

MATERIALS FOR GUARDIAN AD LITEM TRAINING VIDEO

I. THE APPOINTMENT ORDER

Many courts and attorneys use an order that simply names the attorney who is to serve as the Guardian ad Litem. It is recommended that a more comprehensive order be proposed which provides authorization for the GAL to access confidential and private information about the minor child. Two proposed forms for appointment orders are attached to the end of this outline.

II. GETTING STARTED - - WHO TO NOTIFY

A. The GAL should file an entry of appearance to insure that the clerk of court has noted your participation in the case.

B. Contact the attorneys for the parties to arrange for interviews at mutually convenient times.

C. It is also recommended that you send a letter to any unrepresented parties that explains your role in the case and schedules an initial interview.

III. INTERVIEWING

A. MEETING WITH THE CHILD

The lawyer should meet with the child, adapting all communications to the child's age, level of education, cognitive development, cultural background and degree of language acquisition, using an interpreter if necessary. The lawyer should inform the child about the court system, the proceedings, and the lawyer's responsibilities. The lawyer should elicit and assess the child's views concerning the case in an age appropriate manner.

B. INVESTIGATION

1. Act in a culturally sensitive and competent manner, and with regard to the socioeconomic position of the parties throughout all aspects of representation
2. Review any court files concerning the child, and of siblings who are minors or are still in the home, potentially relevant court files of parties and other household members, and case-related records of any social service agency and other service

providers;

3. Review the child's Department of Human Services records, if any, mental health records, drug and alcohol-related records, medical records, law enforcement records, school records, and other records that may be relevant to the case.
4. Contact the lawyers for the parties, and any non-lawyer representatives or court-appointed special advocates (CASA workers);
5. Contact and meet with the parties, with the permission of their lawyers, and any family members who reside in the households;
6. Ask the parties to identify any other persons who have knowledge of information concerning the child and the issues raised in the case;
7. Interview other individuals significantly involved with the child, who may include, if appropriate, case workers, caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;
8. Review the relevant evidence personally, rather than relying on other parties' or counsel's descriptions and characterizations of it;
9. Stay apprised of other court proceedings, including any parallel criminal cases which may affect the child, the parties and other household members;
10. Consider unannounced visits to the home of the custodians of the child.

C. PRETRIAL PREPARATION

A. The ABA model rules for a "best interests" attorney representing children suggests the following Pretrial Responsibilities which the lawyer should consider:

1. Conduct thorough, continuing, and independent discovery and investigations.
2. Develop a theory and strategy of the case to implement at hearings, including presentation of factual and legal issues.
3. Stay apprised of other court proceedings affecting the child, the parties and other household members.
4. Attend meetings involving issues within the scope of the appointment.

5. Take any necessary and appropriate action to expedite the proceedings.
6. Participate in, and, when appropriate, initiate, negotiations and mediation. The lawyer should clarify, when necessary, that she or he is not acting as a mediator; and a lawyer who participates in a mediation should be bound by the confidentiality and privilege rules governing the mediation.
7. Participate in depositions, pretrial conferences, and hearings.
8. File or make petitions, motions, responses or objections when necessary.
9. Where appropriate and not prohibited by law, request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment.

V. THE REPORT

A. A written report may not be required by some courts, but it is recommended. Consider preparing a written report to present to the chancellor and the parties.

B. If a written report is submitted, consider asking the Court to have it filed under seal with the clerk, since it will contain confidential and sensitive information.

VI. HEARINGS

A. The ABA Model Rules suggest the following guidelines for hearings. The lawyer should participate actively in all hearings and conferences with the court on issues within the scope of the appointment. Specifically, the lawyer should:

1. Introduce herself or himself to the court as the Child's Attorney or Best Interests Attorney at the beginning of any hearing.
2. Make appropriate motions, including motions in limine and evidentiary objections, file briefs and preserve issues for appeal, as appropriate.
3. Present and cross-examine witnesses and offer exhibits as necessary.
4. If a child is to meet with the judge or testify, prepare the child, familiarizing the child with the places, people, procedures, and questioning that the child will be exposed to; and seek to minimize any harm to the child from the process.

5. Seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner and that testimony is presented in a manner that is admissible.
6. Where appropriate, introduce evidence and make arguments on the child's competency to testify, or the reliability of the child's testimony or out-of-court statements. The lawyer should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility.
7. Make a closing argument, proposing specific findings of fact and conclusions of law.
8. Ensure that a written order is made, and that it conforms to the court's oral rulings and statutorily required findings and notices.

B. ENFORCEMENT - - The lawyer should monitor the implementation of the court's orders and address any non-compliance.

C. END OF REPRESENTATION - - When the representation ends, the lawyer should inform the child in a developmentally appropriate manner.

VII. APPEALS

A. The ABA Model Rules suggest the following considerations in regard to appeals:

1. If appeals on behalf of the child are allowed by state law, and if it has been decided that such an appeal is necessary, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal.
2. The lawyer should participate in any appeal filed by another party, concerning issues relevant to the child and within the scope of the appointment, unless discharged.
3. When the appeals court's decision is received, the lawyer should explain it to the child.

B. Where appeals on behalf of the child are permitted by state law, the Best Interests Attorney should appeal when he or she believes that

1. The trial court's decision is significantly detrimental to the child's welfare;

2. An appeal could be successful considering the law, the standard of review, and the evidence that can be presented to the appellate court; and
3. The probability and degree of benefit to the child outweighs the probability and degree of detriment to the child from extending the litigation and expense that the parties will undergo.

VIII. AVOIDING BIAS

The GAL should fairly and accurately present the facts and avoid bias in favor of either party.

IX. REVIEW THE 2009 MISSISSIPPI YOUTH COURT RULES TO DETERMINE IF THEY APPLY TO THE CHANCERY COURT PROCEEDINGS.

PROPOSED FORM ORDER FOR APPOINTMENT OF GAL:

IN THE _____ COURT OF _____ COUNTY, MISSISSIPPI

IN THE INTEREST OF:
AMY JO TESTCASE, A MINOR

Cause Number: _____

ORDER APPOINTING GUARDIAN AD LITEM

THIS CAUSE came on to be heard this day, and this Court having heard and considered the same finds that **AMY JO TESTCASE** is under the jurisdiction of this Court, that Miss. Code Ann. § 43-21-121(1) authorizes the appointment of a Guardian Ad Litem in this Cause and it is in the best interests of **AMY JOE TESTCASE** that a Guardian Ad Litem be appointed.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that: ATTORNEY **BEST INTERESTS, 215 MAIN STREET, ANYTOWN, MS 39000; telephone (xxx) xxx-xxxx**, be appointed as the Guardian ad Litem for **AMY JO TESTCASE** in the above styled cause.

IT IS FURTHER ORDERED THAT:

1. **ATTORNEY BEST INTERESTS** is duly certified to act as Guardian ad Litem on behalf of the best interests of the minor child, **AMY JOE TESTCASE** in this case;
2. Upon presentation of this Order to any agency, hospital, organization, school, person or office, including the Clerk of this Court, Department of Human Services, human service agencies, physicians, pediatricians, psychologists, psychiatrists, counselors, therapists and law enforcement agencies, the aforementioned shall permit the Guardian ad Litem to inspect and/ or copy any records relating to the minor child, **AMY JOE TESTCASE**, without consent by **AMY JOE TESTCASE** or his/her/their parents;
3. The Guardian ad Litem assigned to this cause shall maintain any information received for any such source as confidential, and shall not disclose the same except in reports to the Court and the other parties to this cause;

4. The Guardian ad Litem shall, upon presentation of this Order, have full access to all evidence and reports introduced during the proceedings;

5. The Guardian ad Litem may interview witnesses;

6. The Guardian ad Litem shall be noticed and have the right to appear on behalf of the minor child, **AMY JOE TESTCASE** at any hearings, interviews, investigations, depositions or other proceedings, and no proceedings shall take place unless the Guardian ad Litem accompanies the minor child, **AMY JOE TESTCASE**;

7. The Guardian ad Litem shall be informed of all placements of the minor child/children; and,

8. The Guardian ad Litem shall be designated as counsel of record for the minor child/children, and shall be served with copies of all pleadings and notices filed by any party. The Guardian Ad Litem shall be a party to any agreement or plan entered into on behalf of or that affects the minor child, **AMY JOE TESTCASE**.

