



## NEW JERSEY STATE BAR ASSOCIATION

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May 14, 2024

Hon. Glenn A. Grant  
Acting Administrative Director of the Courts  
Hughes Justice Complex / P.O. Box 037  
Trenton, NJ 08625-0037

RE: Proposal for Amendments to Court Rules  
Governing Guardian ad Litem Assignments

Dear Judge Grant:

On behalf of the New Jersey State Bar Association, I am pleased to enclose for the Judiciary's consideration a report from our Family Law Section's Task Force on Guardian ad Litem (GAL) Assignments, which the NJSBA's Board of Trustees approved. The Task Force was formed to address concerns that GAL assignments are not consistent and uniform throughout the state. GALs can serve an important role in evaluating custody and parenting time issues, but more guidance is needed to ensure their role is clearly outlined and they are provided the authority and resources they need.

A number of Court Rule amendments are proposed in the attached report, which the NJSBA respectfully requests the Judiciary to consider. The amendments clarify when GAL appointments are appropriate, the scope of assignments, and the responsibilities of the GAL. They also provide guidance for the preparation of reports and payment of GAL fees.

Here is a summary:

1. Rule 5:8B: Change Title of Rule to "Guardian ad Litem Assignments in Child Custody and Parenting Time Matters" to clarify when those matters in which an appointment of a GAL is appropriate.

2. Rule 5:8B(a): Require that the order appointing a GAL clearly sets forth the scope of the assignment, the issues to be addressed and the specific role of the GAL (investigative only or investigative & evaluative), and require a subsequent court order to modify the scope of the assignment.
3. Rule 5:8B(b): Provide guidance in connection with minimum requirements to fulfill the GAL role, including specific guidance on where and how to interview children and others.
4. Rule 5:8B(b)(3): Clarify that the GAL is empowered to gather all relevant factual information and should be provided access to all requested documents, reports and evaluations, including medical records.
5. Rule 5:8B(b)(8): Establish a process by which the GAL can modify the scope of the initial order.
6. Rule 5:8B(c): Provide guidance about specific issues to be addresses in a GAL report, distinguishing between reports where the GAL is acting in an investigative capacity versus an evaluative role, and require that the GAL be available to testify on the GAL report.
7. Rule 5:8B(e): Designate a GAL report as confidential to be released to parties only upon court order with an appropriate protective order or other conditions in place.
8. Rule 5:8B(h): Provide GALs with immunity from civil liability for acts performed within the scope of their duties.
9. Rule 5:8B(i): Require disclosure of a GAL's professional billing practices in addition to their actual fees, including postage, copying, court filings, overnight mail and other costs, and establish a timeframe for litigant responses to GAL fee applications.
10. Official Comments to Rules: Specifically distinguish between GALs and "Law Guardians," clarifying that Law Guardians are court-appointed counsel providing legal advocacy services for the child while GALs provide fact-finding and investigative services for the court.

11. Appendix – Create a statewide roster of approved GALs to ensure trained and experienced professionals are appointed as GALs; establish minimum mandatory qualifications; impose training and CLE requirements; clarify the need for impartiality; and address conflicts of interest.

12. Rule 5:8-1&-3: Clarify when a GAL should be appointed.

13. Rule 5:8-4: Clarify that a judge should determine whether and under what conditions a GAL report should be submitted to the parties.

14. Include a form for an Order Appointing a Guardian ad Litem pursuant to Rule 5:8B delineating the scope of the appointment, the duties and responsibilities of the GAL, the authority of the GAL, the parties' need to provide the GAL with access to information, details and expectations in connection with the GAL's written report, the extent of the GAL's immunity, and information about the GAL's fees.

Each of these recommendations is discussed more fully in the attached Report, and specific language is proposed for the Court Rule amendments.

The NJSBA thanks the Judiciary for considering the report and the proposed amendments, and remains ready to provide any additional information, analysis or assistance that is needed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim McGoughran".

Timothy F. McGoughran, Esq.  
President

cc: William H. Mergner Jr., Esq., NJSBA President-Elect  
Angela C. Scheck, NJSBA Executive Director

**New Jersey State Bar Association - Family Law Section**  
**Family Law Executive Committee**  
**Report from the Task Force on Guardian ad Litem Assignments**  
**Proposed Amendments to Rule 5:8B, Rule 5:8-1, Rule 5:8-3, and Rule 5:8-4**

In 2021, the Executive Committee of the Family Law Section of the New Jersey State Bar Association created a Task Force on Guardian ad Litem Assignments (hereinafter “the GAL Task Force”). Our mission was to examine the role of guardians ad litem in custody and parenting time matters and evaluate whether change and/or clarification is needed. Questions we examined included: In what circumstances do judges appoint guardians ad Litem? Is the role of the guardian ad Litem different on a case-by-case basis? Is the scope of the guardian ad Litem’s investigation clear to all at the outset of the appointment? Who is being appointed to serve as a guardian ad Litem? Do people appointed as guardians ad litem have any special training, experience or expertise? Are guardian ad litem reports limited to factual investigations or do they include recommendations on the ultimate issues of the case? Are reports disseminated under protective orders? These are but some of the questions we examined and debated.

The members of the GAL Task Force include a retired family court judge, as well as attorneys, mental health professionals and dual degree professionals (law and mental health) with substantial experience serving as guardians ad Litem in numerous counties in the State and representing clients in matters involving guardians ad litem. GAL Task Force members have also been involved in other roles in cases in which a guardian ad Litem was appointed (e.g., custody evaluator, parenting coordinator, mediator), or represented clients in matters in which the appointment of a guardian ad Litem was not made but would have been useful. As a result of the GAL Task Force’s research and discussion over the past two years, we propose a number of amendments to the current rules, specifically, R. 5:8B, and R. 5:8-1, 5:8-3, and 5:8-4.

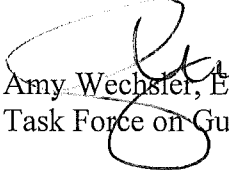
This report has three sections: 1) our rationale for the proposed amendments; 2) the proposed amendments showing the deletions and additions to the existing rules with a new appendix; and 3) the proposed amendments with with edits “accepted” for easier reading, along with the new appendix. The Task Force is also preparing two proposed forms of order – one for the appointment of the guardian ad litem and the other a protective order with respect to dissemination of the guardian ad litem’s report. We expect to submit these shortly for consideration by the Family Law Executive Committee.

The GAL Task Force wishes to express our gratitude to the leadership of the Family Law Executive Committee for supporting our efforts to examine and hopefully clarify and improve the quality of Guardian ad Litem assignments throughout the State. Special thanks to the GAL Task Force members for the substantial time, knowledge, expertise and wisdom they have devoted and contributed to this endeavor.

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Respectfully submitted,

  
Amy Wechsler, Esq., MSW, Chair  
Task Force on Guardian ad Litem Assignments

**Rationale for Guardian ad Litem Task Force Proposed Amendments to  
R. 5:8B, 5:8-1, 5:8-3 and 5:8-4**

**RULE 5:8B**

Rule 5:8B authorizes judges to appoint a guardian ad litem (“GAL”) to represent the best interests of a child in cases in which custody or parenting time is an issue. The role of a GAL is distinct from a law guardian, who represents the child as an advocate. The GAL’s role is also different from that of an attorney appointed to represent the child under R. 5:8A. The Official Comment to R. 5:8B provides that the GAL’s services are “to the court on behalf of the child.” Additionally, the Official Comment makes clear that the GAL “acts as an independent fact finder, investigator and evaluator as to what furthers the best interests of the child.” Thus, the GAL effectively serves as the “eyes and ears” of the court, performing an investigation regarding the custody/parenting time issues presented, and ultimately issuing a “written report” to the court that sets forth “findings and recommendations and the basis thereof…” on a broad spectrum of custody and parenting time issues.

