. Church Ave. S.W.  
1st Floor  
Roanoke, VA 24005-0986

Clerk's Office Hours:  
Monday – Friday, 8AM – 4PM  
Phone: (540) 853-2389  
Fax: (540) 853-1195

## Weekly schedule of the Court

Arraignments — Mon. - Fri., 8:30 AM

Detention Hearings — Mon. - Fri., 1:30 PM

Juvenile Arraignments — Thurs.- 9 AM

Civil Cases (Custody, Visitation and Support) — Mon., Tues., & Thurs., 9AM, 10AM, 2PM & 3PM

DCSE - Division of Child Support Enforcement — Mon. & Wed., 9AM, 10AM, 11AM, 2PM & 3PM

Adult Criminal — Mon - Thurs., 2PM & 3PM

Juvenile Delinquency — Mon & Tues., 9AM, 10AM & 11AM, Thurs. 10AM

DSS (Child Dependency Cases) — Mon. & Wed. 9AM, Tues. & Thurs. 9AM, 10AM & 11AM

Adult Protective Orders — Mon. & Wed. 10AM & 11AM

Truancy — Tues. 2PM & 3PM

Contested Cases — Fri. 9AM, 10AM & 11AM

Court Community Corrections (Show Cause) — 2nd Friday of each month 9AM, 10AM & 11AM

*\*Continuance Policy:*

Ten day notice required for any continuance with both sides in agreement. Continuance in criminal cases must be cleared with the Commonwealth Attorney.

# Community Resources



<http://www.cacva.org/about-us/>

The mission of Children's Advocacy Centers of Virginia (CACVA) is to promote and support the development, growth and continuation of Child Advocacy Centers (CAC) and multidisciplinary teams across the state in their service to child victims of abuse and neglect.

CACVA is a membership organization dedicated to helping local communities respond to child maltreatment in ways that are effective and efficient, and most important of all, ensuring that the child victim's needs are met. Formed in 2002, CACVA provides support, technical assistance, and training for Virginia's CACs and serves as a resource for communities looking to develop CACs or MDTs.



For more information, visit  
<https://virginiacasa.org/>

To report abuse:  
Hotline: 1.800.552.7096

CASA recruits, trains and supervises competent volunteers dedicated to advocating for the needs of abused and neglected children currently in court proceedings, who are too young to speak for themselves during the complicated maze of legal proceedings.

CASA promotes safe, permanent homes for all children and seeks to educate the community concerning the needs of abused and neglected children.

CASA volunteers are appointed by judges to advocate for abused or neglected children, to make sure they don't get lost in the overburdened legal and social service system or languish in inappropriate group or foster homes. Volunteers stay with each case until it is closed and the child is placed in a safe, permanent home.

# Guardians *Ad Litem* for Children: Practice, Purpose, and Process

By Benjamin Rigney<sup>1</sup>

## I. Introduction

United States Supreme Court Justice William Douglas once wrote, “[T]he liberties of none are safe unless the liberties of all are protected.”<sup>2</sup> Generally, a Guardian *Ad Litem* works to protect the rights and liberties of people who “the law deems incapable of doing so for themselves.”<sup>3</sup> A Guardian *Ad Litem* is “[usually] a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party.”<sup>4</sup> More specifically, the Virginia Supreme Court uses Guardian *Ad Litem*s to protect the liberties of children and incapacitated adults in court.<sup>5</sup> The job of a Guardian *Ad Litem* is necessary to protect the liberties for all of us by protecting the liberty of some of the most vulnerable of us.

This discussion of Guardians *Ad Litem* will focus primarily on the role of the Guardian *Ad Litem* (henceforth “GAL”) in cases involving children. To begin, the actual work done by GALs will be examined and discussed. Next, the purpose of a GAL will be examined in the context of the purpose of Virginia’s Juvenile and Domestic Relations Court. Finally, how to become a GAL will be examined alongside a discussion of *who* should become a GAL. The goal of this discussion is to show the reader the value of GALs and to help the reader determine if they should become a GAL.

