

**Statewide  
Guardian ad Litem Office**

**STANDARDS  
OF  
OPERATION**

**Effective  
March 1, 2006**

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## **Section I: Definitions and Roles**

### **Standard 1.0 Scope and Mission of Program**

The Guardian ad Litem Program (GAL) is a network of professional staff and community advocates partnering to provide a strong voice in court and positive systemic change on behalf of Florida's abused, neglected and abandoned children. The Program advocates for the best interests of children who are alleged to be abused, neglected or abandoned and who are involved in court proceedings.

### **Standard 1.1 Definition and Role of Guardian ad Litem**

The GAL Program is the "guardian ad litem" and is appointed to represent the best interests of children in court proceedings. Program representatives, including Program staff, certified lay volunteers and pro bono attorneys, work together to advocate for permanency for children pursuant to the Order Appointing Guardian ad Litem, these Standards of Operation and the Code of Conduct contained herein. Certified guardian ad litem volunteers function under the direction and supervision of Program personnel.

The duties, responsibilities, and roles performed by a guardian ad litem in a particular case vary based upon the type of case assigned. Pursuant to § 39.807(2)(b), Florida Statutes and Rule 8.215, Florida Rules of Juvenile Procedure, the guardian ad litem has the responsibility to investigate and file reports regarding the allegations of the petition and any subsequent matters arising in the case. This report must include a statement of the child's wishes and the guardian ad litem must provide a copy to all parties and the court at least 72 hours before the disposition hearing. The guardian ad litem must be present at all court hearings unless excused by the court and shall represent the best interests of the child until the jurisdiction of the court over the child terminates or until excused by the court.

The guardian ad litem performs the following roles:

- (1) Investigator: carries out an objective, systematic examination of the situation, including relevant history, environment, relationships, and needs of the child. The GAL interviews family, caregivers, service providers, and faculty of the child's school.
- (2) Facilitator: identifies resources and services for the child and facilitates a collaborative relationship between and among all parties involved in the case, helping to create a situation in which the child's needs are met.

- (3) Advocate: as the child's voice in court proceedings, makes independent recommendations and represents the best interests of the child.
- (4) Monitor: monitors progression of court orders and services, as well as the plans of the Department of Children and Families or the community based care provider.

Other duties and responsibilities typically include:

- (1) Visiting the child and keeping the child informed about the court proceedings;
- (2) Gathering and assessing independent information on a consistent basis about the child in order to recommend a resolution that is in the child's best interest;
- (3) Reviewing relevant records;
- (4) Interviewing appropriate parties involved in the case, including the child;
- (5) Determining whether a permanency plan has been created for the child in accordance with federal and state laws and whether appropriate services are being provided to the child and family;
- (6) Submitting a signed written report with recommendations to the court on the placement, visitation plan, services, and permanency plan that are in the best interests of the child;
- (7) Attending and participating in court hearings and other related meetings to advocate for a permanency plan, which serves the child's best interests;
- (8) Maintaining complete records about the case, including appointments scheduled, interviews held, and information gathered about the child and the child's life circumstances; and
- (9) Performing such other duties as are consistent with the scope of the appointment.

The Program uses a team approach to represent children. Volunteers work directly with the case coordinators in their advocacy for children. The case coordinator is a central player in the GAL team. Program attorneys provide legal advice on cases and complement other members of the team in advocating for the best interests of children. The role of the GAL in court proceedings is distinct because the GAL is the only party mandated to advocate solely for the best interests of the children.

### **Standard 1.2 Best Interests**

The Program shall advocate for the child and work with all relevant persons to further a child's best interests. Best interests includes, but is not limited to:

- (1) preservation of the child's physical needs (along with psychological, mental, and developmental effects of maltreatment upon the child), safety, shelter, food, clothing, and medical care;
- (2) emotional well-being, such as nurturance, trust, affection, security, achievement, and encouragement;
- (3) the child's social needs;
- (4) permanent placement in a stable and nurturing home environment that fosters the child's healthy growth and development;
- (5) the preferences of the child;
- (6) advocating for compliance with statutory requirements, including notifying the court of the child's wishes at every hearing;
- (7) the child's educational needs;
- (8) the child's vulnerability and dependence upon others;
- (9) degree of risk;
- (10) the child's age and developmental level, including his or her sense of time;
- (11) the general preference of a child to live with known people, to continue normal activities, and to avoid moving;
- (12) whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources;
- (13) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers;
- (14) the importance of continuity in the child's life;
- (15) the home, school and community record of the child; and
- (16) the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings.

## **Section II: Program Administration**

### **Standard 2.0 Compliance with Standards of Operation**

These Standards of Operation are mandatory for all Circuit GAL Programs, Program personnel, certified lay volunteers and pro bono attorneys.