Rule 5:8B distinguishes between two primary functions of a GAL. If the purpose is independent fact-finding and investigation, the GAL can be an attorney, mental health professional, or other “appropriate person.” If the primary purpose is for the GAL to “act in the capacity of an expert,” the appointee should be “from the appropriate area of expertise.”

The concept of the GAL serving in an investigatory and fact-finding role implicates R. 5:8-1-4, which authorize a judge to order an “investigation to be made by the Family Division of the character and fitness of the parties, the economic condition of the family, the financial ability of the party to pay alimony or support or both, and the parties’ homes” which involves a home inspection. This process, which has been available for over 50 years, is used on a limited basis, generally for home inspections. In some counties, the investigation permitted under R. 5:8-1 is not used at all due to staffing or other issues. The GAL Task Force did not receive any information to suggest that the investigation permitted under R. 5:8-1 is used to assess parental character and fitness, even though that is one of the areas of investigation set forth in the rule.

The GAL Task Force learned that GAL assignments are not made uniformly or with a high level of consistency throughout New Jersey. For example, some judges are comfortable appointing GALs, and expect them to make recommendations as to residential custody, legal custody, parenting time, and all other aspects of parenting plans. Some orders of appointment direct the GAL to investigate all custody-related issues, without specifying either the rationale for the appointment, the scope of the appointment, or the areas of investigation, which in some instances may warrant investigation of only narrow issues. Other judges may not have experience with GALs and how they can be useful to the court and so they do not appoint them at all. The existing rule provides only limited guidance for the performance of the guardian ad

litem role. Nothing in the rule or other administrative, statutory, or case law authority indicates whether there are any qualifications for individuals to serve as a GAL.

Because the report submitted by a GAL is often relied upon by the court for factual information, and because the GAL's analysis and recommendations are given serious consideration, the GAL can be critical to the ultimate determination of custody and parenting in a given case. Without more guidance as to how the role should be performed, who should be deemed "qualified" to perform it, and what should be included in the GAL's report, the Task Force has received information suggesting that attorneys (even law students) have been appointed who lack the requisite knowledge or experience to not only gather facts and conduct interviews of family members, including children, but also to assess the family dynamics in a case, analyze the statutory factors that must be considered in custody determinations, and make sound recommendations that are in the best interests of the children.

The GAL Task Force proposes several amendments to R.5:8B to add clarity and uniformity to these appointments, the scope of assignments, the responsibilities of the GAL, and provide guidance for the preparation of reports. The GAL Task Force further proposes amendments to R.5:8-1, 5:8-1, and 5:8-4, which authorize courts to order family division staff to conduct certain investigations.

#### **Rationales for proposed revised and new provisions of R.5:8B**

The Task Force proposes changing the title of the rule to "Guardian ad Litem Assignments in Child Custody and Parenting Time Matters." This is to avoid confusion and to differentiate these assignments from other statutes and/or court rules referencing guardian ad litem in other contexts.

**R. 5:8B (a)(1) and (2)**. Regarding GAL appointments, the proposed amendment would require that the order appointing a GAL clearly set forth the scope of the assignment, indicating the matters to be investigated and for which recommendations are sought. Lack of clarity can lead to confusion, as well as to the GAL addressing issues beyond what is necessary in a given matter or assuming a role outside the scope of what the assignment was intended to accomplish. This not only can create confusion, but it can add considerable potentially unnecessary cost to the process.

In making this recommendation, we note that not all GAL assignments require a full custody and parenting time investigation. GALs also are appointed to investigate and make recommendations on narrowly defined issues or sets of issues. For example, a GAL may be appointed to address education, health care, or a child's participation in activities. The investigation of these issues may involve parental decision-making (i.e., aspects of legal custody) but would have no bearing on the parenting schedule.

Because GALs are accorded quasi-judicial immunity, this immunity would attach only to those services that fall within the scope of the GAL appointment and not to activities undertaken by the GAL that are beyond that scope. If orders of appointment are unclear, the GAL risks exceeding their authority and being subject to potential claims. Thus, the scope of the appointment must be clear. If the initial assignment is narrowly focused, however, the Task Force urges that, when appropriate, the scope can be expanded or modified during the course of the assignment, and this is addressed in the proposed R. 5:8B(8), below.

**R. 5:8B(b)** Duties of the Guardian ad litem.

**R.5:8B(b)(1) and (2)**. The proposed amendment provides guidance in connection with certain minimum requirements to fulfilling the GAL role. These include observing children where they reside, conducting face-to-face interviews with the child, and holding both separate and joint interviews with parents based upon the GAL's discretion, while prohibiting joint interviews when there is a domestic violence restraining order in effect between the parties. The amendment clarifies that collateral sources interviewed by the GAL should have personal or first-hand knowledge regarding the issues/parties to be investigated/evaluated. This is intended to minimize the use of collateral contacts who lack personal knowledge and whose input and information may, therefore, be unreliable, cumulative, or based on hearsay.

**R. 5:8B(b)(3)**. The GAL Task Force recommends amending this provision to clarify that the GAL is empowered to gather all relevant factual information and have access to all requested documents, reports, and evaluations, including but not limited to, medical and mental health reports, professional notes, professional evaluations, DCP&P records, IEPs, and/or related school and educational reports when these documents, reports, and evaluations pertain to the assignment. The parties should be required to sign necessary releases, including HIPAA authorizations. We stress that these amendments would not preclude a party from objecting to a particular authorization and/or the production of a specific document if the information/document sought is outside the scope of the GAL's assignment.

The rationale for this amendment is to enable the GAL to have access to all information that is necessary to perform a thorough investigation and make recommendations relative to the appointment. Without access to all relevant information, the GAL's goal of making appropriate recommendations in the best interests of the child will be hindered. Typical exclusionary laws (e.g., legal privileges, etc.) must not supercede what is in the best interests of the child. The following points justify these provisions:

- Parental rights are not absolute, but are subordinate to the State's *parens patriae* power, and must yield to the welfare of the child; thus, the Superior Court has the authority to determine whether it is in the best interests of a child



involved in a custody dispute to have confidential and privileged therapy records revealed to his or her parents. As such, disclosure of such records to a GAL is even more compelling.

- It is acknowledged that where no statutory or other traditional exceptions to the privilege apply, the court should not ordinarily order disclosure of therapy records, even for in camera review by the court, without a prima facie showing that the psychologist-patient privilege should be pierced under the Kozlov tripartite test: (1) there must be a legitimate need for the evidence; (2) the evidence must be relevant and material to the issue before the court; and (3) by a fair preponderance of the evidence, the party must show that the information cannot be secured from any less intrusive source. *Kinsella v. Kinsella*, 150 N.J. 276, 285 (1997).
- The Task Force submits that the proposed amendments shall now provide that the Kozlov tripartite test (or such similar standard as may be applicable to any healthcare or DCP&P legal privilege or confidentiality) will be satisfied by the determination by a validly appointed GAL that the information/documentation is necessary to his/her investigation and/or recommendation (even if the information/documentation is otherwise privileged or confidential). Note that privilege/confidentiality may be still maintained outside the proceeding via a Protective Order under Rule 4:10.
- One consequence of the special role of the courts in custody disputes is that evidentiary rules that are accepted as part of the adversarial process are not always controlling in child custody cases. For example, the rules of evidence are somewhat relaxed in trials having to do with a determination of custody of a child where it is necessary to learn of the child's psychology and preferences. *Kinsella v. Kinsella*, 150 N.J. 276, 285 (1997).
- In implementing the best-interest-of-the-child standard, courts rely heavily on the expertise of psychologists and other mental health professionals. *Kinsella v. Kinsella*, 150 N.J. 276, 285 (1997). As such, this information/documentation should be available to the GAL (and the Court).

