

## **Rule 17. Assistance of Counsel and Guardians Ad Litem**

### (A) Counsel

#### (1) When Appointed

The Court shall appoint counsel whenever the court determines that it is necessary to protect the interests of a child or adult, or whenever the Court is required to do so by statute. Assigned counsel shall be appointed for a child at the cost of his/her parent(s), guardian(s) or legal custodian(s), when appropriate. Upon arraignment or subsequent thereto, where it appears to the Court that an adult party desires to have counsel appointed for him/her, the Court, before doing so, shall require the party to pay a twenty-five dollar application fee and to execute an affidavit of indigency and a financial disclosure form.

#### (2) Qualifications

(a) Assigned counsel for all cases except abuse, neglect and dependency, aggravated murder, murder, and first and second degree felony cases shall have at least one of the following qualifications:

- (i) Guardian ad litem for any party on seven (7) prior juvenile court cases, or
- (ii) Currently on the General Division's Assigned Counsel List for fourth and fifth degree felony cases.

(b) Assigned counsel for aggravated murder, murder, and first and second-degree felony cases shall have at least one of the following qualifications:

- (i) Guardian ad litem for any party on seven (7) prior juvenile court cases and assigned counsel on seven (7) juvenile court delinquency cases, or
- (ii) Currently on the General Division's Assigned Counsel List for major felony cases.

(c) Assigned counsel for abuse, neglect and dependency, cases shall have completed the court-sponsored New Guardian ad litem training and must have served as Guardian ad litem for any party on a minimum of seven juvenile court cases.

### (3) How Appointed

The court shall maintain an alphabetical listing of qualified assigned counsel. When a jurist appoints an attorney, the jurist shall select the next available individual from the assigned counsel list.

When the assigned jurist determines that unique circumstances exist, or to facilitate the expeditious management of the docket, the jurist may appoint any individual from the assigned counsel list.

### (4) Compensation

(a) Assigned counsel shall be compensated in accordance with the Fee Bill Policy and Fee Schedule in effect at the time the attorney was appointed upon the filing of a Motion for Appointed Counsel Fees (Form OPD-206R), and shall be compensated at the authorized rate for in-court and out-of-court time not to exceed the maximum fee cap in effect at the time of acceptance of the assignment.

Assigned counsel is entitled to one maximum fee when one proceeding is held for a single subject on multiple charges or counts arising out of a single incident of criminal conduct or a series of related incidents. On cases involving multiple charges in which one fee is payable, the maximum fee shall be set corresponding to the highest degree of offense charged.

(b) It shall be the responsibility of the assigned counsel to file in triplicate (an original plus two copies) an itemized and signed fee bill application detailing the services rendered and the time spent in connection with such services and to meet all requirements of the Assigned Counsel Fee Bill Policy as amended.

(c) If an assigned counsel files a motion for extraordinary fees with the Clerk of Court, it shall be referred to the assigned judge for review. If

approved by the assigned judge, the motion shall then be forwarded to the Administrative Judge for final approval of payment.

#### (5) Periodic Review

The Court shall periodically review all assigned counsel appointments and assignment practices to ensure the equitable distribution of appointments among the attorneys for the list maintained by the court in section (3) of this rule.

#### (6) Quality Control

The Court requires quality representation by members of the bar who are appointed as assigned counsel. The Court may remove an assigned counsel from the case assigned in the interest of justice and for good cause shown. From time to time, the Court may develop procedures for quality control for assigned counsel. The Court may remove assigned counsel from the approved assigned counsel list pursuant to the procedure in effect at the time.

#### (7) Duration of Assignment

An attorney's role as assigned counsel shall terminate upon entry of a final appealable order or the expiration of the time for appeals in the matter for which the attorney is assigned except for the following:

(a) When an attorney has been appointed counsel to represent a defendant in a support hearing when a Motion to Show Cause has been filed, the attorney will continue to represent the defendant through the Review of the Purge hearing.

(b) When an attorney has been appointed to represent a party in an abuse, neglect or dependency case, the attorney will continue to represent the party until a final disposition is entered. For this purpose, a final disposition is: termination of Protective Supervision; termination of Temporary Custody without Protective Supervision; Termination of Planned Permanent Living Arrangement without Protective Supervision; Legal Custody without Protective Supervision; Permanent Custody; or any order

which terminates the court case or Cuyahoga County Division of Children and Family Services involvement or the party's involvement in the case.

When the assigned jurist determines that unique circumstances exist, or to facilitate the expeditious management of the docket, the jurist may appoint any individual from the assigned counsel list.

#### (8) Process: Notice

Absent a prohibiting disability, in conformity with Local Rule 39, an attorney assigned to represent a party before the Court shall provide a current e-mail address to the Court's Clerk's Office. Unless the trial court determines otherwise, notice of all upcoming hearings will be provided to counsel via the e-mail address they have provided.

#### (B) Guardian Ad Litem

##### (1) When Appointed

The Court shall appoint a Guardian ad litem whenever the Court determines it is necessary to protect the interests of a child or adult, or whenever the Court is required to do so by statute or rule. A Guardian ad litem shall be appointed for a child at the cost of his/her parent(s), guardian(s) or legal custodian(s), or the state, when appropriate.

