

Guardians Ad Litem and Court-Appointed Counsel

Appointment, Duties, and Training

Chief Justice John D. Minton
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Interim Joint Committee on Judiciary
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Appointment of GALs and CACs

Guardians ad Litem vs Court-Appoint Counsel

Guardian ad Litem (GAL)

- Appointed to represent legally incapable persons
 - Minors
 - Mentally incompetent persons
 - Incarcerated parties
 - Child victims in criminal proceedings

Court-Appointed Counsel (CAC)

- Appointed to represent:
 - Juvenile respondents in public offenses and status offenses
 - Indigent criminal defendants
 - Indigent adults in child welfare cases (DNA & TPR)
 - Adult respondents in guardianship proceedings

Actions in which a Guardian ad litem (GAL) or Court-appointed counsel might be appointed:

- KRS Ch. 620 Dependency, Neglect, and Abuse (DNA Cases)
 - KRS Ch. 625 Termination of Parental Rights (TPR Cases)
 - KRS Ch. 199 Adoption
- Proposed Family Court Rules of Procedure and Practice address representation in these proceedings

Actions in which a Guardian ad litem (GAL) or Court-appointed counsel might be appointed:

Some other 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)
- Involuntary hospitalization) (KRS 202A) & Involuntary Admission (KRS 202B)
- Guardianship proceedings (KRS Chapter 387)
- Criminal proceedings (KRS 26A.140)
- Self-consent abortion proceedings (KRS 311.732)
- Sale of property of infants, wards, persons under disability (KRS 91.550, KRS 353.330, KRS 353.220, KRS 389A.030, KRS 272A.12-100)

GAL Appointments – Generally

KRS 387.305

- Must be a regular, practicing attorney
- May be appointed by court
- May be appointed upon motion of plaintiff or any friend of the defendant
- Neither the plaintiff nor his attorney shall be appointed, nor suggest name of proposed GAL
- Court may change GAL to better serve child's interests

Dependency, Neglect, and Abuse Actions (KRS 620.100)

- Court shall appoint GAL for child
- Court shall appoint separate counsel for parent who exercises custodial control if indigent
- Court shall appoint counsel for any person claiming to be a de facto custodian if indigent
- Court may appoint separate counsel for non-parent exercising custodial control if indigent

Indigency Standards

KRS 31.100(5)/Who Qualifies

“Needy person” or “indigent person” means:

- Adult or emancipated minor who, at the time of determination, is unable to provide for payment of an attorney and all other necessary expenses of representation
- Minor accused of being an habitual runaway or of being beyond control of parents and , is unable to provide for payment of an attorney and all other necessary expenses of representation
- Minor accuse of public offense (excluding non-felony motor offenses), being beyond control of parent, being an habitual truant, or being a habitual runaway, AND whose parent or custodian is unable to provide for payment of an attorney and all other necessary expenses of representation
- Minor accused of the above-listed charges, whose parent or custodian is able to provide for payment of an attorney and all other necessary expenses of representation, but a conflict exists between the parent/custodian and child to which the parent/custodian does not provide counsel or the child does not consent to the provided counsel

See also KRS 453.190 – “poor person defined” - Sliding Scale of Indigency

KRS 31.120(2)/Factors to Consider

- (a) Income
- (b) Source of income
- (c) Property owned
- (d) Number of motor vehicles owned and in working condition
- (e) Other assets
- (f) Outstanding obligations
- (g) The number and ages of his or her dependents
- (h) The poverty level income guidelines compiled and published by the United States Department of Labor
- (i) Complexity of the case
- (j) Amount a private attorney charges for similar services
- (k) Amount of time an attorney would reasonably spend on the case
- (l) Payment of money bail, other than a property bond of another, whether deposited by the person or another, to secure the person's release from confinement on the present charge of which he or she stands accused or convicted
- (m) Any other circumstances presented to the court relevant to financial status

Indigency Standards

AOC-DNA-11 Affidavit of Indigency

1. Are you employed? Yes No
2. If "Yes," are you Full time; Part time; or Seasonal/Temporary
3. How many adults are living in your household?
4. How many children are living in your household?
5. Total Household Income Per Month: \$
6. Available Cash from ALL SOURCES (bank accts, TANF, SSI, SSD, W/C, etc.) \$
7. Cash value of other resources (food stamps, WIC, etc.) \$
9. Property Ownership: Yes No Property Value: \$
10. Number of autos you own that are in working order: Total Value: \$
11. Total Value of All Other Assets: \$
12. Total Debts: \$
13. Child support obligation? Yes No Monthly Total: \$
14. Other obligations
15. Number of dependents:

Actions for Termination of Parental Rights (TPR)

Voluntary TPR (KRS 625.0405, 041)

- 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
- Indigent parent
 - Appointed a CAC
 - Finance pays if post-TPR custody goes to CHFS or if TPR not granted
 - Otherwise, court apportions fees