**R.5:8B(b)(8)**. Expanding/Modifying the Scope of the GAL Assignment. An initial order of appointment may specify a narrowly defined scope, or alternatively, may afford the GAL broad investigatory powers such as the “overall best interest of the children.” In the course of an investigation and after the receipt of information, a GAL may discover that the actual issue/concern may be different from what the court initially anticipated, or it may be broader or narrower than the scope set forth in the order of appointment.

The GAL Task Force recommends a process by which the GAL can obtain court approval to modify the scope of the initial order, on notice to the parties and counsel. This will allow the judge to tailor the assignment to meet ongoing case-specific objectives, while providing the

parties and counsel with the ability to be heard on, consent to, or object to the GAL's request to modify the scope.

**R. 5:8B(c)**. Reports. Subparagraph (a) of the current rule regarding the appointment of a GAL provides only that the GAL "shall file a written report with the court setting forth findings and recommendations and the basis thereof..." In the absence of more specific guidance, GAL reports differ widely in scope, may not have adequate factual details included, and may/may not analyze the proper factors to support/explain any conclusions or recommendations. The proposed amendment (proposed subsection c)) provides guidance about specific issues to be addressed, establishes minimum requirements for all GAL reports, and stresses the importance of relating the report to the scope of the assignment as specified in the order of appointment or any subsequent orders. It also specifies minimum requirements and distinguishes between reports issued in cases in which the GAL is acting in an investigative capacity, versus those cases in which the GAL performs an evaluative role. In an investigative appointment, the report shall limit its focus to the issues presented, the GAL's findings and the basis for those findings, while identifying the sources of information relied upon. For evaluative appointments, the rule adds the further requirement that the report "set forth an analysis of all relevant statutory factors under N.J.S.A. 9:2-4, and provide substantive recommendations..." In this way, the GAL's recommendations are tied not only to the reported factual findings, but also to the legal standards that apply to the custody and parenting issues under consideration.

The proposed amendment requires all GAL reports to include information about specific issues, such as whether the parties cooperated with the investigations, and whether the GAL was able/unable to access relevant information. Further, the proposed rule directs the GAL to opine as to whether the child's preference is expressed voluntarily or as coached by an adult. The requirement to consider adult influence on the client sheds light on the "wishes of the child" and whether these are accurately conveyed to the court, particularly when a parent insists that the child's articulated preferences should be *determinative* relative to the issue in question.

Delineating the issues that must be addressed in every GAL report will establish consistent standards and expectations for judges, attorneys, and litigants. Since litigants and attorneys are often confused about the role of the GAL, it is important that these standards be incorporated into the court rule, rather than only included as part of training for GALs, so that all parties understand from the outset what the GAL will be addressing and the level of detail that can be expected in the report.

**R. 5:8B(h)**. Immunity. Rule 5:8B provides that "[t]he services rendered by a Guardian Ad Litem shall be to the court on behalf of the child." The official comment to the rule notes that "the Guardian Ad Litem acts as an independent fact finder, investigator and evaluator as to what furthers the best interests of the child." GALs are appointed to serve the court and only in situations in which the court has determined the need for its own independent fact-finder to

conduct an investigation and advise as to a child's best interests. Cases warranting the appointment of a GAL are often high-conflict, with a history of extensive litigation, and involve parties/children with mental health issues, domestic violence, and other adversarial and combative conduct. Judges, law clerks and law guardians are integral to the judicial process and have immunity so they can remain independent and unbiased, and not be subject to retaliation by disgruntled parties. The GAL, in serving the best interests of the child, also serves as an integral part of the judicial process, and should be accorded the same immunity as a law clerk or law guardian. See Delbridge v. Off. Of Pub. Def., 238 N.J. Super.288 (Law Div. 1989), aff'd o.b., sub nom., A.D. v. Franco, 297 N.J. Super.1 (App. Div. 1993), certif. denied, 135 N.J. 467 (1994). See also Satz v. Solomon, No. A-1042-22 (Decided December 12, 2023)

**R. 5:8(B)(j)**. Fees. The proposed amendment regarding "costs/fees" requires disclosure of the GAL's standard professional billing practices, which may include costs such as postage, copying, court filings, overnight mailing services such as NJLS, UPS, FedEx, and other like costs. This places everyone on notice at the outset of the appointment of any fees charged by the GAL's firm in addition to the GAL's hourly rate. The proposed amendment also allows the Court to not only require payment of a retainer to the GAL, but also to require interim payments upon submission by the GAL of a certification of services, on notice to the parties.

The rule in its present form provides only for a certification of fees when the assignment has been completed. This is often problematic, as it forces the GAL to perform extensive services without payment beyond the retainer, carrying a sizable receivable for the duration of the matter, which can span a term of many months, if not years. All too often, the amount owed vastly exceeds the retainer. None of this comes as a surprise to the parties, since they receive monthly billing statements.

Some matters resolve and settle unbeknownst to the GAL, resulting in the submission of fee certifications in "closed" matters and the entry of fee awards long after a case has been resolved. If the matter has closed, the GAL may simply not be paid, despite having rendered extensive required services and submitted a report. Even when fees are awarded, litigants do not always pay. Requiring the GAL to obtain a judgment and pursue their fee through legal process places an added burden on those who have served the court and completed their assignment. This absence of an ability to be properly and timely compensated for their services has a chilling effect on practitioners' willingness to accept these appointments.

These problems can be mitigated by permitting the submission of interim certifications of services and requests for additional retainers and payments. This places the court and the parties on notice of the fees incurred in real time and allows the judge to address them so the GAL is not carrying a substantial receivable over an indefinite period of time. It should be noted that as an anecdotal matter, the GAL Task Force understands that some judges do accept interim fee certifications and award fees and additional retainers as a matter progresses, but

this is not provided for in the current rule. The GAL Task Force urges that this be incorporated into the rule so that it is uniformly applied.

The Task Force proposes that the failure of one or both parties to pay required retainers or interim fees should be a basis for the GAL to be relieved of his or her duties.

The GAL Task Force further urges establishing a time frame for litigants to respond or object after receiving the GAL's certification and application for fees. The current rule does not indicate a time frame, which sometimes results in an open-ended period to respond, during which time the matter may have been concluded and, in some instances, the judge reassigned to another division.

The Task Force proposes adding a time limit of seven (7) days for parties to respond to a GAL fee application. We note there is applicable precedent in other court rules for this time frame, which is the same period set forth for a response by the parties in similar fee applications pursuant to R.4:26-2(c) and 4:87-7 in the Civil Division and Probate Parts respectively.

