

2020 Custody Guardian *ad Litem* Training Manual

2. Beginning Steps and Overview for Serving as a Guardian *ad Litem* in Complex Custody Cases

- a. Primer – Custody Guardians *ad Litem* (GALs) in the District of Columbia
- b. Recommended Steps in Your Custody GAL Case
- c. Initial Client and Party Interview Tip Sheet
- d. E-Filing in DC Family Court

Custody Guardians ad litem (GALs) in the District of Columbia: A Primer

Nature of proceedings

Custody can be adjudicated in divorce, custody and civil protection order cases.

Custody cases (also known as domestic relations, DR, or DRB cases)

Pursuant to D.C. Code §11-1101, the Family Court (a part of Superior Court) has jurisdiction over “actions seeking custody of minor children” Cases can be filed seeking only adjudication of custody, or custody can be awarded as part of the relief granted in a divorce case.

There is no single comprehensive custody statute in the D.C. Code. Provisions of the D.C. Code that address custody as between parents are located primarily in what was originally the District of Columbia Marriage and Divorce Act, D.C. Code §16-901 *et seq.*, although as a practical matter these provisions are applied to any kind of custody determination between parents and not merely to custody determinations arising out of a divorce. *See Ysla v. Lopez*, 684 A.2d 775, 778 (D.C. 1996). The Domestic Relations Laws Clarification Act of 2002 reorganized and amended several provisions of the D.C. Code related to custody in aid of greater clarity in this regard, particularly with respect to D.C. Code §16-914. Custody cases brought by third parties (non-parents) are governed by the “Safe and Stable Homes for Children and Youth Act of 2007,” D.C. Code §16-831.01 *et seq.* Another statute governing custody proceedings is the Uniform Child Custody Jurisdiction and Enforcement Act, D.C. Code §16-4601.01 *et seq.*, which addresses jurisdiction and some procedural issues.

Custody and divorce cases are assigned to one of several Domestic Relations-II calendars in the Domestic Relations Branch of Family Court.

Domestic violence cases (also known as intrafamily or civil protection order cases)

An individual or the District of Columbia Office of the Attorney General can file a petition seeking a civil protection order (CPO). D.C. Code §16-1001 *et seq.* The court can issue a CPO if the court finds that (1) the petitioner and the respondent have a particular relationship to each other as defined by the statute (including having a child in common); and (2) a criminal offense has been committed or threatened by the respondent against the petitioner. D.C. Code §§16-1001, 1005.

The court has the authority to order the respondent to perform or refrain from certain actions, including stay-away and no-contact orders. In addition, relief can include

determinations concerning temporary custody of children, visitation and child support. D.C. Code §§16-1005(c) and (c-1); *Powell v. Powell*, 547 A.2d 973, 975 (D.C. 1988).

CPOs last for up to one year. Upon motion of a party, CPOs can be modified or extended upon a showing of good cause. D.C. Code §16-1005(d).

CPOs can be enforced by means of contempt proceedings. In addition to the court's general contempt powers (e.g. D.C. Code §11-944), the statute also explicitly provides that violations of CPOs are punishable by contempt. D.C. Code §16-1005(f). In addition, civil contempt may lie in connection with violations of orders regarding custody, visitation and child support.

CPO cases are heard in the Domestic Violence Division of the court. Civil Protection Order (CPO) and related Family Court cases, such as custody, may be consolidated with custody/divorce cases upon motion. See D.C. Super. Ct. Dom. Viol. R. 2. Consolidated cases are more typically heard in Family Court before the custody/divorce judge rather than before the CPO judge in the Domestic Violence Unit of the court.

What is a guardian ad litem?

