



Guardians Ad Litem Training and Appointment Process

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All citations effective as of 7/2/2021





Overview



GALs distinguished from CAC

Guardian Ad Litem (GAL)

- Appointed to represent legally incapable persons:
 - Minors
 - Mentally incompetent persons
 - Incarcerated persons

Court-Appointed Counsel (CAC)

- Appointed to represent:
 - Juvenile respondents and indigent criminal defendants (KRS 31.110)
 - Indigent adults in child welfare cases



GAL & CAC Appointments

- Some types of actions in which a Guardian ad litem (GAL) or Court-Appointed Counsel (CAC) are appointed:
- Kentucky Claims Commission (KRS 49.120)
- Adult Protection Actions (KRS 209.110)
- Dissolution of Cooperative Association (KRS 272A.12-100)
- Guardianship, Trusts, and Estates (KRS Ch. 387)
- Divorce and Custody (KRS Ch. 403)
- Dependency, Neglect, and Abuse (KRS Ch. 620)
- Termination of Parental Rights (KRS Ch. 625)
- Adoption (KRS Ch. 199)



- This presentation covers GALs appointed in:
 - KRS Ch. 199 Adoption
 - KRS Ch. 620 Dependency, Neglect, and Abuse (DNA Cases)
 - KRS Ch. 625 Termination of Parental Rights (TPR Cases)





Family Court Rules of Procedure and Practice (FCRPP)



New Statewide Rules - FCRPP 35-38

- Adopted by Order 2020-1 and effective 2-1-2020
- Sets forth the appointment, minimum training, and conduct of court-appointed counsel (CAC), including Guardians ad litem (GALs)
- Set forth the Statewide Standards of Expected Conduct for CAC (based on national standards, including ABA and National Council of Juvenile and Family Court Judges best practices standards)

New Statewide Rules - FCRPP 35-38

- FCRPP 35 – Standards for Court-Appointed Counsel
- FCRPP 36 – Appointment and Retention
- FCRPP 37 – Required Training
- FCRPP 38 – Duties Regarding Representation and Repayment
- Appendix D - Statewide Standards of Expected Conduct for Court-Appointed Counsel



GAL Appointments



DNA Appointment

DNA Proceedings (KRS 620.100)

- Court shall appoint GAL for child



TPR Appointment - Voluntary vs. Involuntary

Voluntary TPR

- GAL appointed
 - If Cabinet for Health and Family Services(CHFS) receives custody, the fee is paid by the Finance and Administration Cabinet (Finance)
 - Otherwise, petitioner pays the fee

Involuntary TPR

- GAL appointed
- Finance pays fee if CHFS is seeking post-TPR custody
 - Otherwise, the court apportions fees
- GAL files report triggering 60-day deadline for hearing

Appointment - Adoptions

Post-TPR (Public Adoption) or Adoption with Consent

- GAL appointed for the child
 - Unless it is a step-parent adoption and both parties are parties
- GAL appointed for minor parent consenting to adoptions

Adoption without Consent

- GAL does not need to be appointed
- Indigent parents who do not consent are entitled to counsel
 - If petitioner(s) is blood relative or fictive kin, Finance pays
 - If not, petitioner pays

Appointment Rules

FCRPP 36(1)-(3)

- Requires court to maintain list of appointment attorneys, along with the attorneys' contact information
- Prohibits “exclusive” or “closed” lists, by making lists open to any attorney who wants to be included and who has completed the required training
- Authorizes sanctions (including removal) for any attorney who does not comply with rules and standards
- Prohibits removal of attorney if it would harm client



Appointment Rules

FCRPP 36(4)

- Requires that, prior to appointment, the court must determine the party is indigent and the file must contain an affidavit of indigency
- Allows courts to appoint without affidavit by making specific findings of indigency, but the party must file the affidavit within 5 days of appointment or the appointment is vacated



Appointment Rules

FCRPP 36(5)-(7)

- Courts must review list every 4 years and make it available upon request
- Courts must appoint attorneys sequentially from the list unless: another attorney previously represented the party, the appointment would create a conflict, or there are unique circumstances requiring a different appointment



Fees

COURT	FAMILY	Circuit	District
ACTIONS	All Child Welfare Cases	TPR, Adoption	DNA
MAX. FEE	\$500	\$500	\$250

Fee is maximum per proceeding, Regardless of parties (siblings)





GAL Training



Statutory requirement for training

- KRS 620.100(1)(a)

(a) The court shall appoint counsel for the child to be paid for by the Finance and Administration Cabinet. **Counsel**

shall document participation in training on the role of counsel that includes training in early childhood, child, and adolescent development.

The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. The fee to be fixed by the court shall not exceed five hundred dollars (\$500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250);

FCRPP requirement for training

- (1) Each attorney seeking appointment in an action under KRS Chapters 199, 620, and 625 shall have completed the required dependency, neglect and abuse training provided by the Administrative Office of the Courts.
- (2) Each attorney shall complete a minimum of four hours of relevant legal or multi-disciplinary training every two years. Relevant legal education must include instruction on improved practice and current law regarding dependency, neglect and abuse, termination of parental rights, or related proceedings. Multi-disciplinary training must include instruction on child development, trauma-informed care and approaches, substance abuse disorder, child welfare forensics, impact of the Americans with Disabilities Act, or other matters related to practice in actions under KRS Chapters 199, 600, and 625. Court-appointed counsel shall provide proof that he or she has completed the required training to the appointing authority in each Circuit or District to remain eligible for appointments.

Legal Training

- DNA Training Workgroup reviewed and revised trainings for 2020
 - Curriculum examined and revised
 - Recruited presenters for sessions
 - Scheduled multiple events for the training



Legal Training Curriculum

- Track 1
 - Reasonable Efforts
 - Dependency, Neglect and Abuse Cases
 - Termination of Parental Rights Cases
 - Early Child Development
- Track 2
 - Later Child Development
 - Evidentiary Issues
 - Appellate Practice
 - Impact of Trauma



Legal Training

Delivery and Response

- Impact of revised trainings
 - Released 2020
 - Offered at least monthly at no cost
 - Over 500 attendees have completed the training since June of 2020
- Response
 - Overwhelmingly positive responses to questions about overall quality and usefulness of training





Other Initiatives



Other Initiatives

- Frequently Asked Questions for Foster Parents and Relative Caregivers
 - Points readers to resources
 - Provides instructions for virtual hearings
- Know Your Rights Booklet for Dependency, Neglect and Abuse Cases
 - Informational and trouble-shooting guide for participants in DNA cases - children, parents, and other parties.





Future Projects





**THANK YOU FOR YOUR TIME
AND ATTENTION**

Questions?





FOLLOW UP

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