**Appendix (rationale for including qualifications and training requirements)**

Currently, there are no requirements to serve as a GAL in New Jersey, despite the gravity of the assignments and the breadth of custody and parenting time recommendations GALs are often called upon to make. The Official Comment for the current R. 5:8B provides limited guidance regarding qualifications for someone to serve as a GAL. Pursuant to the Official Comment, the GAL can be an attorney, a social worker, a mental health professional or other appropriate person. If the primary function of the GAL is to act in the capacity of an expert, then the court should ordinarily appoint a GAL from the appropriate area of expertise. Whether serving in a purely investigative role or in a hybrid investigative/evaluative role, the conclusions and recommendations of the GAL can be far-reaching and have a significant and permanent impact on the lives of children and the functioning of families.

The rationale for subsection (a) of the Appendix to the proposed R. 5:8B is to help ensure that judges have access to trained and experienced professionals when making GAL appointments. The Task Force proposes the creation of a Statewide Roster of Approved Guardians ad Litem for Children in Custody and Parenting Time Matters. Subsection (a)(1) of the Appendix expands on the necessary criteria of the professionals previously set forth in the Official Comment and identifies minimum mandatory qualifications professionals must possess in their specified field, including several years of experience working with families in crisis and in high conflict custody cases.

GALs are called upon to exercise judgment and make viable recommendations as what custody and parenting time is deemed to be in a child's best interests. Sound, reliable judgment about

parental functioning and a child's future requires skills that are acquired through practice and experience, as well as specialized training. The importance of experience cannot be overemphasized. Task Force members were troubled to learn that, in some vicinages, individuals who have just been admitted to practice law and who have no experience, as well as students still in law school are being appointed to serve as GALs in contested custody matters. While this may be done as a cost-savings measure, it minimizes the importance of custody and parenting time determinations, does not provide adequate guidance to the judges who seriously consider the resulting recommendations and it is a disservice to the children whose interests we are duty-bound to protect.

In addition to several years of experience, subsection (a)(2) of the Appendix provides for a minimum 20-hour training requirement, as well as a 4-hour bi-annual continuing education requirement, to provide professionals who seek appointment as a GAL with ongoing critical subject matter training as well as training in the more functional aspects of the role, such as interviewing techniques and report drafting. The subsection would also allow a one-year grace period for otherwise qualified candidates to complete 20 hours of relevant coursework to remain on the Statewide Roster.

We note that, in order to serve on the Roster of Economic Mediators in Family Matters, the Supreme Court requires seven years of experience practicing law, serving as a mental health professional, or in other approved professions, followed by a mentorship with an experienced mediator. This is in addition to active licensure in the mediator's chosen field and 40 hours of mediation training. The stakes in a GAL assignment far outweigh those in post-MESP mediation, and, as such, call for at least a comparable amount of experience.

Task Force members are in the process of creating a training program that would meet the requirements set forth in the proposed Appendix. If our proposed amendments are adopted, training should be available so that candidates can meet the requirements to be included on the Roster. Even if our proposal is not adopted, we believe there is a need to educate attorneys and mental health professionals, as well as judges, about the appropriate utilization of GALs and to encourage uniform and reliable standards for GAL assignments.

The Task Force anticipates that, to the extent the provisions of this Appendix may be adopted, the Supreme Court Family Practice Committee ("Committee") may determine that they should be in a directive from the Administrative Office of the Court rather than included as an Appendix to the Court Rules. This would be similar to how the Committee addressed the Appendix that was included in the Family Law Executive Committee's parenting coordination rule proposal.

### **RULE 5:8-1**

Rule 5:8-1 permits the court to order Family Division staff in child custody matters to conduct an investigation “of the character and fitness of the parties, the economic condition of the family, the financial ability of the party to pay alimony or support or both, and the parties' homes, which shall be limited to a factual description of the home where the child will reside or visit, appropriate child safety precautions in the home, number of household members and their relationship to the child, and criminal record checks for both parties.” Based on feedback from family division staff in several vicinages, with one or two exceptions, it appears that these investigations are rarely conducted, and it is unclear whether this is due to staffing concerns or judges not seeing a need for them.

Rule 5:8-1 also provides that, when parental character and fitness is an issue, recommendations must be made by a mental health professional qualified by “licensure, experience, and training.” Character and fitness, however, may not involve psychological, psychiatric or other mental health issues. The Task Force members believe that this is overly restrictive and that both family law professionals and mental health professionals who have experience working with difficult or high-conflict child custody matters can conduct these investigations and are qualified to make these recommendations. GAL assignments, which often call for similar investigations, assessments and recommendations, are performed by experienced family lawyers as well as by mental health professionals. This should also be permitted under R.5:8-1.

The Task Force proposes amending R.5:8-1, a) so that when this type of investigation is deemed appropriate, and the court does not have adequate resources or seeks investigators with more specific expertise and training, the judge has the option of assigning a GAL pursuant to R. 5:8B, and b) so that judges have discretion to appoint experienced attorneys to conduct this type of investigation, including making recommendations as to parental character and fitness.

### **RULE 5:8-3**

To be consistent with the proposed amendment to R.5:8-1, the Task Force proposes including investigations pursuant to R.5:8B as an option for judges.

### **RULE 5:8-4**

This rule requires investigation reports to be submitted to the parties. To protect the privacy of families, and because these reports can contain sensitive and personal information, the Task Force proposes that these reports be provided under protective orders and conditions set in the discretion of the judge.

**Task Force on Guardian ad Litem Assignment**  
**Proposal to Amend N.J. Court Rules 5:8B, 5:8-1, 5:8-3, and 5:8-4**  
**(showing edits to existing rules – new wording underlined, crossed-out wording deleted))**

Rule 5:8B Appointment of Guardian ad Litem for Children in Custody and Parenting Time Matters

(a) Appointment. In all cases in which custody or parenting time/~~visitation~~ is an issue, a guardian ad litem may be appointed by court order to represent the best interests of the child or children if the circumstances warrant such an appointment. The services rendered by a guardian ad litem shall be to the court on behalf of the child. A guardian ad litem may be appointed by the court on its own motion or on application of either or both of the parents. ~~The guardian ad litem shall file a written report with the court setting forth findings and recommendations and the basis thereof, and shall be available to testify and shall be subject to cross-examination thereon.~~ In addition to preparation of a written report and the obligation to testify and be cross-examined thereon, the duties of a guardian may include, but need to be limited to, the following:

(1) When ordering the appointment of a guardian ad litem, the court shall specify the scope of the assignment, the issues to be addressed, and whether the guardian ad litem's role is:

(A) Investigative only with limited recommendations, or

(B) Investigative and evaluative, which shall include analysis of all relevant factors under N.J.S.A. 9:2-4 and recommendations that are in the best interests of the child(ren) on the issues for which the appointment was made.

(2) The guardian ad litem shall not perform services outside the scope specified in the order of appointment or as the court may subsequently define. Any modification of the scope of assignment shall be on leave of court. In no event shall the guardian ad litem serve as a mediator for the parties.

(b) Duties of the Guardian ad Litem.

1. Interviewing the children and parties. Children are to be observed in the residence(s) where they reside or have parenting time, or at a location designated by the guardian ad litem. Face to face interviews are to be conducted with children over the age of three years old. The guardian ad litem is to interview parties, parents and legal guardians, which may be separate or joint meeting, in the guardian ad litem's discretion, but joint interviews shall not be conducted for parties who have an active domestic violence restraining order between them.