## II. Practice: What do GALs do?

A GAL, in the Commonwealth of Virginia, is an attorney appointed by a judge to help the court determine the circumstances of a matter before the court and to represent the interest of the child. The basic duty of a child’s GAL is “the representation of the child’s legitimate interests.”<sup>6</sup> Most commonly, this requires a GAL to “investigate for the court and recommend

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1 Benjamin Rigney is an intern for Judge Frank Rogers in the Roanoke City Juvenile and Domestic Relations Court, is a student at the T.C. Williams School of Law at the University of Richmond, and has a PhD from Carolina University in Winston-Salem.

2 William Douglass, *A Living Bill of Rights*, 64 (1961).

3 Erik Barnes, *When Should a Guardian Ad Litem be Appointed in a Child Custody Case*, Va. Lawyers Weekly (May 30, 2018).

4 *Guardian*, Black’s Law Dictionary (11th Ed. 2019).

5 *See Va. Code Ann.* § 8.01-9; *Va. Code Ann.* § 16.1-266.

6 *Va. Sup. Ct. R.* 8:6; *see also Va. Code Ann.* § 16.1-266(F) (“In all other cases which in the discretion of the court require... a guardian ad litem... to represent the child or children ... discreet and

what is in the child’s “best interest” in private custody cases.”<sup>7</sup> By representing only the child, the GAL is free to recommend what is in the child’s best interest which may not otherwise be made known to the court.<sup>8</sup> In order to best understand the role of a GAL, this section will discuss both what kind of cases a GAL works on, as well as how a GAL works on those cases.

A. *What Kind of Cases Use a Guardian Ad Litem?*

GALs are not required in every custody case.<sup>9</sup> However, “[t]he established practice is that a guardian *ad litem* may be appointed after a trial judge makes a preliminary finding that the best interests of the child require such appointment.”<sup>10</sup> In Virginia, GALs are appointed to work in cases in which a child is alleged to be abused or neglected; the subject of an entrustment agreement; the subject of a petition seeking termination of parental rights; or the subject of a proceeding in which the parents are seeking to be relieved of the child’s care or custody.<sup>11</sup> Likewise, a GAL may be assigned to a case where: the child is the subject of a foster care plan review;<sup>12</sup> the child is seeking emancipation;<sup>13</sup> the child’s parents are seeking to commit a child over the age of 14 to a psychiatric facility;<sup>14</sup> or the child is seeking authorization for a physician to perform an abortion.<sup>15</sup> The types of cases a GAL works on, as evidenced by the preceding list, are quite varied in nature.

B. *What Kind of Work Does a Guardian Ad Litem do on a Case?*

Understanding the unique work of a GAL is vital to determining if becoming a GAL is a viable option for an individual. The work a GAL does is different from other legal roles as the GAL acts “as the eyes of the court during the proceeding, conducting interviews and compiling

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competent attorneys-at-law may be appointed by the court”).

7 Dale Margolin Cecka, *Inequality in Private Child Custody Litigation*, 20 CUNY L. Rev. 203, 231 (2016).

8 *See Ford v. Ford*, 371 U.S. 187, 193 (1962) (noting “Unfortunately, experience has shown that the question of custody, so vital to a child’s happiness and well-being, frequently cannot be left to the discretion of the parents. This is particularly true where... the estrangement of husband and wife beclouds parental judgment with emotion and prejudice”).

9 *See Va. Code Ann.* § 16.1-266(F).

10 *Verrocchio v. Verrocchio*, 16 Va. App. 314, 317 (Va. Ct. App. 1993).

11 *Va. Code Ann.* § 16.1-266.

12 *Va. Code Ann.* § 16.1-281.

13 *Va. Code Ann.* § 16.1-332.

14 *Va. Code Ann.* § 16.1-339.

