

NEW CODE REQUIREMENTS FOR
GUARDIAN AD LITEMS
&
INDIAN CHILD WELFARE ACT (ICWA)
Summary

FEBRUARY 17, 2015
MARY HERMANN, CWLS

Guardian Ad Litem

Applicable OCGA sections to Juvenile Court GAL

DFCS Policy for GALs

Indian Child Welfare Act (ICWA)

Guardian Ad Litem

15-11-2 (35)

'Guardian ad litem' means an individual appointed to assist the court in determining the best interests of a child.

15-11-26

Whenever a best interests determination is required, the court shall consider and evaluate all of the factors affecting the best interests of the child in the context of such child's age and developmental needs. (19) Any recommendation by a court appointed custody evaluator or guardian ad litem;

Guardian Ad Litem

15-11-104(a)

The court shall appoint a guardian ad litem for an alleged dependent child

15-11-104(b) Dual appointment of GAL & child attorney authorized until conflict

- Conflict analysis
- Legal counseling issues
- If conflict, then dually appointed attorney withdraws as GAL

Guardian Ad Litem

15-11-36 Reasonable Compensation for GAL

The following expenses shall be a charge upon the funds of the county upon certification thereof by the court:(4) Reasonable compensation for a guardian ad litem;

15-11-103 Child Attorney Appointment

Guardian Ad Litem

15-11-104(h) The court may remove a guardian ad litem from a case upon finding that the guardian ad litem acted in a manner contrary to a child's best interests, has not appropriately participated in the case, or if the court otherwise deems continued service as inappropriate or unnecessary.

15-11-104(i) A guardian ad litem shall not engage in ex parte contact with the court except as otherwise provided by law.

Guardian Ad Litem

15-11-104(j) The court, a child, or any other party may compel a guardian ad litem for a child to attend a trial or hearing relating to such child and to testify, if appropriate, as to the proper disposition of a proceeding.

15-11-104(k) The court shall ensure that parties have the ability to challenge recommendations made by the guardian ad litem or the factual basis for the recommendations in accordance with the rules of evidence applicable to the specific proceeding.

Guardian Ad Litem

15-11-104(l) A guardian ad litem's report shall not be admissible into evidence prior to the disposition hearing except in accordance with the rules of evidence applicable to the specific proceeding.

15-11-104(m) A guardian ad litem who is not also serving as attorney for a child may be called as a witness for the purpose of cross-examination regarding the guardian ad litem's report even if the guardian ad litem is not identified as a witness by a party.

Guardian Ad Litem

15-11-105(a)

GAL advocates for the child's best interest

15-11-105(b)

In determining a child's best interests, a guardian ad litem shall consider and evaluate all of the factors affecting the best interests of a child in the context of a child's age and developmental needs.

Guardian Ad Litem Best Interest Factors

15-11-105(b)

- (1) The physical safety and welfare of such child, including food, shelter, health, and clothing;
- (2) The mental and physical health of all individuals involved;
- (3) Evidence of domestic violence in any current, past, or considered home for such child;
- (4) Such child's background and ties, including familial, cultural, and religious;

Guardian Ad Litem Best Interest Factors

15-11-105(b)

- (5) Such child's sense of attachments, including his or her sense of security and familiarity and continuity of affection for the child;
- (6) The least disruptive placement alternative for such child;
- (7) The child's wishes and long-term goals;
- (8) The child's community ties, including church, school, and friends;

Guardian Ad Litem Best Interest Factors

15-11-105(b)

- (9) The child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives;
- (10) The uniqueness of every family and child;
- (11) The risks attendant to entering and being in substitute care;

Guardian Ad Litem Best Interest Factors

15-11-105(b)

(12) The preferences of the persons available to care for such child; and

(13) Any other factors considered by the guardian ad litem to be relevant and proper to his or her determination.

Guardian Ad Litem Duties

15-11-105(c)

Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem shall at a minimum:

(1) Maintain regular and sufficient in-person contact with the child and, in a manner appropriate to his or her developmental level, meet with and interview such child prior to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of this chapter;

Guardian Ad Litem Duties

15-11-105(c)

(2) In a manner appropriate to such child's developmental level, ascertain such child's needs, circumstances, and views;

(3) Conduct an independent assessment to determine the facts and circumstances surrounding the case;

(4) Consult with the child's attorney, if appointed separately, regarding the issues in the proceeding;

Guardian Ad Litem Duties

15-11-105(c)

(5) Communicate with health care, mental health care, and other professionals involved with such child's case;

(6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents;

(7) Review all court related documents;

Guardian Ad Litem Duties

15-11-105(c)