2. Interviewing other persons possessing relevant information. The guardian ad litem, in his/her discretion, may interview other persons who have personal knowledge about the child(ren), parent/guardian, or family regarding the issues specified in the order of appointment.

3. Obtaining relevant documentary evidence as to the specified issues. The guardian ad litem shall gather factual information and documentation relevant to the issues specified in the order of appointment, and shall have unfettered access to all requested documents, reports and evaluations relative to the parties and child(ren) including, but not limited to, medical and mental health reports, professionals' notes, professional evaluations, DCP&P reports and evaluations, and, where relevant, to IEPs and related school or education reports and documentation. The parties shall execute releases to permit the guardian ad litem access to all relevant documentation from agencies/entities in possession of records and information relating to the child(ren) and/or the parties relative to the scope of the guardian ad litem's assignment. The order of appointment shall state that the guardian ad litem is regarded as a HIPPA (Health Insurance Portability and Accountability Act) representative for the child(ren) and shall have the right and power to examine all health and mental health records pertaining to the child(ren).

4. Conferring with counsel for the parties. The guardian ad litem, in his/her discretion, may confer with counsel for the parties.

5. Conferring with the court on notice to counsel. On notice to counsel and to parties who are self-represented, the guardian ad litem may confer with the court.

6. Obtaining the assistance of independent experts, on leave of court. (Rule 5:3-3)

7. Obtaining the assistance of a lawyer for the child (Rule 5:8A) on leave of court.

8. Such other matters as the guardian ad litem may request, on leave of court. In the event the guardian ad litem determines that the scope of the assignment should be revised or expanded, he/she shall so advise the court and request modification of the scope of the assignment, on notice to counsel and self-represented parties, and any such modification shall be set forth in a court order.

(c) Report. The guardian ad litem shall file a written report with the court setting forth findings and recommendations and the basis thereof on the issues specified in the order of appointment or in any subsequent orders entered modifying the scope of assignment.

(1) Investigation. The guardian ad litem's report shall indicate the findings and results of the investigation of the issues presented, and shall include the factual basis for such findings, including all sources of information relied upon.

(2) Investigation and Evaluation. If the appointment is evaluative, the guardian ad litem's report shall include the requirements under (c)(1) above, and shall further set forth an analysis of all relevant statutory factors under N.J.S.A. 9:2-4, and provide substantive recommendations on the issues specified in the order of appointment and any subsequent orders, and the basis therefor.

(3) All reports. Whether investigative only, or investigative and evaluative, in addition to the requirements of (c)(1) and (2) above, the guardian ad litem's report shall include



information as to each party's cooperation and identification of any limits in the information the guardian ad litem was able to obtain.

(d) Testimony/Appearances by the Guardian ad Litem. The guardian ad litem shall be available to testify and shall be subject to cross-examination on his/her report. The guardian ad litem shall be provided with reasonable notice before any action is taken by the court affecting the child(ren), and is entitled to be present at any depositions, hearing or other proceedings concerning the child(ren).

(e) Confidentiality. The guardian ad litem's report shall be released to the court which may release it to counsel or the parties under a protective order or other conditions the court imposes. The guardian ad litem shall not release the report to counsel or the parties except as ordered by the court. In no event shall the parties and their counsel be prohibited from reviewing the report; however, self-represented parties shall review the report at the courthouse. Any protective order or conditions entered by the court shall survive entry of judgment unless otherwise specified by the court.

(b) (f) Objection or Refusal of Appointment. A proposed guardian ad litem shall have the right to consent or to decline to serve as such, notice of such decision to be in writing to the court with copies to counsel and self-represented parties. The parties shall have the right to object to the person appointed as guardian ad litem on good cause shown.

(e) (g) Term. The term of the guardian ad litem shall be coextensive with the application pending before the court, and shall end on the entry of a judgment of divorce, dissolution of a civil union or termination of a domestic partnership or an order terminating the application for which the appointment was made, unless continued by the court. The guardian ad litem shall have no obligation to file a notice of appeal from a judgment or order nor to participate in an appeal filed by a party.

(h) Litigation Privilege/Immunity. In all actions in which a guardian ad litem is appointed by the court, the guardian ad litem will be engaged in a quasi-judicial role and shall be entitled to absolute immunity from civil liability, consistent with applicable New Jersey law for acts performed within the scope and duties of the guardian ad litem as set forth in the court's order of appointment or subsequent order of the court.

(d) (i) Fees. The hourly rate to be charged by the guardian ad litem and any other costs/fees generally and customarily charged by the guardian ad litem's firm shall be fixed in, or as an attachment to, the initial appointing order and the guardian ad litem shall submit informational monthly statements to the parties. The court shall have the power and discretion to fix and to allocate responsibility for payment of the guardian ad litem fee between the parties of a retainer in the appointing order, interim payments as may be requested by the guardian ad litem, and the final payment of the guardian ad litem fee. The guardian ad litem shall submit a certification of services on notice to the parties for any interim fee requests, and at the conclusion of the matter, on notice to the parties, who after which the parties will thereafter be afforded seven days to respond prior to the court fixing the final fee. Failure of one or both parties to pay the required retainer or interim court-ordered fees shall be a basis to relieve the guardian ad litem from the assignment.

### **Official Comment for Rules 5:8A and 5:8B**

The purpose of Rules 5:8A and 5:8B is to eliminate the confusion between the role of a court-appointed counsel for a child and that of a court-appointed guardian ad litem (GAL). The Supreme Court's Family Division Practice Committee in its 1987-1988 Annual Report distinguishes the roles.

A court-appointed counsel's services are to the child. Counsel acts as an independent legal advocate for the best interests of the child and takes an active part in the hearing, ranging from subpoenaing and cross-examining witnesses to appealing the decision, if warranted. If the purpose of the appointment is for legal advocacy, then counsel would be appointed. Similarly, "law guardians," who are attorneys regularly employed by the Office of the Public Defender and appointed pursuant to N.J.S.A. 9:6-8.21.1.(d) to act on behalf of children in abuse or neglect cases and in termination of parental rights cases, should act as counsel for the child pursuant to R.5:8A rather than in the capacity of a GAL pursuant of R.5:8B. See Matter of M.R., 135 N.J. 155, 174, 638 A.2d 1274, 1283 (1994).

A court-appointed guardian ad litem's services are to the court on behalf of the child. The GAL acts as an independent fact finder, investigator and, when deemed appropriate by the court, evaluator as to what furthers the best interests of the child. The GAL submits a written report to the court and is available to testify. If the purpose of the appointment is for independent investigation and fact finding, then a GAL would be appointed. The GAL can be a licensed attorney or mental health professional or other appropriate person who possesses the requisite training and experience set forth in the rule (or administrative guidelines). If the primary function of the GAL is to act in the capacity of an expert, then the court should ordinarily appoint a GAL from the appropriate area of expertise.

These rules are not intended to expand the circumstances when such appointments are to be made; neither are these appointments to be made routinely.

APPENDIX

(a). **Qualifications of Guardians ad Litem.**

(1). Professional Qualifications

(A). Attorneys. In order to serve as a guardian ad Litem, an attorneys must have the following qualifications:

- (i) A juris doctorate (or an equivalent law degree);
- (ii) Be admitted to practice law in the State of New Jersey for at least seven years;
- (iii) Be an attorney in good standing with an active license to practice law in the State of New Jersey; and
- (iv) Have a practice that is substantially devoted to family law, including extensive practical professional experience with high conflict custody cases.