##### (2) Qualifications

A Guardian ad litem shall have the following qualifications:

- (a) Currently licensed as an attorney in Ohio and in good standing with the Ohio Supreme Court,
- (b) Completed the court-sponsored New Guardian ad Litem Training,
- (c) Completed the court-sponsored advanced training/continuing education as and when required,
- (d) All other requirements as listed in Sup. R. 48 and in the Guardian ad Litem Policy and Procedure Manual.

### (3) How Appointed

The Guardian ad Litem Project shall maintain an alphabetical listing of qualified Guardians ad litem. When a jurist appoints a Guardian ad litem, the jurist shall select the next available individual from the Guardian ad litem list. When the assigned jurist determines unique circumstances exist, or to facilitate the expeditious management of the docket, the jurist may appoint any individual from the Guardian ad litem list.

### (4) Compensation

(a) At the time the Court appoints a Guardian ad litem for a child and prior to ordering that the state pay Guardian ad litem fees, the Court shall require the parties to execute an affidavit of indigency and a financial disclosure form.

(b) When a party is not indigent, the Court may order the party to post a bond to secure payment of Guardian ad litem fees, sua sponte or upon motion by the Guardian ad litem. As the case proceeds, the Court may order a party to post additional bond.

(c) If the filing party fails to post the bond ordered to secure payment of Guardian ad litem fees, the Court may dismiss the party's complaint or motion or may impose any other sanction the Court deems appropriate. If any other party fails to post the bond ordered, the Court may impose any sanction the court deems appropriate.

(d) The Guardian ad litem shall maintain accurate time and expense records and shall provide monthly billings to the parties during the pendency of the case and shall adhere to the Guidelines for Guardians ad litem practicing in the Court of Common Pleas - Juvenile Division.

(e) Upon motion for Guardian ad litem fees to be paid by the parties, the Court shall conduct a hearing to determine 1) the amount of time the Guardian ad litem has expended to represent the best interests of the child; 2) whether the time

and services rendered were reasonable and necessary in the Guardian ad litem's representation of the best interests of the child; 3) whether the Guardian ad litem's hourly rate is commensurate with customary fees in this locality; and 4) the amount each party shall contribute toward the Guardian ad litem's fees.

(f) An order for payment of Guardian ad litem fees shall be a joint and several judgment. Guardian ad litem fees are assessed as and for additional child support and as such are not dischargeable in bankruptcy.

(g) If a party fails to pay the Guardian ad litem fees ordered, the Court may impose any sanction the Court deems appropriate, including but not limited to a fine, community service, and/or jail time.

(h) In cases where the State is ordered to pay Guardian ad litem fees, upon the filing of Form OPD-206R, compensation to the Guardian ad litem shall be paid in accordance with the Cuyahoga County Juvenile Court Fee Bill Policy and Fee Schedule in effect at the time the Guardian ad litem was appointed. The Guardian ad litem shall be compensated at the authorized rate for in-court and out-of-court time, not to exceed the maximum fee cap in effect at the time of acceptance of the assignment.

(I) The filing of a motion to extend or to modify a previous dispositional order shall be considered a new appointment for billing purposes pursuant to the Cuyahoga County Juvenile Court Fee Bill Policy and Fee Schedule.

(j) For good cause and with notice, the Administrative Judge may modify the Court's Fee Bill Policy and Fee Schedule in accordance with budget restraints.

(k) It shall be the responsibility of the Guardian ad litem to file in triplicate (an original plus two copies) a completed and signed Form OPD-206R and to meet all requirements of the Cuyahoga County Juvenile Court GAL Fee Bill Policy in effect at the time the fee bill is filed.

(l) If a Guardian ad litem files a Motion for Extraordinary Fees with the Clerk of Court, it shall be referred to the assigned judge for review and processing. If approved by the assigned judge, the motion shall then be forwarded to the Administrative Judge for final approval of payment.

(5) Dual Appointment Capacity. In the event a Guardian ad litem is also appointed as the child's legal counsel and a conflict of interest arises in the dual appointment, the Guardian ad litem/attorney shall immediately notify the Court and withdraw as Guardian ad litem pursuant to R.C. 2151.281(H) and Juv.R. 4(C)(2).

#### (6) Periodic Review

The court shall periodically review all Guardian ad litem appointments and assignment practices to ensure the equitable distribution of appointments among the attorneys for each list maintained by the court in section (B) (3) of this rule.

#### (7) Responsibilities of a Guardian ad litem

At a minimum, a Guardian ad litem shall comply with the Guidelines for Guardians ad litem adopted by the Guardian ad Litem Project Advisory Committee on June 2, 1994 and as amended, as well as with all requirements as listed in Sup. R. 48.

#### (8) Quality Control

The Court requires quality representation by members of the bar who are appointed as Guardians ad litem. The Court may remove a Guardian ad litem from the case assigned in the interest of justice and for good cause shown. The Guardian ad litem Project may remove a Guardian ad litem from the approved list of Guardians ad litem pursuant to the procedure in effect at the time.

#### (9) Duration of Assignment

The duration of an attorney's role as Guardian ad litem shall be controlled by R.C. 2151.281, Sup. R. 48 and the Guidelines for Guardians Ad Litem.

(10) Process: Notice

Absent a prohibiting disability, in conformity with Local Rule 39, a Guardian ad litem appointed to represent a party before the Court shall provide a current e-mail address to the Court's Clerk's Office. Unless the trial court determines otherwise, notice of all upcoming hearings will be provided to the attorney via the e-mail address they have provided.

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