15 *Va. Code Ann.* § 16.1-241.

reports to present to the court.”<sup>16</sup> Likewise, a GAL’s responsibility is different from other court assigned guardianship roles because it does not require a long term commitment that may be common for other types of guardians.<sup>17</sup>

The work of a GAL is both investigatory and legal in nature.<sup>18</sup> Specifically, the GAL is tasked with assisting the court in determining the circumstances surrounding a case by making a recommendation about what is in the child’s best interest even if the recommendation is against the child’s wishes.<sup>19</sup> The GAL accomplishes this task by conducting interviews, investigating facts surrounding the case, submitting oral or written reports to the court, and participating in court hearings.<sup>20</sup> For example, in a custody dispute in which a GAL is representing the interests of the children, “A GAL is valuable to the resolution of custody disputes because the GAL evaluates the facts concerning the dispute and recommends to the court what are the best interests of the child.”<sup>21</sup> The work of a GAL protects children when the parents want to use children as tools for manipulation and do not have the children’s best interests in mind.<sup>22</sup> The GAL work as an advocate for the children is generally very beneficial both to the court and the children represented.

### **III. Purpose: Why do Courts use GALs?**

The purpose of a GAL goes hand-in-hand with the purpose of the Juvenile and Domestic Relations Court (henceforth “JDR Court”) in Virginia. It is important to note that a GAL is *not* the ultimate decider or judge of a case, but the GAL does function as an extension of the court as a representative for the child. Therefore, both a GAL and the JDR Court need to be pri-

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16 Kelly Crowe, *Statutory Provisions for Guardians ad Litem in Guardianship Proceedings*, 30 A.B.A. J. on Law & Aging 94 (2018).

17 See *Guardian Ad Litem*, Cornell Legal Information Institute WEX, [https://www.law.cornell.edu/wex/guardian\\_ad\\_litem](https://www.law.cornell.edu/wex/guardian_ad_litem) (last visited July 28, 2020) (“Unlike typical guardians or conservators, guardians ad litem only protect their ward’s interests in a single case.”)

18 See generally *Guardians Ad Litem (GAL)*, Virginia Supreme Court Office of the Executive Secretary, <http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/home.html> (last visited July 28, 2020).

19 *Id.*

20 *Id.*

21 Suzanne J. Schmitz, *Guardians Ad Litem Do Not Belong in Family Mediations*, 8 Pepp. Disp. Resol. L.J. 221, 222 (2008).

22 Shelia M. Murphy, *Guardians Ad Litem: The Guardian Angels of Our Children in Domestic Violence Court*, 30 Loy. U. Chi. L.J. 281, 287 (1999) (noting “The presence of guardians *ad litem* would help prevent batterers from using children as tools or pawns in domestic violence court”).

marily focused on preserving the child’s best interest. The relationship between the JDR Court judge and the GAL is a cooperative relationship seeking to ensure that the best interests of the child are preserved in the courtroom and beyond.

A. *The Purpose of the Juvenile and Domestic Relations Court*

The JDR Court’s purpose, in Virginia, is determined by *Va. Code Ann.* § 16.1-277 which states, “in all proceedings the welfare of the child and the family... and the protection of the rights of victims are the paramount concerns of the Commonwealth.” In particular, protecting “the welfare of the child”<sup>23</sup> is a guiding principle for the JDR Court in both civil and criminal cases. For example, in order to protect the welfare of the child in visitation cases, the JDR Court is asked to determine what is in the “best interests of a child”<sup>24</sup> to promote the child’s welfare.

B. *The Purpose of the Guardian Ad Litem*

A GAL’s purpose, as defined by the Virginia Supreme Court, is to “vigorously represent the child, fully protecting the child’s interest and welfare.”<sup>25</sup> Although the specific duties of a GAL may vary, the purpose always remains the same.<sup>26</sup> The Virginia Supreme Court has determined that a GAL is a person with a “legitimate interest” in making sure that the child’s welfare is preserved.<sup>27</sup> The GAL should therefore take appropriate action to ensure the welfare of the child is promoted and protected in court.<sup>28</sup>

Like the JDR Court, the GAL is primarily focused on the welfare of the child being promoted and protected.<sup>29</sup> Both the JDR Court and the GAL, while operating independently, are unified in the goal of working for the child’s best interest. Importantly, a judge is still the ulti-

23 *Va. Code Ann.* § 16.1-277

24 *Va. Code Ann.* § 20-124.3

25 Va. Sup. Ct. R. 8:6

26 *Norfolk Div. of Social Services v. Unknown Father*, 2 Va. App. 420, 423 (“The duties of a guardian *ad litem* cannot be specifically spelled out as a general rule ... ‘Every guardian ad litem shall *faithfully represent the... interest of the person* under a disability for whom he is appointed.’”) (quoting *Va. Code Ann.* § 8.01-9) (Va. Ct. App. 1986).