### **Standard 2.1 Appointment of GAL Program and Acceptance and Assignment of Cases**

Subject to the availability of Program resources and the limitations imposed by Standard 2.4, the GAL Program will accept appointment by the court in judicial proceedings involving children who are alleged to be abused, abandoned or neglected. The GAL Program may not accept appointments in dissolution of marriage cases unless there is a companion dependency case.

The GAL Program's acceptance and assignment of cases shall be according to any approved statewide case assignment matrix and the availability of Program resources.

GAL Program staff shall assign a Program representative within thirty (30) days of the order of appointment of the GAL Program to a case or shall file a motion for discharge pursuant to Standard 2.6. Immediately upon acceptance of a case, the Program shall file a Notice of Acceptance with the court. The GAL Program must ensure that copies of the Order of Appointment and the Notice of Acceptance are furnished to all parties in the case. If the Program representative assigned to a case resigns or abandons his or her responsibilities, GAL Program staff will reassign the case within thirty (30) days of resignation or abandonment by the Program representative. The GAL Program shall maintain complete records of all case assignments.

#### **Explanation/Comment**

The GAL Program endeavors to represent 100% of children who are alleged to be abused, abandoned or neglected and who are involved in court proceedings. However, in the absence of sufficient resources to do so, a statewide case assignment matrix has been designed to assist Programs in consistently assigning volunteers and Program staff to those children whose need for best interests representation is the most critical.

## **Standard 2.2 Authority to Act**

The GAL Program is authorized to act only in a pending case in accordance with the Order Appointing Guardian ad Litem. The Program's representation of a child begins only after the judge who is presiding over the case issues an order of appointment. Program representatives are prohibited from undertaking any representation of or advocacy for children prior to the court appointing the Program orally or by issuing a written Order Appointing Guardian ad Litem.

The GAL Program has authority to act only as long as the court retains jurisdiction. Loss of jurisdiction by the court results in the Program losing authority to take action in a case. For those courts that obtain continuing jurisdiction over children as provided by Florida Statutes, once active judicial review of the case ends, the Program shall seek discharge.

Nothing in this section is intended to prohibit a Program from assisting another Program in out-of-circuit visits pursuant to Standard 2.5.

## **Standard 2.3 Record Management of Case Files**

All records (computer and hard copy) shall be safely and securely maintained and controls shall be established so that records can be located at any time. Records shall be retained in accordance with the Rules of Juvenile Procedure, and the currently utilized Retention guidelines published by the Florida Department of State General Schedule for State Government Agencies GS1-S (January 2001; revised 10/20/04 and 4/11/05).

Each circuit GAL Program shall maintain case files for all children served which may include:

- (1) case fact sheet which includes identifying information and reason for referral by the court;
- (2) order of appointment;
- (3) notice or oath of acceptance;
- (4) court reports and court orders;
- (5) court hearing notes;
- (6) documentation of each Program contact on case related activities;
- (7) staff case notes;
- (8) copies of all guardian ad litem reports filed with the court;
- (9) correspondence;
- (10) case plan(s);
- (11) copies of any documents filed with the court (e.g. pleadings, motions, discovery, mediation agreements); and
- (12) any another documentation related to appointment and discharge, or received regarding the child or child's family.

Pursuant to § 39.0132(4)(a) 2., Florida Statutes, files in the possession of the GAL Program staff and volunteers are confidential and shall not be disclosed except as authorized by federal or state law or pursuant to court order.

## **Standard 2.4 Conflict of Interest**

The GAL Program shall provide best interests representation for each child it serves. The GAL Program shall request discharge from a case when there is a conflict of interest for any Program representative, or because of conflicts arising from representation of multiple parties.

A conflict of interest exists where the Program has been appointed to:

- (1) simultaneously represent a minor parent and that minor's child(ren);
- (2) represent a minor child where the Program previously represented the minor child's parent and the information from the representation of the parent could now be used to the disadvantage of the parent;
- (3) represent 2 or more children where the interests of any child are incompatible with or in any way contrary to the interests of another.

Additionally, if a program director determines that circumstances exist which would compromise the Program's ability to provide independent advocacy for the best interests of a child, he or she should identify those circumstances as a conflict of interest and report this information to the court and other parties. Any conflict of interest identified shall be reported to the presiding judge in the case.

If the Program is unable to serve on a case because of a conflict of interest, the Program is not obligated to identify or provide an alternate guardian ad litem or attorney to represent the child's interests. However, if pro bono attorneys or other resources are available, the Program may recommend the court appoint a guardian ad litem or attorney for the child.

## **Standard 2.5 Out-of-Circuit Investigations and Monitoring**

When a local GAL Program is appointed to a case in which a child is placed outside the circuit and the Program representative cannot visit that child, the appointed GAL Program ("primary Program") may request assistance from a GAL Program in another circuit (the "receiving Program"). All communications with the court or other parties regarding the case should be directed to the primary Program. The receiving Program shall file any report with the primary Program and not with the court directly.

