

Standards to Govern the Appointment of Guardians Ad Litem Pursuant to § 16.1-266, Code of Virginia

Introduction

The Judicial Council of Virginia has adopted standards to govern the appointment of attorneys as guardians ad litem for certain children. This action has been taken to comply with an enactment by the 1994 Session of the General Assembly that these standards for appointment be in effect as of January 1, 1995. For the dates of amendments to these Standards adopted by the Judicial Council of Virginia and their associated effective dates, see the concluding page of this document.

A copy of these standards as adopted by the Judicial Council follows. "Representation of Children As a Guardian Ad Litem," the continuing legal education program which complies with standard B.1 is administered by Virginia CLE. You may call Virginia CLE at 1-800-979-8253 to indicate your interest in attending such a program and to learn about the program schedule.

There are other requirements in these standards of which you should take note. In order to be included on the list of qualified guardians ad litem, which is periodically distributed to the courts, you must file with the Office of the Executive Secretary, Supreme Court of Virginia, a letter and certain certificates as specified in standard E. The required certificates will be made available to you at the continuing legal education program referenced above.

The goal of these standards is to foster vigorous, effective and competent representation of children's interest and welfare. On behalf of the Judicial Council of Virginia, the Office of the Executive Secretary, Supreme Court of Virginia, looks forward to your participation in the training program and to receiving the information necessary to qualify you as a guardian ad litem for children.

The Standards

The Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, hereby sets forth the following standards to govern the appointment of attorneys as guardians ad litem pursuant to § 16.1-266, Code of Virginia. These standards are intended to foster vigorous, effective and competent representation of children's interests and welfare.

In accordance with the provisions of § 16.1-266.1, to qualify for appointment as guardian ad litem pursuant to § 16.1-266 a person shall:

- A. Be an active member in good standing of the Virginia State Bar.
- B.1. Complete seven hours of MCLE approved continuing legal education in the following areas in order to initially comply with these standards and be included on the list of qualified attorneys:
 - a. Overview of the Juvenile and Domestic Relations District Court Law
 - b. Roles, responsibilities and duties of guardian ad litem representation
 - c. Laws governing child abuse and neglect, foster care case review, termination of parental rights and entrustments
 - d. Role of social services agencies in handling abuse and neglect cases
 - e. Developmental needs of children
 - f. Characteristics of abusive and neglectful families and of children who are victims; physical, medical and mental health aspects of child abuse and neglect

- g. Communication with children; children as witnesses; use of closed circuit television
- h. Cultural awareness

Certification of attendance at “Representation of Children as a Guardian ad Litem” shall be submitted to the Office of the Executive Secretary of the Supreme Court of Virginia on the required form in accordance with paragraph E hereof. Credit for this program must be sought within two (2) years of attendance. If an attorney fails to qualify as a Guardian Ad Litem within that two-year period, the course must be repeated.

2. Complete six hours of approved continuing education biennially thereafter on any topic related to the representation of children as a guardian ad litem. Credit for repeating the basic training class, “Representation of Children as a Guardian Ad Litem” will be approved once within a six-year period. A maximum of six hours will be approved within a six-year period for programs designed especially for attorneys specializing in adoption.

In order to provide flexibility in fulfilling this biennial requirement, a two-year carry-over of credit hours is permitted, so that accrued credit hours in excess of the two-year requirement may be carried forward from one two-year period to meet the requirement for the next two-year period. However, a maximum of six credit hours may be carried forward from one two-year period to the next two-year period.

Certification of attendance and a brief description of the course content of such education programs shall be submitted for approval to the Office of the Executive Secretary of the Supreme Court of Virginia on the required form in accordance with paragraph E of these standards.

COMMENT:

Standard B.2.

The continuing education requirement of six hours every two years may be successfully fulfilled by attendance at a qualified MCLE approved program or any other non-MCLE approved program which assists an attorney in better representing children as a guardian ad litem. The goal is to permit attorneys to participate in interdisciplinary programs with other professions that also focus on serving children and families.

Examples of such programs include: training for Court Appointed Special Advocates (CASA); programs on domestic violence; programs on the “Psychiatric Treatment of Minors Act”; mental health programs on the effect of abuse, neglect, parental termination or divorce on a child; presentations on accessing school services or understanding school records and programs on special education; and programs on the availability of community resources, such as social services, financial assistance and youth centers.