27 *See Stanley v. Fairfax Cnty. Dep’t of Social Services*, 405 S.E.2d 621, 623 (Va. 1991) (holding “A guardian ad litem certainly has a legitimate interest in whether his ward is to be subjected to continued abuse and neglect”).

28 *See Id.* at 623 (holding that if “a guardian ad litem feels that the best interests of his ward compel termination of the parents’ residual rights, he can and should file an appropriate termination petition”).

29 *See Va. Code Ann.* § 16.1-277; Va. Sup. Ct. R. 8:6.

mate decision maker in these cases, but the GAL is still able to contribute in meaningful ways.<sup>30</sup> The similarities in purpose for a GAL and the JDR Court allow them to work cooperatively to ensure the wellbeing of the child is protected in court.

#### IV. Personnel: Who Should Become a GAL?

Across the country, from Florida<sup>31</sup> to Nebraska<sup>32</sup> to Idaho<sup>33</sup>, there is a need for more people to sign-up as GALs.<sup>34</sup> These recruitment efforts are not just looking for any person, rather the need is for trained attorneys to step up and advocate for children. For the purposes of this discussion, the section discussing professional requirements will focus exclusively on the standards required by the Commonwealth of Virginia. The section discussing the *type* of person who should become a GAL will promote ideas that are universally applicable across all states.

##### A. Professional Requirements

The professional qualifications for who can become a GAL vary state-by-state.<sup>35</sup> The Virginia Supreme Court determines the standards and conduct of GALs in the Commonwealth.<sup>36</sup> Likewise, the Virginia Supreme Court determines the requirements for who can work as a GAL.<sup>37</sup> In Virginia, a GAL must be an attorney (or a qualified 3rd year law student) with familiarity of juvenile law and a member in good standing with the Virginia State Bar.<sup>38</sup> Additionally, to become and maintain one's qualifications as a GAL, there are continuing education

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30 See Dale Margolin Cekcka, *Improper Delegation of Judicial Authority in Child Custody Cases*, 52 Univ. of Richmond L. Rev. 181 (noting “judges cannot delegate judicial decision-making power in child custody cases to outside professionals”) (2017).

31 See Alan Abramowitz, *How to Become a GAL*, Florida's Guardian Ad Litem for Children Program, <https://guardianadlitem.org/become-gal/> (last visited July 30, 2020).

32 See Nebraska College of Law, *New Law Clinic at Nebraska will Advocate for State's Children*, (June 6, 2017) <https://law.unl.edu/node/1056/>

33 See Family Advocates, *Legal Representation for Children of Abuse & Neglect*, (Oct. 30, 2018) <https://www.familyadvocates.org/2018/10/30/legal-representation-for-children-of-abuse-neglect/>

34 See Murphy, *supra*, at 303 (noting “Guardians ad litem are needed to represent the interests of children”).

35 See *Guardian Ad Litem*, Cornell Legal Information Institute WEX, *supra*, (noting “jurisdictions differ not only on when to appoint guardian ad litem, but also on the guardians' minimum qualifications, training, compensation, and duties.”).

36 See Supreme Court of Va., *Standards to Govern the Performance of Guardian Ad Litem for Children* (June 23, 2003) [http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/gal\\_performance\\_standards\\_children.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/gal_performance_standards_children.pdf)

37 See Virginia Supreme Court: Office of the Executive Secretary, *Frequently Asked Questions Guardian Ad Litem for Children Program* (Jan. 2018) ([http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/faq\\_children.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/faq_children.pdf)).