At a minimum, the following standards apply to out-of-circuit requests:



- (1) A copy of the Order Appointing Guardian ad Litem, a Notice of Acceptance signed by the primary Program, and a copy of the court order placing the child out of circuit shall be delivered to the receiving Program to provide the receiving Program authority to act on a particular case. No additional Notices of Acceptance need be signed by the receiving Program unless specifically requested by the court;
- (2) The primary Program shall clearly state the purpose and scope of the investigation or monitoring required of the receiving Program. In all cases, the purpose and scope of the investigation and monitoring shall include, at minimum, monthly contact with the child(ren) placed out-of-circuit, unless an alternative visitation schedule has been approved in writing by the program director;
- (3) The receiving Program shall provide the primary Program written, monthly progress reports on the status of the requested investigation or monitoring;
- (4) Ongoing communication between the primary Program and the receiving Program is necessary to ensure the needs of the child(ren) are being met;
- (5) It is the responsibility of the primary Program to prepare all court reports and to testify in court concerning the activities of the receiving Program;
- (6) Only the primary Program gathers and records statistics concerning activity relating to the child(ren) unless such information is specifically requested by the State Office;

When a GAL Program is requested to perform services to assist a guardian ad litem or Court Appointed Special Advocate (“CASA”) program from another state, the Program shall require documentation of the request from the presiding court in that state. Before taking any action on such a case, the Program shall obtain approval from the director of operations.

## **Standard 2.6 Discharge of Guardian ad Litem Program**

The Program shall file a motion or provide notice for discharge when:

- (1) the Program does not have adequate resources to accept appointment of a case;
- (2) the Program has discovered a conflict of interest as defined by these Standards, which has not been waived;
- (3) a child has turned 18 years of age, unless jurisdiction is extended; or
- (4) the Department of Children and Families has received authorization from the court to terminate its supervision with a child and family.

The GAL Program shall appoint a Program representative to a case within thirty (30) days of court appointment unless one of the above-listed grounds for discharge exists. If unable to accept the case, the Program shall move for discharge no later than thirty (30) days after notice of appointment. If the motion for discharge is denied by the court, staff must make a written notation (dated and signed) in the case file documenting the denial. If after thirty (30) days from the denial, the Program is unable to accept the case, the Program must motion for discharge again, describing to the court the reasons the Program cannot provide advocacy. The Program

shall then file a notice with the court stating the statutory obligations of the Program and an explanation as to why the Program is unable to fulfill its obligations.

## **Section III: Guardian ad Litem Certification and Training**

### **Standard 3.0 Guardian ad Litem Certification**

All applicants shall meet the following minimum qualifications prior to certification as guardians ad litem with the Program.

A guardian ad litem shall:

- (1) be 19 years of age or older;
- (2) submit a completed application including information about educational background and training, employment history and experience working with children;
- (3) provide official photo identification;
- (4) successfully complete a screening interview with a program director or the program director's designee;
- (5) provide two positive character references in writing;
- (6) authorize a release of information sufficient to enable the Program to independently verify the facts set forth in the application and freely check into the applicant's background, criminal history, employment and qualifications; and
- (7) successfully complete training requirements per Standard 3.1.

Volunteer and staff screening shall include, but need not be limited to, an applicant interview, review of written references, employment history checks for a minimum of the last five years, a background investigation through the Florida Department of Law Enforcement, any available local criminal background checks, and for attorneys, a disciplinary listing from The Florida Bar. The Program shall not assign a case to an individual until the screening process has been completed. Successful completion of the screening process does not guarantee certification.

Documentation that the applicant has met eligibility and qualification criteria must be maintained in the volunteer or staff file. The program director shall have the sole discretion to accept or reject any applicant. However, an individual shall not be considered eligible for certification as a guardian ad litem if he or she has been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any prohibited offense under the provisions of the Florida Statutes specified in § 435.04(2) or under any similar law in another jurisdiction. In analyzing and evaluating the information obtained in the security background investigation, the Program must give particular emphasis to past activities involving children, including but not limited to, child-related criminal offenses or child abuse; whether the individual has had a permanent injunction for domestic violence entered against him or her; and whether the individual has a prior finding of abuse, neglect or abandonment of a child or an adult.

No applicant shall be certified as a guardian ad litem until all required documentation has been received, reviewed and approved by the program director or program director's designee. Based on the totality of the information concerning each applicant, and a consideration of whether anything in the applicant's file could adversely affect the individual's performance as a guardian ad litem, the program director shall then accept or reject the application. A decision to reject an applicant shall be communicated in writing to the applicant.

The Program has the sole discretion in determining whether to certify a person based on his or her security background investigation or for any other reason. The information collected pursuant to the background investigation is confidential and is exempt from § 119.07(1), Florida Statutes, as described in Standard 4.7.