(8) Attend all court hearings and other proceedings to advocate for such child's best interests;

(9) Advocate for timely court hearings to obtain permanency for such child;

(10) Protect the cultural needs of such child;

(11) Contact the child prior to any proposed change in such child's placement;

Guardian Ad Litem Duties

15-11-105(c)

(12) Contact the child after changes in such child's placement;

(13) Request a judicial citizen review panel or judicial review of the case;

(14) Attend citizen panel review hearings concerning such child and if unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last citizen panel review and include an assessment of the DFCS permanency and treatment plans;

Guardian Ad Litem Duties

15-11-105(c)

(15) Provide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child;

Guardian Ad Litem Duties

15-11-105(c)

(16) When appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted; and
(17) Monitor compliance with the case plan and all court orders.

Guardian Ad Litem

15-11-105(d)

- (1) Except as provided in Article 11 of this chapter, a guardian ad litem shall receive notices, pleadings, or other documents required to be provided to or served upon a party and shall be notified of all court hearings, judicial reviews, judicial citizen review panels, and other significant changes of circumstances of a child's case which he or she is appointed to the same extent and in the same manner as the parties to the case are notified of such matters.
- (2) A guardian ad litem shall be notified of the formulation of any case plan of a child's case which he or she is appointed and may be given the opportunity to be heard by the court about such plans.

Guardian Ad Litem

15-11-105(e)

Upon presentation of an order appointing a guardian ad litem, such guardian ad litem shall have access to all records and information relevant to a child's case to which he or she is appointed when such records and information are not otherwise protected from disclosure pursuant to Code Section 19-7-5. Such records and information shall not include records and information provided under Article 11 of this chapter or provided under Chapter 4A of Title 49.

Guardian Ad Litem

15-11-105(f)

All records and information acquired or reviewed by a guardian ad litem during the course of his or her appointment shall be deemed confidential and shall not be disclosed except as ordered by the court.

Guardian Ad Litem

15-11-105(g)

Except as provided in Code Section 49-5-41, regarding access to records, any guardian ad litem who discloses confidential information obtained during the course of his or her appointment, in violation of law, shall be guilty of a misdemeanor. A guardian ad litem shall maintain all information and records regarding mental health, developmental disability, and substance abuse according to the confidentiality requirements contained in Code Section 37-3-166, 37-4-125, or 37-7-166, as applicable

Guardian Ad Litem

15-11-105(h)

In the event of a change of venue, the original guardian ad litem shall, as soon as possible, communicate with the appointed guardian ad litem in the new venue and shall forward all pertinent information to the new guardian ad litem.

CASA & Guardian Ad Litem Hearing Notices

15-11-106

CASA

15-11-108

Notice to GAL of hearings & events for child

Guardian Ad Litem Right to Participate

15-11-145(d)(2)

GAL right to participate in PPH

15-11-160(a)

Summons to GAL

15-11-181(b)(2)

GAL right to participate in adjudication

Guardian Ad Litem Right to Participate

15-11-200

GAL Right to Caseplan & Caseplan development meeting

15-11-204

GAL right to participate in nonreunification hearing

15-11-210

GAL Right to participate in disposition hearing & admission of GAL report

Guardian Ad Litem Right to Participate

15-11-215

GAL right to Change of Placement Notification & request for hearing

15-11-230

GAL Right to participate in Permanency Plan Hearing

15-11-262

GAL appointment in termination of parental rights hearing

Guardian Ad Litem Right to Participate

15-11-281

GAL right to summons in TPR

15-11-322

GALs are not included in post TPR reviews but are usually included

15-11-323

GAL right to notice of reinstatement of parent rights filing

Guardian Ad Litem in CHINS case

15-11-390 GAL may file a CHINS case

(a) A complaint alleging a child is a child in need of services may be filed by a parent, guardian, or legal custodian, DFCS, a school official, a law enforcement officer, a guardian ad litem, or an attorney who has knowledge of the facts alleged or is informed and believes that such facts are true.