D.C. Code §16-918(b) provides that “[i]n any proceeding wherein the custody of a child is in question, the court may appoint a disinterested attorney to appear on behalf of the child and represent his best interests.” D.C. Code §16-914(g) provides that “[t]he Court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney, or both, to represent the minor child’s interests.” D.C. Code §16-831.06 (c) allows for the appointment of a “guardian ad litem for the child” in third-party custody cases. See also D.C. Super. Ct. Dom. Rel. R. 101(e)(2)(B). In addition, most judges seem to believe that it is within the inherent powers of the court to appoint a guardian ad litem (GAL) or an attorney for the child.¹

In January 2014, the D.C. Superior Court issued Administrative Order 14-01 adopting Practice Standards for Guardians ad Litem in Custody and Related Consolidated Cases (Standards). These Standards provide that a GAL is an attorney appointed by the court to represent the child’s best interests in domestic relations proceedings (as opposed to a stated-interest attorney). The Standards also address qualifications for GALs, provisions for appointment orders for GALs, role and duties of GALs, and the applicability of the D.C. Rules of Professional Conduct to GALs.

Beyond the practice standards, there is little guidance on the role of the guardian ad litem. There is no statutory definition of the role or duties of a guardian ad litem in D.C., nor is

¹ See *Eaton v. Karr*, 251 A.2d 640 (D.C. 1969), which states that “the Court may appoint ‘experienced disinterested persons’ to aid in the resolution of custody disputes. This power of appointment was not based upon any specific statutory authority but arose from the court’s inherent equity powers when it was acting in its capacity of *parens patriae* in custody matters.” *Id.* at 642.

there any case law interpreting a GAL's role in the context of custody or CPO cases. *S.S. v. D.M.*, 597 A.2d 870 (D.C. 1991) discusses role definition for guardians ad litem and attorneys for children in the context of neglect cases and touches on issues that may be relevant to other kinds of cases. *See also Fields v. Mayo*, 982 A.2d 809 (D.C. 2009).

Why do judges appoint GALs?

Judges appoint GALs for a number of reasons. The practice standards set out a non-exclusive list of fifteen circumstances when appointment may be appropriate and a catchall provision allowing for the court to appoint a GAL in any circumstance deemed necessary. Some of the considerations that may prompt a judge to appoint a GAL are:

1. To help the court reach a decision. Some judges would like to have GALs whenever possible. Others appoint GALs in cases that they perceive as difficult or high-conflict or posing special problems that another participant, particularly a neutral one, might be able to help the court to resolve, whether short of trial or at trial.

Judges frequently want to have a GAL involved in cases in which one or both parties are appearing *pro se*.

2. Facilitating settlement; help in resolving points of contention (even when both parties have counsel – sometimes even *because* of the parties' counsel). While GALs are not mediators, they may be able to give the parties an opportunity to express their viewpoints and concerns short of trial and in a way that will lead to a settlement. Similarly, a GAL may be able to facilitate communication, identify options and make suggestions about options from a more neutral and thus more acceptable posture. (Note that the best interests of the child, not settlement *per se*, is the GAL's goal.)

3. To help bring forward information about the child and the child's opinion/wishes.

The judge may also want someone who can present to the child a more "objective" version of what is going on, and/or to whom the child might in some situations feel freer to communicate generally.

4. Very rarely, judges appoint GALs for a limited purpose: for example, to ascertain whether a child wishes to speak with the opposing party's counsel in a contempt proceeding.

5. While this may not fall within the GAL's mandate, GALs may be asked whether they can assist in locating services for the family (e.g. therapy for the child or family counseling).

Other readings

Standards of Practice for Guardians ad Litem in Custody and Related Consolidated Cases, Superior Court of the District of Columbia (January 2014)

Standards of Practice for Lawyers Representing Children in Custody Cases, American Bar Association Section on Family Law (August 2003)

Special Issue on Legal Representation of Children, 6 NEVADA LAW JOURNAL 3 (Spring 2006)

Anne Graffam Walker, *Handbook On Questioning Children: A Linguistic Perspective*, ABA Center on Children and the Law (2nd edition, 1999)

Proceedings of the Conference on Ethical Issues in the Legal Representation of Children, 64 FORDHAM LAW REVIEW 1301 (March 1996) (focuses on child protection proceedings but discusses some issues of relevance to GALs and representation of children generally)