### **Standard 3.1 Guardian ad Litem Certification Training**

A guardian ad litem shall successfully complete training requirements as set forth by the Program prior to certification as a guardian ad litem. The training shall consist of a minimum of thirty (30) hours and shall satisfy the following topics at a minimum:

- Program History and Structure
- Dynamics of Child Abuse and Neglect
- Best Interests of the Child
- Children and Permanence
- Role and Responsibilities of GAL Program Staff and the Volunteer
- Juvenile Court Process
- Department of Children and Families
- Cultural Diversity
- Communication Skills and Interviewing Techniques
- Confidentiality
- Record Keeping Practices
- Report Writing
- GAL Program Standards of Operations
- Ethical Obligations
- Community Agencies and Resources
- Court Observation

The Program may not use resources for dissolution of marriage cases unless there is a companion dependency case. If the Program is appointed to criminal cases or appropriate family law cases, the Program shall provide additional training, which shall include at a minimum, the statutes and rules applicable to criminal or family law proceedings. Successful completion of any training does not guarantee certification.

### **Standard 3.2 Volunteer In-Service Training**

Continuing education of guardian ad litem volunteers is critically important. In-service training enhances skills and permits indispensable, in-depth learning on topics relevant to work as a guardian ad litem. As a result all lay volunteers shall complete a minimum of six (6) hours per year of in-service training approved by the program director. There is no in-service requirement during the first year of certification, although nothing in these Standards of Operation shall prevent any volunteer from taking in-service training at any time. The GAL Program shall ensure that sufficient hours of approved in-service training opportunities are available for Program volunteers annually.

### **Standard 3.3 Guardian ad Litem Annual Performance Reviews**

GAL Program staff must conduct a performance review at least once every 12 months with each active guardian ad litem volunteer to evaluate the individual's performance, including, but not limited to, a review of the GAL volunteer's active cases and compliance with in-service training requirements. Staff conducting the review shall meet with the GAL volunteer to discuss the results of the written performance evaluation, which shall then be signed by the volunteer. The GAL volunteer must also be given the opportunity to respond, in writing, to the annual performance evaluation if he or she wishes. GAL volunteers must also review and sign the GAL Code of Conduct annually. Completion of the review, along with any volunteer comments, must be documented in the GAL volunteer's personnel file and dated and signed by the staff person conducting the review.

### **Standard 3.4 Volunteer Status**

Volunteers shall be classified as either "Certified" or "Not Certified".

Certified volunteers are those lay or attorney volunteers designated as such by the program director, who shall have completed all required pre-certification training and background requirements, annually required in-service training, and who signed the GAL Code of Conduct agreeing to adhere to each of the terms and conditions during the time of service.

Certified volunteers will be reported to the State Office, on reports requested, as either:

- (1) Active: indicating the volunteer has at least one open case as a GAL, or
- (2) Inactive: indicating that the volunteer does not currently have at least one open case. A certified GAL volunteer may remain on inactive status as long as all conditions for certification are in force. For example, a volunteer can remain Certified-Inactive, if continuing educational requirements are met and Code of Conduct is signed, even if

the volunteer does not have a case. To become Certified-Active the volunteer would be assigned a new case.

Not Certified means that the conditions required for certification are no longer current. Volunteers who are Not Certified are not eligible to take cases or otherwise work on behalf of the GAL Program. Being classified as Not Certified can result when the program director determines that one of the following conditions exists:

- (1) A volunteer wishes to resign his or her certification status for any reason;
- (2) Required ongoing, in-service training is not current, after sufficient notification and opportunity to achieve the requirements have been offered;
- (3) Serious or repeated violations of the Code of Conduct have occurred; or
- (4) The volunteer is not acting in the best interests of the children.

The program director shall determine whether a volunteer is Certified or Not Certified. Once a volunteer has been classified as Not Certified, it will be necessary to complete a new application and undergo a new background check prior to re-classification as Certified. In addition, the program director, or designee, shall meet with the prospective candidate to determine what additional training may be necessary to re-certify the candidate. A written training plan, approved by the program director, with a minimum requirement of six (6) hours and a maximum of thirty (30) hours of pre-certification training shall be developed. This plan shall be filed in the candidate's volunteer file. Once the application, background check and training have all been completed, the volunteer may be Certified and may resume accepting case assignments.

### **Standard 3.5 Pro Bono Attorney Qualifications**

A pro bono attorney shall:

- (1) demonstrate he or she is a member in good standing of The Florida Bar;
- (2) submit a completed pro bono attorney application and current resume if requested by Program;
- (3) provide official photo identification;
- (4) successfully complete appropriate training depending on the role of the pro bono attorney in the case, as determined by the program director and supervising attorney; and
- (5) comply with local Program policies and procedures.