Involuntary TPR (KRS 625.080)

- GAL appointed
 - Fee paid by Finance
- Parents have right to counsel
 - Finance pays appointed CAC if indigent
- GAL files report triggering 60-day deadline for hearing

Adoptions

Post-TPR (Cabinet Adoption) or Adoption with Consent

- 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
- CAC appointed for indigent parent(s), if parent still has parental rights
 - Finance pays if post-TPR custody goes to CHFS or if TPR not granted
 - Otherwise, court apportions fees

Adoption without Consent

- GAL appointed
- Parents have right to counsel, CAC appointed if indigent
 - Finance pays fee if CHFS is seeking post-TPR custody
- Otherwise, the court apportions fees

Improvements to the Appointment Process

Proposed Amendments to the Family Court Rules of Procedure and Practice

- Prohibits selective appointments except in rare circumstances
- Prohibits “closed lists” of appointed attorneys
- Allows courts to remove attorneys who do not meet the standards of representation

Fees Currently Authorized by Statute

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)

Addressing Payment Concerns

Proposed Amendments to the Family Court Rules of Procedure and Practice

- Requires courts to review income and resources prior to appointing attorneys for adults
- Requires parties seeking attorneys to complete and submit the affidavit of indigency
- Prohibits multiple invoicing for the same case

**Duties of
GALs and CACs in
Child Welfare Cases**

Duty of GAL (KRS 387.305)

- The duties of a GAL shall be to advocate for the client's best interests in the proceeding through which the GAL was appointed
- This is distinguishable from the child's wishes
- An attorney representing the child (GAL) shall have full access to all records (except referral source) held by:
 - Juvenile Court;
 - Law Enforcement;
 - Social work agencies; or
 - Other record, public/private about child.
 - AOC GAL Order Form clarifies this

Ethical Responsibilities

- As attorneys, GALs and CACs must follow the Code of Professional Conduct
 - Competence
 - Diligence
 - Confidentiality
- Other specific provisions/concepts also apply

Statewide Standards for GALs/CACs

Proposed Amendments to the Family Court Rules of Procedure and Practice

- Establishes standards of conduct specifically for GALs and CACs in child welfare cases
- Requires zealous advocacy
- Requires regular communication with the client(s)
- Requires diligent and independent investigation
- Requires preparation and attendance at hearings
- Requires proactive movement toward resolution of the case

Training of GALs and CACs in Child Welfare Cases

General Training

Attorneys must complete 12 hours of Continuing Legal Education each year, with at least 2 hours related to Ethics

Additional training appropriate to the role

- “Legal training simply does not qualify lawyers to make ‘best interest’ judgments[...].” Morgan vs. Getter,
- DNA case representation requires “training appropriate to the role”. (42 U.S.C. 5106a(b)(2), KRS 620.100(1)(a))

Administrative Office of the Courts' DNA Training Program

Basic DNA Training

- DNA Statutes and Procedures
- Child Development
- FCRPP and Forms
- TPR Statutes and Procedures
- Adoption Statutes and Procedures
- Duties of the GAL/CAC

Advanced DNA Training

- ABA Standards of Practice
- Substance Use Disorder
- Trauma Informed Approaches
- Domestic Violence
- Child Development and Communication
- Ethical Responsibilities

Mandatory Education

Proposed Amendments to the Family Court Rules of Procedure and Practice

- Requires all attorneys to complete the AOC training prior to appointment
- Requires attorneys to complete additional continuing education every two years
- Requires attorneys to maintain documentation and submit proof to the court
- Allows removal for failure to meet education requirements

Other GAL/CAC Appointments

Guardianship Proceedings

- Appointment for disabled adults
 - KRS 387.305 regarding appointment and duties apply
- Per KRS 387.560:

Appointed counsel shall be entitled to compensation for services. If counsel is appointed for a poor person as defined in KRS 453.190, the court shall prescribe reasonable compensation to be paid by the county in which the proceeding is held in accordance with the complexity of the issues, the time involved, and other relevant considerations, except that appointed counsel shall not be compensated at a rate higher than sixty dollars (\$60) an hour for time spent in court and no higher than forty dollars (\$40) an hour for time spent out of court. If the petition is found to be frivolous or not brought in good faith, counsel fees shall be charged to the petitioner.

 - Usually paid by petitioner, unless indigent, in which case county pays

KRS 202A and KRS 202B Proceedings

- Court appointed counsel required unless respondent retains private counsel
 - Department of Public Advocacy usually represents respondents in these cases

KRS 26A.140(a) - Accommodations of Special Needs of Children

- Courts shall implement measures to accommodate the special needs of children, including trained guardians ad litem or special advocates, if available, shall be appointed for all child victims and shall serve in Circuit or District Courts to offer consistency and support to the child and to represent the child's best interests where needed
- No mechanism for paying these GALs

**Thank You For Your Time.
Questions?**