RECOMMENDED STEPS IN YOUR CUSTODY GUARDIAN AD LITEM CASE

- Please review CLC's case placement e-mail and connect with your [CLC mentor](#) about individualized recommendations for next steps in your case.
- Review any case records provided by CLC. (Note that these are not a substitute for a complete records search.)
- Review the *Practice Standards for Guardians ad Litem in Custody and Related Consolidated Cases*. See D.C. Superior Court Admin. Order 14-01 (January 24, 2014). **A copy is attached to your case placement e-mail.**
- Email a proposed GAL appointment order to the judge's chambers as described in the case placement e-mail. **A sample that conforms to the practice standards is attached to your case placement e-mail.**
- Obtain and review a copy of the entire case file and a printout of the docket. Go to the Family Court Clerk's office, Room JM-300, to obtain these records. Custody court files are open to the public but are not available on-line. Copying fees, if any, should be waived if you produce your GAL appointment order.
- Once appointed, file and serve a praecipe of appearance on the parties (or counsel if represented). **A sample is attached to your case placement e-mail** and also available on [CLC's resources page](#).
- Once appointed, you should contact the parties to introduce yourself. If any party is represented, remember that you must contact counsel first to request permission to speak directly with his/her/their client.
- We suggest that you schedule a time for an initial meeting with each party (with counsel, if the party is represented and counsel wishes to be present) without the child(ren) present, to interview them about the case.
- Seek releases of information from the legal custodian(s) of the child if and when necessary. **A sample is provided in your case placement e-mail** and also available on [CLC's resources page](#).
- We also recommend that you arrange through the custodial caregiver(s) or their counsel to meet with the child(ren). Establish a relationship with the child by consistently and respectfully communicating with the child in a developmentally appropriate manner. Remember that this may take time, so be patient. It is best practice to observe the child in their natural environment and in each caregiver's home, if possible, although you may also want to meet with the child outside of the home. We encourage you to consult [CLC's resources page](#) and your [CLC mentor](#) if you need guidance on this issue.

- It is best practice that all contact with the child(ren) be arranged through the custodial caregivers (or their counsel), as they are the legal decision-makers for the child(ren). If you encounter difficulty scheduling meetings with the child(ren) through the custodial caregivers, contact [your CLC mentor](#) to talk through possible strategies.
- Investigate the facts, the parties' positions, and the child's wishes and thoughts by, e.g., interviewing collateral information sources and witnesses, gathering and reviewing documentary evidence (e.g., social, medical, educational (academic and attendance) records), and running criminal, civil, family/domestic relations and domestic violence/protection order court records checks in D.C. and other jurisdictions where the parties live or have lived.
- Obtain a copy of any home studies or psychological evaluations conducted on the case by requesting them from chambers. If these studies have not been conducted, consider whether a home study and or an evaluation would be helpful to you in developing your position on the case or determining the child's best interest.
- If you want to file a pleading, sample GAL pleadings are located on our [CLC's resources page](#). If you are trying to determine what type of pleading would be appropriate in any given circumstance, contact [your CLC mentor](#).
- Under the practice standards, written reports are permissible but are not evidence. At CLC, we typically do not file reports. Although reports are permissible, the practice standards adopt an overall structure in which GALs function as attorneys. If you do file a report, ensure it is consistent with the *Practice Standards for Custody Guardians ad Litem in Custody and Related Consolidated Cases* (see Section III.C.7).
- As the case proceeds, please consult [CLC's resources page](#) and [your CLC mentor](#) for assistance.
- Pursuant to D.C. Superior Court Domestic Relations Rule 101(e)(4), a GAL appointment ends after the appeal period has run on the issuance of a final order (10 days after a magistrate judge's order; 30 days after an associate judge's order) and no appeal has been taken. Although the termination of appointment is automatic pursuant to Rule 101(e)(4), consider whether filing a praecipe at that time, noting the termination of your appearance, would provide clarity for the parties.
- We suggest that, in a developmentally appropriate manner, you discuss case closure and the final order with the child(ren) (unless the circumstances of the case suggest that this would not be appropriate or in the child's best interests). If you wish to discuss strategies for accomplishing this, contact [your CLC mentor](#).
- Please let [your CLC mentor](#) know if you believe that the trial court's decision is contrary to the child(ren)'s best interest or if a notice of appeal is filed by any party (including you). CLC may be available to assist with appellate strategy.
- Please notify CLC when your case closes by completing our [short case closure form](#) available on CLC's pro bono page.