C. Demonstrate familiarity with the court system and a general background in juvenile law by completion of one of the following in the two-year period prior to seeking initial qualification as a guardian ad litem:

1. Participation as an attorney or as a third-year law student under Part 6, § IV, Para. 15, of the Rules of the Supreme Court of Virginia, in four cases in the juvenile and domestic relations district court involving children, excluding traffic cases; or

2. Service as a guardian ad litem or provision of assistance to a qualified guardian ad litem in two cases involving children in the juvenile and domestic relations district court.

The attorney seeking qualification shall in the letter of request required by paragraph E.1 hereof certify that he/she has complied with the applicable provisions of this standard C.1 or C.2.

COMMENT:

Standard C.1

The requirement to “participate” in four cases in the juvenile court either as an attorney or qualified third-year law student may be met by serving either as lead counsel or co-counsel.

Standard C.2

The requirement to “assist” a qualified guardian ad litem in two cases in the juvenile court may be met by the applicant attorney associating with a qualified guardian ad litem who serves as a mentor for those two cases. The purpose of this association is to afford the applicant the opportunity to learn from the qualified guardian ad litem how to effectively handle these cases.

D. Demonstrate proficiency in the representation of children by submission of a required certificate of nomination (i) from one juvenile and domestic relations district court judge before whom the attorney has appeared in cases listed in C.1 or C.2 or (ii) from an active member in good standing of the Virginia State Bar who is a qualified guardian ad litem whom the applicant has assisted in a case pursuant to C.2 hereof.

E.1. Within two (2) years from the date of attendance at the qualifying course specified in paragraph B.1, file with the Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Richmond, Virginia, 23219, a letter which:

- a. Requests qualification as a guardian ad litem.
- b. Includes the applicant’s social security number.
- c. Contains the applicant’s written certification of compliance with paragraph C.1 or C.2. Such certification must specifically state the language of paragraph C.1 or C.2. Please do not provide specific case information.
- d. If not previously submitted, forward a certificate of nomination as required by paragraph D.
- e. If not previously submitted, forward the required form certifying attendance at the MCLE continuing legal education program specified in paragraph B.1.

2. For compliance with the biennial continuing education requirement specified in B.2 of these standards, the required form certifying attendance at the required program hours.

F.1. An attorney shall be removed from the list of qualified guardians ad litem under the following circumstances:

- a. Receipt of a request from the attorney that their name be removed.
- b. Failure to complete the biennial continuing education requirements outlined in Standard B.2 above.
- c. Suspension or revocation by the Virginia State Bar of the attorney's license to practice law in the Commonwealth. Removal under this circumstance will occur upon the Executive Secretary receiving notice of such license suspension or revocation. If an attorney's name is removed from the qualified list because of a license suspension and the attorney would like to again accept appointments as a guardian ad litem, the attorney must contact the Office of the Executive Secretary at the end of the license suspension term and request reinstatement.

2. An attorney removed from the list of qualified guardians ad litem pursuant to Standard F.1.a, Standard F.1.b, and Standard F.1.c (as it relates to a license suspension), must submit the following to the Office of the Executive Secretary to again be included on the list of attorneys eligible for appointment as a guardian ad litem in the Commonwealth:

- a. Within one year of being removed from the list, certification of attendance indicating completion of the required six (6) hours of continuing education.
- b. If more than one year passes since removal from the list, certification of attendance indicating completion of seven (7) hours of approved continuing education.
- c. If more than five years pass since removal from the list, complete the initial qualification process as outlined in Standards A, B.1, C, D, and E.1 above.

The names of applicants who meet these requirements will be included on a list of attorneys qualified as guardians ad litem to be published by the Office of the Executive Secretary, Supreme Court of Virginia, and distributed electronically to the juvenile and domestic relations district courts and circuit courts in the Commonwealth no less than quarterly, at the beginning of January, April, July and October of each year.

Amendments adopted October 18, 1999; effective date January 1, 2000

Amendments adopted October 23, 2006; effective date January 1, 2007

Amendments adopted October 20, 2008; effective date January 1, 2009

Amendments adopted October 13, 2010; effective date January 1, 2011