(B). Mental Health Professionals. In order to serve as a guardian ad Litem, licensed mental health professionals must have the following qualifications:

- (i) Be licensed in the State of New Jersey by the appropriate State Board or Agency in their field;
- (ii) Be licensed to practice in their field for at least seven years, and be in good standing in their profession with an active license to practice;
- (iii) Have a practice that is substantially devoted to family forensic matters, including extensive practical professional experience with high conflict custody cases.

(2). Training Requirements

(A) General Provisions. To be included on the Roster of Approved Guardians ad Litem in Child Custody Matters, all persons serving as a guardian ad litem shall have completed a minimum of 20 hours of training complying with the requirements of subparagraphs (B) and (C) of this rule. Persons who possess the professional qualifications set forth above, but who have not yet completed 20 hours of training as set in subparagraph (B), above, may be added to the Statewide Roster of Approved Guardians ad Litem in Child Custody Matters for a period of one year following their inclusion on the roster, during which time they must complete the 20 hours of training in order to remain on the roster.

(B) Guardian ad litem Course Content. The 20 hours of classroom instruction for guardians ad litem shall include New Jersey family law, with a focus on child custody statutes, case law and court rules, including the requirements and procedures set forth in R.5:8B and this Appendix; psychological issues in separation and divorce, family dynamics, including high-conflict family dynamics; domestic violence; the impact of divorce, separation and parental conflict on children; interviewing children; diversity; writing reports and making recommendations; and child protective services. These twenty

hours of classroom instruction may be a single course or a combination of classes/seminars that address these subjects.

(C) Continuing Training. All roster guardians ad litem shall every two years attend four hours of continuing education and shall file with the Administrative Office of the Courts, as appropriate, a bi-annual certification of compliance with training and licensure requirements. This continuing education shall include instruction in ethical issues and at least two of the areas set forth in paragraph (B) above.

**(b). Conflicts of Interest and Impartiality**

(1) A guardian ad litem shall be subject to the professional standards of their respective professions.

(2) A guardian ad litem shall be impartial and shall not discriminate on the basis of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability. A guardian ad litem shall withdraw from a case if he/she determines that he/she cannot act in an impartial manner. The guardian ad litem has a primary duty to be impartial and to advise all parties of any circumstances that create the appearance of possible bias, prejudice, or inability to remain impartial. A guardian ad litem may make referrals to other professionals to work with the family but shall avoid actual or apparent conflicts of interest when making such referrals.

(3) A guardian ad litem shall neither give nor accept a gift, favor, loan or other item of value from any party having an interest in the underlying matter for which the guardian ad litem is appointed.

(4) A guardian ad litem shall not serve in a manner that presents a conflict of interest. A conflict of interest arises when any relationship between the guardian ad litem and either or both parties, or the subject matter of the dispute compromises the guardian ad litem's impartiality. A guardian ad litem shall disclose potential conflicts of interest as soon as practical after a guardian ad litem becomes aware of the interest or relationship giving rise to the potential conflict.

(5) A guardian ad litem shall not create a conflict of interest by providing any service to interested parties that are not directly specified in the order of appointment.

(6) For purposes of this rule, a conflict of interest shall include, but not be limited to:

(A) The guardian ad litem has a personal bias or prejudice concerning a party or a party's lawyer;

(B) The guardian ad litem has personal knowledge of the parties, the children or of disputed evidentiary facts concerning the proceeding;

(C) The guardian ad litem, served as lawyer, therapist, consultant, coach, arbitrator or parenting coordinator, or a partner, associate or other employee in the guardian ad litem's firm, agency or practice served in any of these capacities within a two-year period preceding the appointment.

(7) A guardian ad litem disqualified by the terms of this Rule may not avoid disqualification by disclosing the conflict of interest and securing the parties' consent to a waiver of the conflict.

(8) A guardian ad litem shall attend to all matters in a timely manner.

(9) A guardian ad litem may make referrals to other professionals to work with the family, but shall avoid actual or apparent conflicts of interest by referrals. No commissions, rebates, or other remuneration shall be given or received by a guardian ad litem for guardian ad litem referrals.

(10) A guardian ad litem shall not serve in dual sequential roles in a matter. This includes the following roles: guardian ad litem; mediator; custody evaluator; therapist, coach, consultant or other mental health role for either party or a child in the matter.

**(c). Communication by the Guardian ad Litem with Counsel**

(1) The guardian ad litem may communicate with a party's attorney on an *ex parte* basis to the extent necessary to obtain information relevant to the guardian ad litem assignment.

(2) Any party or counsel may communicate in writing with the guardian ad litem and copies of such communications will be provided to the other party, unless the guardian ad litem determines otherwise, in which event she/he will determine the means by which she/he will communicate its contents to the other parent. Copies of any documents, tape recordings or other electronic material that one party gives to the guardian ad litem must also be given to the other party. If a crisis situation arises that will affect a child, the guardian ad litem may make a recommendation on an emergent basis to the court, on notice to the parties.

**(d). Statewide Roster of Approved Guardians ad litem in Child Custody Matters.** A credentials committee comprised of representatives from the Supreme Court Committee on Complementary Dispute Resolution shall be responsible for reviewing and approving all guardian ad litem applications for inclusion on the Statewide Roster of Approved Guardians ad litem in Child Custody Matters. Applicants must complete an application form posted on the Judiciary's Internet website ([www.judiciary.state.nj.us](http://www.judiciary.state.nj.us)). Persons who meet the professional and training requirements set forth in this rule, and any other approved criteria that may be developed by the Family Court Programs Subcommittee on Complementary Dispute Resolution shall be added to the Roster of Approved Guardians ad litem in Child Custody Matters. The roster shall be maintained by the Administrative Office of the Courts and shall be posted on the Judiciary's internet website.

(e). **Appointment not from the Statewide Roster of Approved Guardians ad Litem in Child Custody Matters.** Upon a showing of good cause, the court may appoint or approve the appointment of an individual to serve as a guardian ad litem who is not on the Statewide Roster of Approved Child Custody Guardians ad Litem; however, no such appointment shall be made in any case in which a domestic violence restraining order is in effect.

#### Rule 5:8-1. Investigation Before Award

In family actions in which the court finds that either the custody of children or parenting time issues, or both, are a genuine and substantial issue, the court shall refer the case to mediation in accordance with the provisions of R. 1:40-5. During the mediation process, the parties shall not be required to participate in custody evaluations with any expert. The parties may, however, agree to do so. The mediation process shall last no longer than two months from the date it commences or is ordered to commence, whichever is sooner. As set forth in R. 5:8-6, the court, on good cause shown, may extend the time period. The date for conclusion of mediation shall be set forth in any Case Management Order(s). If the mediation is not successful in resolving custody issues, the court may before final judgment or order require an investigation to be made by the Family Division of the character and fitness of the parties, the economic condition of the family, the financial ability of the party to pay alimony or support or both, and the parties' homes, which shall be limited to a factual description of the home where the child will reside or visit, appropriate child safety precautions in the home, number of household members and their relationship to the child, and criminal record checks for both parties. Any recommendations as to character and fitness of the parties must be made by mental health professionals or family law professionals qualified by licensure, experience, and training. In other family actions the court may, if the public interest so requires, order such an investigation. Where custody and/or parenting time is a genuine and substantial issue and the court deems such an investigation is warranted, in lieu of an investigation set forth here, the court may appoint a guardian ad litem pursuant to r.5:8b, in which event the appointment, investigation and report shall be governed by the provisions of r.5:8b. The court may continue any family action for the purpose of such investigation, but shall not withhold the granting of any temporary relief by way of alimony, support or pendente lite orders pertaining to parenting issues under R. 5:5-4 and R. 5:7-2 where the circumstances require. Such investigation of the parties shall be conducted by the Family Division, which shall file its report with the court no later than 45 days after its receipt of the judgment or order requiring the investigation, unless the court otherwise provides. If one of the parties lives outside the county of venue but still within New Jersey, then the Family Division in the county of residence shall conduct the investigation of that party and forward the report to the Family Division in the county of venue within the time frame set forth above. In lieu of an investigation pursuant to R 5:8-1, the court may appoint a guardian ad litem to conduct an investigation pursuant to Rule 5:8B, which investigation shall be governed by Rule 5:8B.