#### **Explanation/Comment**

A pro bono attorney may demonstrate good standing with The Florida Bar either by providing a certificate from The Bar or by executing a sworn oath or affirmation to that effect.

## **Section IV: Conduct and Supervision**

### **Standard 4.0 Guardian ad Litem Code of Conduct**

The GAL Program must advise all guardian ad litem staff and volunteers of the following Guardian ad Litem Code of Conduct and must require each certified guardian ad litem to read, sign and date a copy of the Code of Conduct at the time of original certification, annually in accordance with Standard 3.3, and at each subsequent annual review. The signed and dated Code of Conduct shall be maintained in the volunteer or personnel file and a copy provided to the volunteer or staff member. The following is the Guardian ad Litem Code of Conduct:

The guardian ad litem shall:

- (1) maintain high standards of conduct in carrying out his or her duties and obligations;
- (2) diligently represent and be guided solely by the best interests of the child;
- (3) report honestly and impartially to the court on what is in the best interest of the child;
- (4) respect the privacy of the child and the family;
- (5) hold confidential all information obtained in the course of service as a guardian ad litem, as required by law and these Standards;
- (6) decline appointment, withdraw, or request assistance when the volunteer recognizes that he or she may not have the time or ability to effectively advocate for a child;
- (7) affirmatively advise the Program if he or she is charged with or convicted of a criminal offense, or becomes involved in any other court proceeding, as this may cause a conflict of interest or adversely affect the GAL's ability to effectively advocate for a child;
- (8) if an attorney, affirmatively advise the Program if he or she becomes the subject of a complaint registered with The Florida Bar;
- (9) report any new incident of child abuse or neglect to his or her supervisor and the abuse hotline;
- (10) comply with local circuit Program policies;
- (11) notify the program director if the guardian ad litem or any member of the GAL's immediate family becomes involved in a case with allegations of child abuse or neglect;
- (12) discuss all recommendations concerning assigned cases with Program staff prior to submitting recommendations to the court;
- (13) obtain approval from Program staff before submitting any document to the court or other parties;



- (14) monitor the child regularly, including visiting the child every 30 days at a minimum, unless an alternative visitation schedule has been approved in writing by the program director;
- (15) return identification cards and all case files and related materials to the Program office upon discharge from the case or dismissal from the Program;
- (16) discuss case progress and guardian ad litem activity at least every thirty (30) days with Program staff and regularly submit case activity sheets; and
- (17) complete six hours of in-service training annually.

Guardian ad litem staff and volunteers shall not:

- (1) take action which endangers the child, a party, a witness or other person;
- (2) take action which is outside the powers or role of the guardian ad litem;
- (3) violate state or local law, court rule, Program policy or court or Program procedure;
- (4) take action which contravenes staff or court direction;
- (5) repeatedly or significantly fail to perform a responsibility as a GAL;
- (6) falsify or fail to disclose information on the guardian ad litem application form, misrepresent facts during the screening interview or commit an act which results in a substantial alteration of the individual's qualifications to serve in the GAL Program;
- (7) violate the GAL Code of Conduct or the Standards of Operation;
- (8) transport a child or a family member of a child represented by the Program;
- (9) engage in conduct that is inappropriate or not in the best interests of the child or the GAL Program;
- (10) engage in an intimate, social, or other nonprofessional relationship with any person connected to the case or be employed in a position that may result in a conflict of interest;
- (11) practice, condone, facilitate, or participate in any form of discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference or personal characteristic, condition or status;
- (12) accept a fee for services as a guardian ad litem appointed through the GAL Program;
- (13) allow any child or family member of a child represented by the Program into their home;
- (14) give therapeutic counseling;
- (15) give legal advice or otherwise practice law in their capacity as a guardian ad litem, unless the guardian ad litem is an attorney;
- (16) misrepresent the role or position of the guardian ad litem; or
- (17) engage in any ex parte communication with a judge.

Each program director, in consultation with the director of operations, may determine whether failure to comply with the Code of Conduct will result in either discipline or discharge. If the

program director determines that action is required, the program director will provide written notice of the incident and the action taken to the director of operations.

All volunteers certified by the GAL Program serve at the pleasure of the appointing authority and may be discharged with or without cause. These Standards are not intended to confer upon the volunteer any protected property interest or contractual right.

### **Standard 4.1 Confidentiality**

Program representatives shall not disclose or participate in the disclosure of any information relating to an appointed case to any person who is not a party to the case, except in reports to the court and as provided by law or court order.