Guardian Ad Litem in CHINS case

15-11-402

GAL may be appointed in CHINS case & has same duties as in a dependency case

15-11-450

GAL participation in a CHINS competency proceedings & comprehensive services plan

15-11-451

GAL participating in comprehensive services plan may request a hearing

Guardian Ad Litem in Delinquency case

15-11-476

GAL may be appointed in a delinquency case with same duties as a dependency case

15-11-506

GAL participation in delinquency preadjudication detention hearing

15-11-652

GAL may request competency evaluation in delinquency or CHINS case

Guardian Ad Litem in Delinquency case

15-11-653

GAL to receive copy of court ordered competency evaluation

15-11-660

GAL may request review hearing on child's competency

Guardian Ad Litem

15-11-700

GAL participation in hearing to exclude general public from hearing / GAL may request hearing to exclude

15-11-723

GAL to investigation in petition for emancipation

Guardian Ad Litem

Although not specifically stated, GALs may also be appointed to assist the Court in best interest determinations and to participate in:

- Legitimation hearings
- Guardianship Transfers from Probate Court
- Parental Bypass hearings

DFCS Policy & Guardian Ad Litem

Effective December 2014 DFCS policy 3.10

- DFCS will collaborate with GAL
- Assist in setting up interview with child
- Allow GAL access to pertinent information from the DFCS file, both hard copy & electronic file (SHINES) / HIPPA may prevent third party disclosure of PHI
- Provide copies of caseplan & invite GAL to participate in all case reviews, includes FTM & MDT

DFCS Policy & Guardian Ad Litem

- Meet with GAL to discuss the child
- Meet with the child to discuss the name, duties & responsibilities of the GAL
- Casemanager shall inform placement that GAL has been appointed & identity of the GAL
- Provide GAL with change of placement information

The Indian Child Welfare Act

- ICWA passed in 1978
- The Congressional intent under ICWA was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families"
- 25 U.S.C. § 1902

The Indian Child Welfare Act

ICWA sets the minimum federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

ICWA sets the minimum federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

ICWA

Jurisdictional

- Failure to follow ICWA's federally required procedures invalidates the entire child protection case from the beginning

Substantive Federal Law

- Federal standards for any case involving a child who is Qualified as an "Indian child"

ICWA

- If ICWA applies to the child & the child custody proceeding then it also applies to any non-Native parents & family members
- Failure to follow the ICWA requirements results in reversal of the whole process

Special ICWA Definitions

- **Child custody proceeding:** includes foster care placement, TPR, preadoptive placement, and adoptive placement; 25 U.S.C. § 1903 (1)
- **Foster care placement:** any action removing an Indian child from the parent or Indian custodian for temporary placement in a foster home, institution, or the home of a guardian or conservator where the Indian parent cannot have the child returned upon demand, but parental rights have not been terminated; 25 U.S.C. § 1903 (1)(i)

Special ICWA Definitions

- **Indian Tribe:** means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43; 25 U.S.C. § 1903 (8)

Procedural Differences with ICWA

- Parents & child appointed an attorney
- Removal requires:
 - clear and convincing evidence
 - State court may only order the foster care placement of an Indian child where the court determines that continued custody by the parents or Indian custodian is likely to result in **serious emotional or physical damage to the child.**

Special ICWA Definitions

- **Indian child:** any unmarried person under the age of 18 years who is either a member of a federally recognized Indian tribe or eligible for membership in a federally Indian tribe **AND** is the biological child of a member of a federally recognized Indian tribe; 25 U.S.C. § 1903 (4)
- **Indian Child's Tribe:** means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts; 25 U.S.C. § 1903 (5)

ICWA Jurisdictional Analysis

1. Is this a child custody proceeding
2. Is the child an Indian child
3. Is the Indian child residing or domiciled on a reservation
 - If YES then exclusive jurisdiction of tribal court except emergency protection
 - If NO then **Notice** to the Indian Tribe & possible transfer proceedings; concurrent jurisdiction the tribal & state court &
4. If transfer to Tribal court is not requested or denied for "good cause" then ICWA procedural safeguards still apply

Procedural Differences with ICWA

- Removal requires:
 - Evidence must include testimony from one or more qualified expert witnesses
 - **Active Efforts** must be shown to have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family, and that the active efforts were unsuccessful

Procedural Differences with ICWA

Placement Preferences following Removal & Adjudication

- Member of the Indian child's extended family
- Foster home licensed, approved, or specified by the child's Indian tribe
- Indian foster home licensed or approved by an authorized non-Indian licensing authority
- Institution for children approved by an Indian tribe or operated by an Indian organization, which institution has a program suitable to meet the child's needs

Procedural Differences with ICWA

Termination of Parental Rights requires:

- Proof beyond a reasonable doubt
- State court may only order the TPR of an Indian child where the court determines that continued custody by the parents or Indian custodian is likely to result in serious emotional or physical damage to the child
- Evidence must include testimony from one or more qualified expert witnesses

Procedural Differences with ICWA

Placement Preferences following TPR

- Member of the Indian child's extended family
- Other members of the child's Indian tribe
- Other Indian families
- Along with the parents, Indian custodian and the child, the Indian tribe should be asked for assistance in identifying the child's extended family members and members of the child's Indian tribe interested in providing a placement for the child