38 *Id.*

classes that must be completed.<sup>39</sup> For more information about the specific requirements please consult the final page of this newsletter or go to the Virginia Supreme Court’s website detailing the steps to become a GAL.<sup>40</sup>

*B. Personal Requirements*

Despite there being no national standard for the professional qualifications of a GAL, some personal qualifications should be universally true for GALs.<sup>41</sup> Many people go into the field of law looking to change the world: working as a GAL is an opportunity to make the world a better place by changing a child’s world for the better.<sup>42</sup> While the court does provide compensation for GALs,<sup>43</sup> the role is best suited for someone who wants to help children who would otherwise be helpless, more so than someone whose primary motivation is financial. Ultimately, the role of GAL requires someone that is willing to invest time into a case purely to represent the child’s best interest.

**V. Conclusion**

A GAL is at the “front line” of defense for children in imperfect situations with the “potential to dramatically impact the situation.”<sup>44</sup> The job of a GAL is often not an easy one, but in the difficulty lies the opportunity to make lasting change in the lives of children.<sup>45</sup> The JDR Court needs attorneys, perhaps like you, who are willing to partner with the JDR Court to protect “the welfare of the child.”<sup>46</sup> If you are interested in becoming a GAL for JDR Court, please read the final page of this newsletter for more information on the process for becoming a GAL in the Commonwealth of Virginia.

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39 *Id.*

40 *Id.*

41 See Andrea Hamilton, *Recruiting and Retaining a Diverse, Culturally Responsive Guardian ad Litem Volunteer Pool in Durham County*, Duke Univ. (“The most important qualification [for a GAL] is a sincere concern for the wellbeing of children and a continuing commitment to advocate for a child”) (internal quotation marks omitted) (2011).

42 See generally, *supra* note 22.

43 See Virginia Supreme Court Office of the Executive Secretary, *Court-Appointed Counsel Procedures & Guideline Manual: Guidelines for Payment of Guardian Ad Litem for Children*, 7-2 (2016) (“The Supreme Court has approved the policy that guardians ad litem shall be compensated \$75 per hour for in-court service and \$55 per hour for out-of-court service.”). <http://www.courts.state.va.us/courtadmin/aoc/djs/resources/manuals/ctapptatty/chapter07.pdf>

44 Mary Grams, *Guardians Ad Litem and the Cycle of Domestic Violence*, 22 *Law & Ineq.* 105, 138 (2004).

45 *Supra* note 31.

46 *Supra* note 23.

# What are the basic requirements to become qualified as a Guardian *Ad Litem* for children?

- Be an active member in good standing of the Virginia State Bar.
- Complete the seven-hour required course, “Representation of Children as a Guardian Ad Litem,” offered by Virginia CLE. There are no substitutions for this course.
- Demonstrate familiarity with the court system and a general background in juvenile law by completing one of the following:
  1. Participate as an attorney, or as a third-year law student under Part 6, § IV, Para. 15, of the Rules of the Supreme Court of Virginia, in four cases in the juvenile and domestic relations district court involving children, excluding traffic cases; or
  2. Associate with one qualified guardian ad litem in two cases in the juvenile court involving children, excluding traffic cases.
- Demonstrate proficiency in the representation of children by submitting a Nomination Certificate signed by one juvenile court judge before whom you have appeared, or by the qualified guardian ad litem whom you have assisted in 2 cases in the juvenile court.
- Send a letter to the Office of the Executive Secretary of the Supreme Court of Virginia requesting qualification, and including the judicial districts in which you would like to accept appointments as a guardian ad litem.

# Helpful Links



Forms related to cases in the Juvenile and Domestic Relations Court can be found at:

<http://www.courts.state.va.us/forms/district/jdr.html>

**Want to stay up to date with cases decided  
throughout Virginia?**

Find them at:

<https://valawyersweekly.com>

*— Newsletter designed and composed by Juvenile and Domestic Relations Court interns Ben Rigney and Nathan Seidel*