### **Standard 4.2 Children's Therapy Records**

When requesting records containing communications that occur in therapy sessions between the child and the child's mental health therapist (therapy records), the Program shall follow the procedure detailed below:

- (1) **Court-Ordered Evaluations.** When the court has ordered a mental health evaluation, the evaluation is for informational purposes and shall be reviewed by the Program. The Program must review court-ordered evaluations as required by rule 8.215(c)(1), Florida Rules of Juvenile Procedure and § 39.807 (2)(b), Florida Statutes. In addition, the Program shall acquire and review all records in the possession of the Department of Children and Families.
  - (a) Psychotherapists are aware of the limits of confidentiality for the evaluation results. In the case of a court-ordered evaluation, the psychologist must appreciate the difference in roles and methods between being a psychotherapist and being a child protection evaluator.<sup>1</sup>
- (2) **Information Sharing among the Program Team Members.** At all times throughout the case's progression, each member of the Program is obligated to ensure that other members of the team have all of the most current information from which to form an opinion on the issues in a case. Before requesting therapy records the Program must meet to discuss the case and to ensure that this standard for records review is followed.
- (3) **When requesting therapy records the Program shall determine specifically what information is required and for what purpose the Program will use the information.**

- (a) The information needed must be specific. The Program will not request to inspect or copy therapy records to obtain general information or to gather information in an unfocused manner.
  - (b) Acquisition of the information must further the child's best interests. The Program will not acquire therapy records unless a determination is made by the Program that such information is essential to protection of the child's best interests.
  - (c) The Program shall contact the mental health service provider in possession of the therapy records to determine the potential emotional and psychological impact to the child as well as any potential damage to the relationship between the therapist and the child if the records are disclosed to the GAL.
  - (d) The Program shall balance the need for the therapy records with the risk to the therapeutic benefits. If the child's mental health service provider indicates disclosure to the GAL will adversely affect the child's therapy, the Program shall evaluate the need for the information obtained from mental health records against the potential harm that may be caused by violating the trust established in the confidential relationship between the child and his or her therapist. If the child has the capacity to consent as described in subsection 5(a), the Program shall discuss the need for the therapy records with child and consider the child's preferences in the decision to review therapy records. If the Program determines the need for the records outweighs the potential harm the Program may acquire the records.
- (4) The Program Shall Maintain Confidentiality.
- (a) The Program shall maintain the confidential or exempt status of any therapy records in its position as required by § 39.822(3)(a), Florida Statutes.
  - (b) The Program shall zealously guard the confidential relationship between the child and his or her psychotherapist established in § 90.503, Florida Statutes. If the Program is in possession of therapy records the Program shall review the information to determine the need for disclosure in the judicial proceedings.
    - i. The Program shall balance the need to disclose the therapy records with the risk of harm to the child. If the child's mental health service provider indicates disclosure in the judicial proceedings will adversely affect the child's therapy or otherwise harm the child, the Program shall evaluate the need to disclose the records against the potential harm. If the Program determines the potential harm outweighs the need to disclose the records the Program shall maintain the records as confidential pursuant to

§ 90.503, Florida Statutes. If a third party seeks disclosure of the records the program attorney shall take appropriate legal action to protect the records from disclosure.

- (5) If the Program determines the need to disclose therapy records in the judicial proceedings outweighs the potential harm the Program shall determine if the child is competent and mature enough to consent to the GAL's disclosure. The Program must attempt to obtain a competent child's informed consent prior to the disclosure of the records in the following manner:
  - (a) The Program must first determine if the child has the capacity to consent to the disclosure. When determining the child's capacity to consent, the Program shall consider such factors as the child's age, level of maturity, experience, education, background, and intelligence.<sup>2</sup> Any child age 14 and older is presumed to have capacity to consent.
  - (b) If the child has the capacity to consent, the Program shall:
    - i. inform the child and the child's attorney ad litem (AAL), if the child represented by an AAL, of the need to disclose the therapy records;
    - ii. If the child does not object to the disclosure the GAL may disclose the therapy records.
    - iii. If the child objects to disclosure of the therapy records and has an AAL, the program attorney shall inform the AAL of the child's objection. If the child objects to disclosure of the records and does not have an AAL, the Program shall request appointment of an AAL, if available, to represent the child.
- (6) Emergencies: If the Program determines that its acquisition and disclosure to the court is necessary to prevent harm to the child's health or welfare as defined in § 39.01(30), Florida Statutes, the Program shall acquire and disclose the therapy records to the court.
- (7) The Program shall follow the decision making procedure established in Standard 4.6 of these Standards of Operation when making decisions or determinations required by this section.

### **Standard 4.3 Reports to the Court**

The guardian ad litem must file reports with the court as required by the court or by law. Program staff must review and sign all guardian ad litem reports and shall provide copies to all parties at least 72 hours prior to the hearing. A volunteer shall not submit any document or report to the court (or other parties) without first allowing Program staff to review and approve

it. Program staff will not change the volunteer's recommendations unless they are contrary to law, fact, or the GAL Standards of Operation, and then only after consultation with the volunteer. Nothing in the GAL Standards precludes Program staff from making stylistic or grammatical modifications to volunteer reports. The program director may authorize the filing of additional information if in the program director's opinion, it is in the best interests of the child to do so.

