

**PROPOSED STANDARDS OF PRACTICE FOR GUARDIANS AD LITEM
IN CHILD PROTECTION AND TERMINATION OF
PARENTAL RIGHTS PROCEEDINGS**

SCOPE:

These standards apply to guardians ad litem appointed by a youth court or chancery court to protect the child's best interests in child protection proceedings under the Mississippi Youth Court Law and for proceedings under the Mississippi Termination of Parental Rights Law.

Competent, diligent, confidential, and professionally ethical conduct is essential for protecting the health, safety, and welfare of the child and for achieving a successful permanency outcome.

ARM OF THE COURT:

As an arm of the court, and a court appointed expert witness, the guardian ad litem may not serve in the dual role of advisor to the court and lawyer for the child.

The appointed guardian ad litem shall zealously, competently, and without bias, investigate, make recommendations, and enter reports as instructed by the court in holding paramount the child's best interest.

In performing these duties, the appointed guardian ad litem shall comply with all federal and state laws, whether substantive or procedural, applicable to the appointment.

A guardian ad litem must inform the court of any adverse interest to the child that might reasonably be perceived as prejudicial to the appointment.

In zealously protecting the child's best interest, "the guardian ad litem should make recommendations only after providing the court with **all material information which weighs on the issue to be decided by the court including information which does not support the recommendation.**" Ballard v. Ballard, 2017 WL 2290495 (Miss.); McDonald v. McDonald, 39 So. 3d 868, 883 (Miss. 2010) (citing S.G. v. D.C., 13 So. 3d 269, 282 (Miss. 2009).

COMMENT: The GAL should marshal evidence to be presented at the hearing on the merits, and be prepared to examine and/or cross-examine witnesses.

The GAL must also be prepared to testify, be subject to cross-examination, and to provide a summary of the investigation and the GAL's recommendation to the Court about what is in the best interest of the child.

The GAL should be aware of any limitations that the appointing judge may have placed on the matters to be investigated and the recommendations to be rendered.

DISCLOSURE OF ROLE TO THE CHILD, AND TO THE PARENTS, GUARDIANS, AND CUSTODIANS:

When conducting an investigation, the guardian ad litem shall inform the child, if of a suitable age, and the parent(s), guardian(s), or custodian(s) that the role of the guardian ad litem is to act as an arm of the court in protecting the interest of the child, and **not as the child's attorney or the parties' attorney**, and that any statements made to the guardian ad litem affecting the health, safety, or welfare of the child **will be reported to the court.**

CONFIDENTIALITY:

An appointed guardian ad litem may only disclose confidential records or information acquired in the course of official duties as allowed by the Mississippi Rules of Court, the Mississippi Code, or a court order.

COMMENT: All information gathered by the GAL during the investigation and presented to the Court must be maintained as confidential.

If a formal written report is presented in Chancery Court proceedings, you should ask that the report be filed under seal.

PERFORMANCE OF DUTIES:

In protecting the best interests of the child, an appointed guardian ad litem shall faithfully, impartially, and diligently serve the court in the performance of duties, which includes:

- Complying with all applicable provisions of the Mississippi Rules of Court, the Mississippi Code, and other laws governing mandatory training and education and the performance of duties by the guardian ad litem.
- Upholding the integrity and independence of the judiciary by observing professional, courteous, and impartial standards of conduct in the performance of duties.
- Avoiding impropriety or the appearance of impropriety in all activities.
- Not being swayed by partisan interests, public clamor, or the fear of criticism in the performance of duties.
- **Not providing legal advice** to the parents, the child, or other interested persons in the case.

- Not engaging in **unlawful ex parte communications**.
- Not making comments that could **adversely affect the right to a fair trial or hearing**.
- Conducting investigations, making recommendations, and entering reports for the protection of the child's best interests in a **complete, diligent, prompt, fair, and efficient manner at every stage of the proceedings**.
- Maintaining a **manageable workload**.
- Being **fully prepared to examine and/or cross-examine witnesses, and testify at hearings** on matters pertaining to the child's health, safety, and welfare.
- **Keeping confidential all information acquired in the performance of duties** except as otherwise provided by law or a court order in protecting the child's best interests.
- Disclosing to the court any **actual or apparent conflict of interest** arising from any relationship, activity, or circumstance that might reasonably be perceived as requiring disqualification.
- **Advising the court if there is disagreement between the child preferences and the guardian ad litem's recommendation so that the court may promptly resolve the concern**.
- Keeping an **accurate and itemized account of time spent, services rendered, and expenses incurred in the performance of duties**.
- Utilizing governmental resources, property, and funds in the performance of duties in accordance with statutory and regulatory procedures.
- **Adhering to the mandatory reporting requirements set forth in section 43-21-353 of the Mississippi Code, and as otherwise required by law, if there is reasonable cause to suspect that a child is a neglected child or an abused child**.

ENFORCEMENT PROCEDURES AND SANCTIONS:

The court having jurisdiction of the proceedings for which the guardian ad litem has been appointed may enforce these standards whenever reasonably necessary in carrying out the purpose of the Mississippi Youth Court Law or the Mississippi Termination of Parental Rights Law by contempt of court pursuant to Section 43-21-153 of the Mississippi Code, sanctions, or other appropriate disciplinary actions. **The Administrative Office of Courts may discipline a guardian ad litem for failure to comply with these standards pursuant to its policies and procedures under due process of law.**