

The following is a suggested form for appointment of a Guardian ad Litem that contains terms that have been imposed and utilized by various courts. The order should be revised and tailored to address the issues presented in each case, and the preferences of the Chancellor.

IN THE _____ COURT OF _____ COUNTY, MISSISSIPPI

PLAINTIFF

v.

Cause Number: _____

DEFENDANT

ORDER APPOINTING GUARDIAN AD LITEM

THIS CAUSE came on to be heard this day in regard to [the request by _____] [on the Court's own Motion] for an Order appointing a Guardian ad Litem for the minor child _____ (date of birth _____), who is the minor child of the parties, _____ and _____. The Court, being fully advised in the premises, finds that _____ is a minor child under the jurisdiction of this Court who should have a Guardian ad Litem appointed in this Cause to investigate the matters alleged in these proceedings, and make a recommendation to this Court as to what would be in the best interests of these minor children. Based on the allegations made by the parties, the Court finds that the appointment of a Guardian ad Litem is [**discretionary or mandatory**] under Mississippi law.

The Court finds that _____, P.O. Box _____, _____, Mississippi 3_____, telephone (6xx) xxx-xxxx; fax (6xx) xxx-xxxx, is an attorney licensed to practice law in this state who has received the requisite training and is duly certified to serve as Guardian ad Litem for the best interests of the minor children in this case. The Court is of the opinion that _____ shall be appointed as Guardian ad Litem for the minor child _____ in this case.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Attorney _____ is hereby appointed as the Guardian ad Litem for the best interests of the minor child _____ in the above-styled cause, to investigate and ascertain the facts, and make reports and recommendations to this Court as to what is in the best interest of the minor child. Specifically, the Guardian ad Litem shall investigate _____

2. The Guardian ad Litem shall prepare a written report to this Court concerning his investigation and shall make a recommendation as to what would be in the best interest of these children, in view of the claims and allegations that have been asserted by the parties. The Guardian ad Litem's report shall be served on the attorneys for the parties and filed under seal with the clerk of court on _____. Any objections to the Guardian ad Litem's report shall be filed by the parties contemporaneously, within ten days after service of the Report. The Guardian ad Litem's Report, along with any objections that may be timely filed by the Parties, shall be considered by the Court on the hearing of the issues, as allowed under the

rules of this Court.

3. To fulfill his duties as Guardian ad Litem, David L. Calder shall have immediate access to the minor child in this case, as well as access to all otherwise privileged or confidential information regarding the minor child and the parties, without the necessity of any further Order by this Court or Release executed on behalf of the parties or the minor child.

4. Such information includes but is not limited to records of medical care and treatment, psychological care and treatment, counseling records, social services records, drug and alcohol treatment, evaluations, law enforcement records, school records, records of trusts and accounts of which the child is a beneficiary, and any other records that are relevant to the case, including court records concerning the parties or their household members.

5. As the best interest attorney for the child, upon presentation of this Order by the Guardian ad Litem, _____ to any third party, including a doctor, psychiatrist, psychologist, hospital, medical care provider, agency, organization, school, social service agency, counselor, therapist, law enforcement agency, bank or financial institution, the Clerk of this Court, the Department of Human Services, and any other person, private entity or public entity, the aforementioned persons or entities shall permit the Guardian ad Litem to inspect and/or copy any records relating to the minor children, without the necessity of formal consent or release by the minor child, or the child's parents or guardians.

6. The Guardian ad Litem shall maintain any information received from any such source as confidential, and shall not disclose such information except in reports presented to this Court and the parties in this Cause.

7. The Guardian ad Litem is hereby authorized to communicate directly with the parties

in this case, and shall not be required to communicate through counsel. The Guardian ad Litem is directed to send a copy of all correspondence with each party simultaneously to that party's counsel of record.