#### **Standard 4.4 Restriction of Program Services**

While assigned to a case as the guardian ad litem, Program representatives shall not assume direct responsibility for providing services to the children in that case or their families, including but not limited to:

- (1) permitting any child or sibling of a child represented by the Program to be placed, invited to or temporarily housed in the residence of any Program staff member or volunteer;
- (2) transporting any child, or family member of that child, represented by the Program;
- (3) accepting responsibility for the welfare, supervision, or custody of any child represented by the Program; or
- (4) conducting or being responsible for supervised visits for the children in their cases.

#### **Standard 4.5 Grievances**

Written, external grievances about Program operations, administration or management shall be referred to the program director, who shall review the grievance, ensure review by an attorney and provide it to the director of operations with a copy of the complaint and documentation of any Program response or plan of action.

Written grievances about the conduct of a volunteer may be directed to the program director. The program director shall ensure review by the Program's supervising attorney and provide a written response within a reasonable amount of time. Notification of grievances concerning volunteers shall be provided to the director of operations.

#### **Standard 4.6 Decision-Making Process**

The Program's team approach utilizes volunteers, case coordinators, and program attorneys to represent the best interests of children. This team concept was instituted to ensure the Program capitalized upon the expertise of each person working with the child: the volunteer, the case

coordinator and the attorney. Each member of the team has a unique perspective and different professional background that compliment one another and enhance the quality of representation provided to children. Exploring different viewpoints of team members creates opportunities to ensure all possible outcomes are explored for the child and should result in the formulation of a more comprehensive best interest solution. Inevitably, the professional judgments of team members will conflict at some time.

The fundamental principle of effective team decision making is information sharing. Each team member has an obligation to ensure that other members of the team have all of the most current information from which to form an opinion on the issues in a case.

The following guidelines are intended to provide a framework to assist with decision making and resolve disputes. Team members shall adhere to these general guidelines to facilitate the most effective representation of children:

- (1) Team members should meet regularly to ensure there is consensus on the Program's position regarding the best course of action for the child. The team should meet before all proceedings to discuss the GAL Program's position and the potential issues that may arise during the proceeding, whether it is a hearing, staffing, mediation, or other event. Meetings should occur far enough in advance of upcoming proceedings to allow the team to determine whether additional preparation by any team member is required before the proceeding. In addition, situations will arise which require immediate communication between team members. Team members should recognize that some information is more critical than other information and the manner in which it is shared with other team members may need to differ. For example, if a motion is handed to the volunteer, team members may need to find the program attorney in person, or call the attorney immediately, to discuss the matter as opposed to waiting for the next meeting to occur. Conversely, other documents received in court may be appropriately discussed at the next meeting of the team. Any disagreements between team members should be identified and resolved before any proceedings.
- (2) Deference should be given to the assessment of the volunteer or case coordinator regarding objectives of representation and issues of fact.

From a legal perspective, the volunteer or case coordinators are the authorized constituents for the GAL Program for purposes of Rule 4-1.13, Rules Regulating The Florida Bar. Therefore, the program attorney is bound by Rule 4-1.2, Rules Regulating The Florida Bar, and must abide by the decisions of the volunteer or case coordinator regarding the objectives of representation and must consult with them regarding the means by which the objectives are pursued. There are a number of exceptions to this general rule:

- (a) If the program attorney believes the volunteer or case coordinator is engaged in action, intends to act, or refuses to act in a matter related to a case that is contrary to the best interests of the child or the Program.
- (b) If the program attorney believes the volunteer or case coordinator, is engaged in action, intends to act, or refuses to act in a matter related to a case that is a violation of the GAL Standards of Operation or a violation of the law.
- (c) Any exception found in Rule 4-1.2, Rules Regulating The Florida Bar.

Under these circumstances, the program attorney should address the issue with the team. The program attorney should provide information about how the volunteer's or case coordinator's assessment, conduct or potential conduct is in conflict with the child's best interests, the GAL Program or its Standards, or general law. The program attorney should counsel the team on its options. If consensus cannot be reached, the dispute should be resolved with the program director, as described below.

- (3) Deference should be given to the volunteer's or case coordinator's assessment regarding issues of fact.

In nearly all cases, the volunteer or case coordinator will have first-hand knowledge of the facts of the case. When a conflict arises as to an issue of fact, the attorney should typically defer to the volunteer or case coordinator assuming these team members are more familiar with the facts of the case than the attorney.

- (4) Deference should be given to the attorney regarding issues of law.