IT IS FURTHER ORDERED that the Clerk of the Court is instructed to forward a copy of this Order to **ATTORNEY BEST INTERESTS**.

SO ORDERED, ADJUDGED AND DECREED this the _____ day of _____, 20_____.

CHANCERY JUDGE

Order prepared by:

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

IN THE CHANCERY COURT OF _____ COUNTY, MISSISSIPPI

PLAINTIFF

vs.

CAUSE NO. _____

DEFENDANT

**ORDER APPOINTING GUARDIAN AD LITEM AND
AUTHORIZATION FOR RELEASE OF INFORMATION**

THIS CAUSE came on for hearing on this date for an Order appointing a Guardian Ad Litem for _____ (child's name) _____, who is a minor child of the parties, and for authorization of the Guardian Ad Litem to obtain requisite information. The Court finds as follows:

1. The appointment of a *Guardian ad litem* is necessary for a determination of this case and for the protection of the best interests of this child.

2. _____, an attorney licensed to practice law in this state, has received the requisite training to serve as Guardian Ad Litem and is willing to serve in this capacity in cases before this Court.

Accordingly, it is hereby Ordered, Adjudged and Decreed as follows:

A. _____, is hereby appointed as Guardian ad Litem to represent and protect the best interests of the minor child, _____ (name of child) _____, to diligently investigate and ascertain the facts, and make a report and

recommendation to this Court as to the best interest of this child in view of the claims and allegations by the parties.

B. Based on the allegations of the parties, this appointment of a Guardian ad Litem is _____ (insert either mandatory or discretionary) under Mississippi law.

C. To fulfill his/her duties, the Guardian ad Litem shall have access to all otherwise privileged or confidential information regarding such children without the necessity of any further Order by this Court or Release by the parties.

D. The Guardian ad Litem is hereby authorized to obtain copies of applicable reports, records or information concerning the minor children named herein from doctors, health care providers, counselors, therapists, schools, teachers, law enforcement, courts, and the Mississippi Department of Human Services, and any other persons or entities holding any reports, records or information concerning the minor children, and these persons and entities are hereby directed to release these records and information to the Guardian ad Litem upon request, and to communicate with the Guardian ad Litem concerning any matters relating to the minor child.

E. Upon presentation of this Order to any agency, hospital, organization, school, person or office, including the Clerk of this Court, Department of Human Services, human service agencies, physicians, pediatricians, psychologists, psychiatrists, counselors, and law enforcement agencies the aforementioned shall permit the Guardian ad Litem to inspect and/ or copy any records relating to the minor child and the parties in this litigation, without the requirement of consent or a release on behalf of the minor child or the parties.

F. The Guardian Ad Litem shall maintain any information received from any such source as confidential, and shall not disclose the same except in reports to the Court and the parties in

this cause.

G. The Guardian Ad Litem shall, upon presentation of this Order, have full access to all evidence and reports introduced during the proceedings;

H. The Guardian Ad Litem shall be noticed and have the right to appear on behalf of the minor child at any hearings, interviews, investigations, depositions or other proceedings and no proceedings shall take place unless the Guardian Ad Litem is present.

I. The Guardian Ad Litem shall be informed of all placements of minor child.

J. The Guardian Ad Litem shall be a party to any agreement or plan entered into between the parties which affects the minor child.

THE CLERK IS HEREBY DIRECTED TO PROVIDE COPIES OF THIS ORDER TO ALL PARTIES AND THEIR COUNSEL AND TO THE GUARDIAN AD LITEM.

SO ORDERED, ADJUDGED AND DECREED, this the _____ day of _____, 200__.

CHANCELLOR

Order approved by:
XXXXXXX
XXXXXXX