- EFILING REMINDER

eFiling is mandatory for counsel in most D.C. Family Court cases, including custody cases. In order to receive orders and participate in eFiling you must [REGISTER](#) with the CaseFileXpress system.

A few additional reminders:

- (1) if a pro se litigant is not participating in eFiling, you must serve that party consistent with Domestic Relations Rules 4 and 5;
- (2) filing and eFiling fees are waived for guardians *ad litem* by using the "dccourtapprovedgal" code; and
- (3) pro bono attorneys who are not DC-barred and are practicing under D.C. Court of Appeals Rule 49 should use "999999" in place of the required bar number.

If you are new to eFiling, we suggest that you access the [CaseFileXpress training materials](#). The eFiling Support Team is available to assist you by phone at 877-433-4533, by email at info@fileandservexpress.com or by live [chat](#) online.

Initial Client and Party Interview Tip Sheet

Interviewing the Child(ren)

Gather background information as to specific needs prior to first interview
Meet with the child as soon as possible after appointment. The first interview is to establish a relationship. Conduct several meetings rather than one long one. Interviews can occur in:

- The child's home (with primary caregiver)
- The other caregiver's home, and
- A neutral setting, if possible

Ask (probably more than once) if they have any questions

Give child business card with phone number circled (if appropriate)

Possible topics for discussion:

- If appropriate, explain the court process and your role in a developmentally appropriate manner
- Pets
- Themselves
- School/daycare/friends/activities/interests
- Siblings
- Caregivers
- Daily routines in each home
- What makes them happy/sad
- Who are the relevant adults in their life?
- Life now—how do they feel, how is the schedule working, (if appropriate) do they understand what is happening
- Who cares for them when they are sick?
- What they would change if they could
- Special issues—what they know and how they feel about it
- (If appropriate) what have they heard or seen when parties/caregivers fight?
- Is there anything I haven't asked that I should know?

Interviewing the Parties/Caregivers

Obtain consent from each party's attorney to interview his/her client. Find out whether attorney needs to be present and whether you can contact and talk with the parties and about what.

If a party is not represented, contact the party directly

Set up initial interview to obtain background information and get overview of case issues from each party's perspective

Explore whether there are others who may have pertinent information including:

- Name, address, telephone, relation to parties
- Particular area or incident known of which they have knowledge
- Signed releases if needed

Obtain signed medical release information to obtain the child's medical or mental health information and signed educational release to obtain the child's school records if your appointment order is not sufficient.

(If and when appropriate), offer general information about possible effects of custody conflict on children and how to help

Topics to discuss:

- Caregiver's background information (date of birth, place of birth, etc.)
- Personal history; history of relationship with the other party/parties
- History of parenting responsibilities
- Child's strengths and challenges
- Caregiver's strengths and challenges
- Employment history
- Other party's strengths and weaknesses as a caregiver
- Details surrounding circumstances relating to present custody conflict
- Favorite activities with and without the child
- Current relationships and involvement with the child
- Concerns about child's exposure to conflict/violence; what the child has seen or heard
- Concerns about areas of child's functioning; school, emotional, social
- View of what doctors, therapists, and teachers say about the child
- Any plans to relocate
- Questions raised by investigation
- People they would like you to talk with

Possible Other Sources to Interview
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Review child's and family's records in the following areas, as appropriate (obtain releases where needed)

- School
- Psychiatric/psychological/social services
- Drug/alcohol
- Medical
- Law enforcement (criminal, civil, and domestic violence background checks)

Review court files of other cases involving the parties. Check Maryland and other jurisdictions if appropriate.