When a conflict arises as to an issue of law, the team shall defer to the program attorney. In most cases, the program attorney will be the only member of the team with legal training. It is the program attorney's professional responsibility to have the most up-to-date information on legal issues facing the Program and the children it represents. In some cases, the law may not make sense to someone who is not law-trained and team members may need to follow the attorney's lead on an issue even though it may not be the approach they would otherwise choose. While the team has a responsibility to respect the professional legal judgment of the attorney, the attorney has a responsibility to provide the team with a clear explanation of why the law might dictate a particular course of action. If, after a discussion of the legal reasoning, the team members have serious concerns about an attorney's advice as it relates to the child's best interests, it may be appropriate to bring the issue to the supervising attorney as described below.

(5) Resolution of policy issues.

Sometimes issues in an individual case may impact children throughout the state.

A team member shall consult with his or her supervisor if the team member believes an issue may affect children throughout the state. The supervisor shall consult with the program director, who may need to consult with the State Office in order to resolve the issue.<sup>3</sup>

(6) When a conflict cannot be resolved among team members, the following steps shall be taken:

(a) Conflicts between the volunteer and case coordinator. When the case coordinator and volunteer disagree, they shall consult with the case coordinator's immediate supervisor. If an agreement cannot be reached then the case coordinator's immediate supervisor, volunteer and case coordinator shall consult with the program director to make a final decision.

(b) Conflicts between team members and the program attorney. When the volunteer or case coordinator disagrees with the program attorney the team shall consult with the supervising attorney. If an agreement cannot be reached, the supervising attorney and the team shall consult with the program director. The program director and supervising attorney shall review the matter to determine the final decision.

(i) If the final decision rests upon an interpretation of the law, the program director should defer to the supervising attorney.

(ii) If the final decision does not rest upon an interpretation of law the supervising attorney should defer to the program director.

(7) Referral of Conflicts to the State Office.

In the rare event that an agreement cannot be reached between the program director and supervising attorney, the conflict shall be referred to the director of operations and the general counsel at the State Office. The referral shall include the volunteer or case coordinator's position, the program attorney's position, the supervising attorney's opinion and the program director's opinion. Each individual is responsible for submitting his or her own position. The individual positions shall be submitted in writing unless waived by the director of operations and the general counsel.



(8) State Office Review Procedure.

The director of operations and the general counsel shall review the opinions submitted by team members involved in the dispute, the supervising attorney's and the program director's opinion as well as any other information deemed relevant by the director of operations and the general counsel. The director of operations and the general counsel shall resolve the dispute and inform the program director and the supervising attorney of their decision.

### **Standard 4.7 Public Records**

Certain identifying information of guardian ad litem volunteers and staff members is exempt from public record disclosure laws if the volunteer or staff member has made reasonable efforts to protect his or her information from being accessible through other means available to the public. Pursuant to § 119.071(4)(d)(6), Florida Statutes, the home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, as defined in § 39.820, and the names, home addresses, telephone numbers, and places of employment of the spouses and children of such persons, are exempt from § 119.07(1) and § 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public.

### **Standard 4.8 Media Relations**

As a public office, it is the GAL Program's policy to be open and accountable to the public. It is the policy of the GAL Program to respond to media questions and inquiries effectively, accurately and in a timely manner. However, the GAL Program must also protect the privacy of the children it represents. The balance of openness with the public and privacy of children the Program represents, requires an explanation of the media relations protocol that all Program employees, volunteers and contractors (Program staff) must follow.

- (1) General Information. In an effort to increase the public's understanding of the GAL Program, its mission and needs, general information about the Program may be distributed to media representatives. No information may be provided by Program staff to the media that relates to a specific case, party, child or family.
  - (a) Program staff shall inform the program director of any media contact immediately.
  - (b) The program director will determine whether the information requested is general enough to be released to the media representative.

- (c) When speaking to a media representative, Program staff shall consider the implications of being quoted, shall consider requesting more time to respond, and asking about the topic to be discussed during an interview.
- (2) Specific Information. No information shall be provided by Program staff to the media that relates to a specific case, party, child or family. If the requested information is specific, the following guidelines apply.
- (a) Information about specific cases and circumstances of specific children, represented by the program, is confidential and governed by §§ 39.202 and 39.822, Florida Statutes.
  - (b) Program staff shall inform the program director of any media contact immediately.
  - (c) Media representatives seeking information, must be referred to the program director immediately.
  - (d) The program director shall contact the director of operations regarding any media contact regarding a specific case, child, or party or family immediately. If the director of operations cannot be reached, the program director shall immediately contact the general counsel.

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<sup>1</sup> American Psychological Association (1998) Guideline for Psychological Evaluations in child protection matters 8.0 <http://www.apa.org/practice/childprotection.html> (last visited September 27, 2005)

<sup>2</sup> D.K. v Parents of D.K., 780 So.2d 301(Fla. 4th DCA 2001); S.C. v Guardian ad Litem, 845 So.2d 953 (Fla. 4th DCA 2003).

<sup>3</sup> Rule 4-1.13, Rules Regulating the Florida Bar, Comment 1: Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province.