#### Rule 5:8-3. Investigation After Award

The court may on its own motion when it deems it necessary or where an application is made by either party to modify the award or terms thereof, in its discretion require the investigation provided for in R. 5:8-1, or 5:8B. The court may continue such application for the purpose of such investigation and report.

#### Rule 5:8-4. Filing of Reports

The written report of an investigation made pursuant to this rule shall be filed with the court, shall be furnished to the parties under appropriate protective orders as determined by the judge, and shall thereafter be filed in the office of the Family Division. The report shall be regarded as confidential, except as otherwise provided by rule or by court order. The report shall be received as direct evidence of the facts contained therein which are within the personal knowledge of the

Family Division personnel or Guardian ad litem who made the investigation and report, subject to cross-examination.



Plaintiff,  
v.  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION-FAMILY PART  
\_\_\_\_\_ COUNTY

Docket No. FM- \_\_\_\_\_

Civil Action

**ORDER APPOINTING GUARDIAN AD LITEM  
For Minor(s) Pursuant to R.5:8B**

Investigative Appointment ***without***  
Evaluative Recommendations

Investigative Appointment ***with*** Evaluative  
Recommendations

1. **IT IS** on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, **ORDERED** that: The Court finds it is in the best interest of the child(ren) in this matter to appoint a Guardian *ad Litem* (“GAL”) pursuant to R.5:8B, subject to the conditions set forth below. The Court appoints \_\_\_\_\_ to serve as a GAL for the following minor child(ren), whose name(s) and date(s) of birth is/are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The contact information for the GAL is:

a. ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

b. TELEPHONE NUMBER \_\_\_\_\_

c. EMAIL: \_\_\_\_\_

3. **SCOPE OF THE GUARDIAN AD LITEM ASSIGNMENT:** The GAL is appointed to assist the Court in making a determination of what is in the child(ren)’s best interests as to the following issue(s) (check all that apply):

- a.  Parental responsibility of child(ren)
- b.  Residence of child(ren)
- c.  Time-sharing including times and locations
- d.  Legal custody/decision-making
- e.  Relocation

- f.  Education
  - g.  Day Care/Child Care
  - h.  Health Care
  - i.  Best interest of child(ren) (addressing each factor under *N.J.S.A. 9:2-4*)
  - j.  Specific other issues as follows: \_\_\_\_\_
- 
- 

The GAL shall investigate, gather and report factual information to assist the court in assessing the issues set forth above. The GAL shall serve either an investigative function only, or shall serve an investigative and evaluative function, as follows (check one):

- a. **Investigative Appointment without Evaluative Recommendations.**
- b. **Investigative Appointment with Evaluative Recommendations:**

In addition to the report being without/with Evaluative Recommendations as set forth above, the GAL's report shall include an analysis of the relevant factors under NJSA 9:2-4.

4. **NOTICE REGARDING CHILDREN:** Each party is expressly prohibited from attempting to indirectly or directly influence, coach and/or pressure the child(ren) as to what to say to the GAL or the Court. The parties are aware that non-compliance with this provision may be a basis for Court-imposed sanctions. If the GAL has reason to believe a child has been indirectly or directly influenced, coached and/or pressured by a parent or third party, the factual basis for this belief shall be included in the GAL's report.

5. **DUTIES OF THE GUARDIAN AD LITEM APPOINTMENT, GUARDIAN AD LITEM INVESTIGATIVE DUTIES, AND RESPONSIBILITY FOR WRITTEN REPORT:**

- a. The GAL is authorized to meet, interview and obtain information from the parents/legal guardians of the child(ren), the child(ren), and collateral contacts inclusive of, and not limited to the following: teachers, school staff and administrators, health care professionals, therapists/counselors, psychological or psychiatric evaluators, education specialists, addiction treatment agencies and professionals, and other service providers for members of the family to the extent said interviews and information are relevant to the scope of this appointment.
- b. The GAL may recommend appointment of an attorney for the child pursuant to R. 5:8A.

- c. The GAL may recommend the retention of other professionals for the child or family (e.g., risk assessment, substance use disorder evaluation, therapy, etc).
- d. The GAL shall be available to testify, and be subject to cross-examination, unless excused by the Court. The GAL may appear virtually at all hearings related to the GAL's assignment to the extent permitted by the Court. The GAL shall receive a copy of all Court Orders effecting the timeline, scope, or nature of the GAL's assignment.
- e. The GAL shall not act in the capacity of a mediator or arbitrator (whether in a formal or informal manner) between the parties. However, the GAL may act as a resource to the parties and to any mediator, arbitrator, or other neutral third party who may be assisting the parties in attempting to resolve their disputes.

f. The GAL shall perform the following specific duties (*check all that apply*):

Observe the child(ren) in the home(s) where the child(ren) regularly lives or has parenting time, (or in a location designated by the GAL) and for a child over age 3, conduct a face-to-face interview with the child; and

Interview each parent, guardian, caretaker, and any adult who lives in the home(s) where the child(ren) regularly live or have parenting time.

Interview others in the GAL's discretion (e.g., teachers, therapists, health care providers, family members, neighbors, and other people who have personal knowledge about the child(ren) or family regarding the issue(s) for which the GAL is appointed).

Review DCP&P or other child protection agency records, the following of which shall be made available to the GAL: \_\_\_\_\_

\_\_\_\_\_

Specific other duties of the appointment: \_\_\_\_\_

\_\_\_\_\_

The GAL shall not exceed the scope of this assignment without further order of the Court. If the GAL believes the scope of the assignment should be modified, the GAL shall, on notice to the parties, advise the Court and request an amended order setting forth the modified scope.

6. **AUTHORIZATIONS:** On request by the GAL, parents/guardians shall execute Authorizations for the release of records/information to the GAL, including but not limited to records pertaining to education, health care, law enforcement, court proceedings, and other records and information in possession of entities/agencies, relating to the child(ren) named above and/or the children's parents/guardian, relating to the issues for which the GAL is appointed.

The GAL, who is appointed to represent the best interests of the child(ren) named in this Order, is hereby regarded as a HIPPA (Health Insurance Portability and Accountability Act) representative for the child(ren) and shall have the right and power to examine complete medical records including medical and psychiatric records and written charts, pertaining to the child(ren).

7. **LENGTH OF GUARDIAN AD LITEM APPOINTMENT:**

This GAL appointment ends:

- in accord with R. 5:8(B), or
- upon further order or written continuance of the Court.