Interview persons who have may particular knowledge (as appropriate and with sensitivity to confidentiality/privacy needs)

- Teachers
- School psychologist or social worker
- Therapist
- Physician, if child has particular medical problem or injury
- Family members, significant others, friends
- Babysitter

Determine the need for a mental health expert

Explore special issues or allegations such as

- Domestic violence
- Physical/sexual abuse of the child
- Substance abuse
- Mental health
- Developmental, medical, or educational needs of the child



EFILING IN D.C. FAMILY COURT

EFiling in D.C. Superior Court is a system for electronic filing and service of pleadings and orders. It is **not** an online case file like the federal PACER system.

[D.C. Superior Court Administrative Order 12-10](#) outlines eFiling requirements and procedures for D.C. Family Court.

Who eFiles?

- Attorneys, unless employed by a tax-exempt non-profit organization or government agency, are required to eFile *except* for case-initiating pleadings. Case-initiating pleadings must be filed in person at the Family Court Central Intake Center. Efiling is not available in adoption cases.
- Pro se litigants are not required to eFile.
- Register on [CaseFileXpress](#) (CFX). Registration is free.
 - [CFX training materials are available on-line.](#)
 - CFX staff are on call 24 hours. CFX can be reached at 877-433-4533 and at support@fileandserveexpress.com and also has a Live Chat feature on its website.

Filing fees?

- Any applicable court filing fee must still be paid, plus a \$16 CFX processing fee, subject to the following exceptions:
 - In neglect cases, there are no filing fees; caregiver attorneys will have to pay the \$16 CFX processing fee.
 - In custody cases, the standard GAL appointment order provides that GALs are not required to pay filing or processing fees; enter the promo code *dccourtapprovedGAL*.
 - In custody cases, if you represent a party who has been granted IFP status, enter the promo code *dccourtapprovedifp*.

Service of pleadings and orders?

- You eserve other eFilers. CFX will automatically serve anyone on the CFX service list for the case, which you will be able to create or view and edit.
- You must serve non-eFilers by one of the methods allowed by the applicable court rules.
- If you are an eFiler, court orders will usually be eserved; otherwise, orders will be mailed.

When is the pleading actually filed?

- When you submit a pleading through CFX, you will receive a confirmation e-mail that acknowledges your submission. You will also receive a “proof of service” email indicating who was served.
- After you submit your pleading, a Family Court Central Intake Center clerk (CIC) will review the pleading and accept or reject it.
- If the clerk accepts your pleading, you will receive an e-mail confirming acceptance. Note that the filing date for your pleading is the date you submitted the pleading to CFX and not the date that the clerk accepted it.
- If the clerk rejects your pleading, you will receive an email to that effect which may include information about why CIC rejected your pleading. If you have questions about why it was rejected, you can contact CIC.
- If you are filing a response to another party’s pleading, you cannot file your response until the clerk has accepted the other party’s pleading. For example, you may receive another party’s pleading and plan to file a response, but if CIC rejects that party’s pleading, then you must wait until the pleading is accepted before filing your response.

eFiling tips

- When registering, most pro bono attorneys will use the law firm code associated with their law firm or organization. If you do not have access to a firm code, you may use CLC’s code: *clcprobonoprogr*.
- There is a required format for entering case numbers in CFX – for example, *2018 DRB 001234*. Spaces must be included. The three-letter code must be capitalized. The second number must have six characters, so you may need to add leading zeros.
- Pro bono attorneys who are not D.C.-barred and are practicing under D.C. Court of Appeals Rule 49 should use 999999 in place of the required bar number.
- You must enter something in the *Client matter* field. This is a field that can be used for billing records if you need to. If you do not need to assign a client matter identifier, you can enter anything you want – e.g., the client’s name, or *N/A*, or *1*.
- Be sure to include the judge on the service list. If you need to add or change the judge, put “judge” or “magistrate judge” in the *First name* box in the search field.
- When filing a motion, you can select “motion” if none of the more specific options matches your pleading.
- For sibling neglect cases:
 - You must eFile separate motions in each child’s case if the motion applies to all of the children. We suggest you list one child and one case number on each motion you file. The clerk’s office will accept a motion with more than one child in the caption, but this may lead to confusion.
 - If you are filing a guardianship motion, which requires a summons, separate summonses must be prepared for each parent and other person to be served, and a separate summons for each parent must be filed in each child’s case.