8. Within ten (10) days after the date of this Order, each party is hereby Ordered and directed to provide the following information in writing to the Guardian ad Litem:

- a. A brief statement of the party's position on the issues concerning child custody, placement, support, and any other matters relating to the child's welfare and best interest;
- b. A copy of each and every document in the party's possession upon which the party relies to support the party's position on child custody, placement and support, but not limited to, psychological or other professional reports or records;
- c. A list of all witnesses, including but not limited to, medical, psychological and mental-health professionals, who have information supporting the party's position on child custody, placement and support, providing for each the name address and telephone number;
- d. A list of the party's employers for the preceding five years, together with a statement of the work performed, hours and days regularly worked, and gross and net pay;
- e. A list of all counselors, psychiatrists, psychologists and other mental health professionals within the party and/or the minor child have consulted within the past five years;
- f. A list of each street address at which the party has resided within the past five

years;

- g. The names, addresses and telephone numbers of all persons who have relevant knowledge concerning the issues raised by the allegations that have been asserted by any person or entity in this case;
- h. The names, addresses and telephone numbers of references, other than relatives, with whom the guardian ad litem may discuss the party's parenting ability and relationship with the minor child.
- i. The parties are directed to supplement the productions of this information to the Guardian ad Litem as additional information becomes available.

9. Each party is hereby ordered and directed to cooperate fully with the Guardian ad Litem and to provide the Guardian ad Litem with truthful, accurate information promptly when requested to do so. This is a continuing order for disclosure, and the Court may refuse to allow the introduction into evidence of information that was not provided to the Guardian ad Litem as provided in this Order, unless good cause is shown.

10. The Guardian ad Litem shall have full access to all evidence, depositions, and discovery materials prepared or propounded in regard to these proceedings.

11. The Guardian ad Litem may interview witnesses and participate in discovery and pretrial preparations in this case as necessary for his investigation. The Guardian ad Litem shall be provided notice and have the right to appear and participate on behalf of the minor child at any hearings, interviews, investigations, depositions or other proceedings in this case.

12. The Court specifically recognizes that the Guardian ad Litem shall be designated as an expert witness under Rule 706, Miss.R.Evid. and Mississippi law, as provided in *S.G. v. D.C.*,

13 So. 3d 269 (Miss. 2009) and *McDonald v. McDonald*, 39 So. 3d 868 (Miss. 2010). Therefore, the opinions and recommendations offered by the Guardian ad Litem, and the factual basis for these opinions derived in the course of the investigation, shall be governed by Rule 702, Rule 703, Rule 803(6), (8), (24) & (25); and Rule 804 of the Mississippi Rules of Evidence, and any other applicable rules governing the presentation of expert opinions.

13. Any objections by any party to the qualifications of the Guardian ad Litem to serve as an expert witness, or to the appointment of the Guardian ad Litem as a expert witness in this case shall be filed within fourteen (14) days after the date of this Order. Failure to timely file any such objections shall be deemed a waiver of any claims that the party may have on these issues.

14. The Guardian ad Litem is specifically vested with all powers set forth in Rule 53(d) & (e) of the Mississippi Rules of Civil Procedure. Pursuant to Rule 53(g)(2), the parties are directed to serve any written objections to the Guardian ad Litem's written report within ten days after service of the report on the parties.

15. The guardian ad litem shall serve on the parties and file under seal with the Clerk of Court any supplemental written reports that may be prepared in this case, summarizing the results of the investigation and setting forth the recommendations concerning the best interest of the minor child with respect to the issues raised in the proceedings. These supplemental Reports, along with any objections that may be timely filed by the Parties, shall be considered by the Court on the hearing of the issues, as allowed under the rules of this Court.

16. The Parties shall be equally responsible for payment of the attorney's fees incurred by the Guardian ad Litem in investigating this case. The Parties shall each pay \$ _____ to the Guardian as a retainer for the services to be rendered by the Guardian

ad Litem at the rate of \$ _____ per hour in this case, plus any travel costs or other expenses that may be incurred by the Guardian ad Litem, including the costs of obtaining records from third parties, in regard to this investigation. The Guardian ad Litem shall present an itemized bill to be approved and assessed by this Court.

17. The Guardian ad Litem shall be a party to any agreement or plan entered into between the parties that affects the minor child.

18. The Guardian ad Litem shall be designated by the clerk of court as counsel of record for the minor child, and shall be served with copies of all pleadings, discovery, notices and other papers filed or served by any party.

19. The Clerk of Court is hereby directed to provide copies of this order to all parties an/or their counsel and to the Guardian ad Litem.

So Ordered, Adjudged and Decreed, this the _____ day of _____, 2012.

CHANCELLOR

Order Approved by:

Counsel for Petitioner

Counsel for Respondent