8. **WRITTEN REPORT:**

- The GAL shall submit a written report before testifying at the hearing.
- The GAL shall submit a written report to the Court within \_\_\_\_\_ days of the GAL's receipt of both this Order and the parties' payment of their respective portions of the initial retainer and any other fees ordered by the Court, unless the Court grants an extension of time.

If the GAL is notified, and confirms with the Court that the case is settled, no written report shall be submitted, and the GAL shall cease all work under this assignment.

The report must include the results of the GAL's investigation. If evaluative recommendations are required by this Order, pursuant to R. 5:8(B), the GAL shall make recommendations on the issues specified in number 3, above, subject to any conditions ordered by the Court.

The report shall further:

- i. Include information as to a party/parties' cooperation;
- ii. Identify any material limits in the information the GAL was able to obtain;

- iii. Identify all sources of information (documents reviewed, persons interviewed, etc.);
- iv. Include specificity as to relevant dates, timeframes and parties as to factual assertions made pertaining to the scope of the investigation;
- v. Note any preferences expressed by the child, inclusive of facts relative to whether the GAL believes the preferences are being expressed voluntarily or as coached by a parent or other person;
- vi. Include such other issues as become relevant to the investigation in the GAL's discretion.

The report shall be submitted only to the Court, which may release it to counsel and parties under a Protective Order or other condition the Court imposes to ensure its confidentiality pursuant to R.1:38-1, et seq., and R.5:8(e) consistent with the provisions of the Protective Order attached hereto. Subject to said protective measure, under no circumstances shall the parties and their counsel (if represented) be prohibited from reviewing the GAL's report. Any such Protective Order/measure shall survive, and shall not merge into, any final order or judgment in the matter.

9. **LITIGATION PRIVILEGE/IMMUNITY:** The GAL is engaged in a quasi-judicial role and shall be entitled to absolute immunity from civil liability consistent with applicable New Jersey law and as set forth in R.5:8(h).

10. **FEES:** The parties shall pay an initial retainer of \$\_\_\_\_\_ to the GAL. The hourly rate of the GAL is \$\_\_\_\_\_. Plaintiff shall pay \_\_\_\_% of the cost and Defendant shall pay \_\_\_\_% of the cost without prejudice, subject to reallocation by the Court at the time of the final hearing. Both parties shall have the right to file an application with the Court regarding allocation of the GAL's fees. The GAL shall send to the parties informational monthly billing statements.

- a. Parties shall not be required to execute retainer agreements with the GAL or his/her firm. The Court is the client and the GAL's duty is to the Court. Nonetheless, the billing requirements and costs charged by the GAL's firm (e.g., normal and customary copy charges, printing charges, FedEx/UPS/USPS charges, credit card charges, messenger service, travel time, parking, record collection) are [ ] set forth on an attachment to this Order, or [ ] must be provided to the Court and the parties within seven days of the entry of this Order].
- b. The Court may grant interim fee requests by the GAL who, on notice to the parties shall submit a certification of services for any interim fee requests or

additional retainers, as well as at the conclusion of the assignment. Interim fees/additional retainers shall be paid by the parties in proportion to the percentages indicated above within twenty (20) days of receipt of an invoice from the GAL. To the extent a party fails to remit their portion of the payment, the GAL may submit to the Court a certification of services and proposed form of Order for payment of the outstanding balance/additional retainer. At the conclusion of the assignment, the GAL shall submit a certification of services after which the parties will have seven (7) days to respond prior to the Court fixing the final fee.

- c. If an asset will be used to pay the GAL's fees, the source of such fees is \_\_\_\_\_. The parties shall cooperate to facilitate the disbursement of funds as necessary and as requested by the GAL.

**11. GENERAL PROVISIONS APPLICABLE TO ALL GUARDIAN AD LITEM APPOINTMENTS:**

- a. The parties shall fully cooperate with the GAL's investigation, including, but not limited to, participating in interviews, making themselves and the child(ren) available to the GAL at such reasonable times and places as the GAL may request, and signing authorizations as set forth above. The GAL report shall indicate each party's cooperation with the investigative process.
- b. Each party shall supply the GAL with copies of relevant pleadings, orders, findings, notices, stipulations and other documents filed in this action. The GAL is entitled to be present at any depositions, hearings, or other proceedings concerning the minor child(ren).
- c. The GAL may advocate for special procedures to protect the child(ren) from unnecessary harm resulting from the child(ren)'s testimony, with or without the consent of the parties.

Date: \_\_\_\_\_

\_\_\_\_\_  
HON.



Neither party shall retain a copy of the report or be permitted to take notes, or photocopy the documents or any portion thereof.

The report shall be released in hard copy to the attorneys and parties. The attorneys and parties shall be permitted to retain a hard copy of the report.

The report shall  or shall not  (select one) be released electronically to the attorneys and parties. The attorneys and parties shall  or shall not  (select one) be permitted to retain an electronic and hard copy of the report.

The report shall be released in hard copy to the self-represented litigants. The self-represented litigants shall be permitted to retain a physical copy of the report.

OR

The parties and/or self-represented litigants shall not receive the report but shall be permitted to review the report at the courthouse on a date to be selected by the court.

2. No document or information contained in said report shall be disclosed to any person not involved in this litigation, except that documents and communications may be disclosed without the express written permission of the Court to the following:

- a. Any mediator, arbitrator or Parenting Coordinator involved in this litigation;
- b. The court and officers of the court;
- c. Any custody expert retained by either party upon notice and disclosure to the other party; and
- d. Treating mental health professionals for the children and/or the parties.



3. Any and all documents and information contained in the report shall be kept confidential by the parties, the attorneys for the parties, any mediators, arbitrators, experts, witnesses, or other third party. All persons who have access to information subject to this Protective Order shall not discuss the documents or communications, or the contents thereof, with anyone other than those specified hereinabove, nor shall they provide or make such documents or communications known or available to anyone other than those specified hereinabove, or in any other way reveal to any other person or entity any of the information disclosed within any such documents or communications.

4. The report cannot be used in any other matter without the express written permission of the Court.

5. The report and the information contained therein cannot be disclosed to the child/children or any other person for any reason, and cannot be given out or made public by any means, direct or indirect, without the express written permission of the Court. Under no circumstances is the report to be discussed, revealed or disclosed to the child/children. Any discussion by the litigants with the child/children as to the contents of the report referenced herein shall be strictly prohibited.

6. Any other use of the contents of the documents that are the subject of this protective order is strictly prohibited. A person who uses the information contained in the report for any purpose other than stated by the Court shall be in violation of this Court order and may be subject to sanctions at the Court's discretion.

7. In the event that either party retains other attorneys and/or experts, the party must give them a copy of this Protective Order, which shall be binding upon them and shall remain in full force and effect.

8. In the event that the report is submitted to the Court for any purpose with any pleading, it shall be filed "under seal," in a confidential appendix or other such protection to ensure its confidentiality.

9. Upon disposition of this matter, the report shall be:

- Destroyed;
- Returned to \_\_\_\_\_; or
- Retained by any person in possession of the report who will continue to be bound by the terms of this protective order.

10. It is further Ordered

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. The terms of this Protective Order shall survive the adjudication of the pending issues before the Court and shall remain valid and binding unless and until further Order of the Court.

12. A copy of this Order shall be provided to all persons receiving or reviewing the Guardian ad Litem report.

\_\_\_\_\_  
, J.S.C.