

**CHAPTER 7 - GUIDELINES FOR PAYMENT OF GUARDIANS *AD LITEM* FOR CHILDREN****I. INTRODUCTION**

Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition terminating residual parental rights or is otherwise before the court pursuant [Va. Code § 16.1-241 \(A\)\(4\)](#) or [Va. Code § 63.2-1230](#), the court is required by [Va. Code § 16.1-266](#) to appoint an attorney as guardian *ad litem* to represent the child. This appointment must be made pursuant to [Va. Code § 16.1-266.1](#).

Payment for attorneys who serve as guardians *ad litem* for these children will be made in accordance with guidelines established by the Supreme Court. The Supreme Court has approved the policy that guardians *ad litem* shall be compensated \$75 per hour for in-court service and \$55 per hour for out-of-court service. There is no limitation on these payments for hours that are documented and approved by the judge who appointed the guardian *ad litem*. See Attorney General Opinion to Zehler, dated 10/27/86 (1986-87, page 153); Guardian *ad litem* who represents child in contested custody case entitled to receive reasonable compensation and actual expenses; if estate of child inadequate to pay such compensation, compensation may be taxed as costs in proceedings. See also Attorney General Opinion to Hertz, dated 12/2/80 (1980-81, page 177); Guardian *ad litem*. Determined by [§ 8.01-9](#). Further, the court is authorized to pay for the reasonable expenses of a guardian *ad litem* incurred in representing a child.

The documentation method for payment as a guardian *ad litem* is the same as that used for court-appointed counsel (See form DC-40, LIST OF ALLOWANCES). However, if the amount of reimbursement exceeds \$500, guardians *ad litem* should submit an itemized statement that details the dates, times and tasks performed for the hours claimed on form DC-40, LIST OF ALLOWANCES (e.g., “meeting with client,” interviewing parent,” etc).

The Appropriations Act, Acts of Assembly, requires parents, adoptive parents, or other parties with a legitimate interest to reimburse the Commonwealth for the costs of services rendered by guardians *ad litem* for their children. “Parties with a legitimate interest” shall be broadly construed and includes, but is not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, provided any such party intervened in the suit or is otherwise properly before the court. This legislative requirement also directs the Executive Secretary of the Supreme Court to report on payments under this program on a semi-annual basis.

**II. SCOPE OF LEGISLATIVE POLICY**

The requirement that the Commonwealth be reimbursed by parents (or by other parties with a legitimate interest so identified by the court) for the costs of the guardian *ad litem* for children encompasses those appointments of guardians *ad litem* made pursuant to [Va. Code](#)

[§ 16.1-266](#). These provisions apply to appointments in the juvenile and domestic relations district court and to those appointments made by a circuit court in a case on appeal from the juvenile and domestic relations district court, when the circuit court is invoking the appointment authority of [Va. Code § 16.1-266](#).<sup>1</sup>

In every instance, appointment of a guardian *ad litem* for a child should be made by the court in accordance with customary legal and judicial practices and without regard to the availability or ability of a parent or parents (or other parties with a legitimate interest) to pay the costs of the guardian *ad litem*'s services.

### III. NOTICE TO PARENT (OR OTHER PARTY WITH A LEGITIMATE INTEREST)

As a part of the process of appointing a guardian *ad litem* for a child, the court should inform parents (or the other parties with a legitimate interest) of their obligation under this law to reimburse the Commonwealth for the costs of the guardian *ad litem*'s services. Whenever possible, notification of potential financial responsibility should occur in the context of a hearing where the responsible parties are present, in addition to the written notice referenced below. The notice should include a statement that such reimbursement (i) may not exceed the amount awarded the guardian *ad litem* by the court and (ii) may be reduced or eliminated if the court determines that the parents are unable to pay.

Two district court forms effectuate this notice requirement. Form DC-510, SUMMONS includes on the reverse side a notice of this obligation of the parents (or the parties with a legitimate interest). Form DC-533, ASSESSMENT/PAYMENT ORDER facilitates the court's assessing the parents (or the parties with a legitimate interest) with the amount determined to be appropriate. This order is included as an attachment to form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN *AD LITEM* to remind the court of the need to make this determination and assessment.

### IV. COMPENSATING THE GUARDIAN *AD LITEM*

Requests for payment of a guardian *ad litem* by the juvenile and domestic relations district court, and by the circuit court in cases appealed from the juvenile court, should be submitted to OES for payment from the Criminal Fund. The appointing court retains its oversight responsibility for reviewing and approving these requests for compensation of guardians *ad litem*. Prior to approving a request for reimbursement for more than \$500, the court should ensure that the GAL has submitted for the court's review an itemized statement which details the dates, times and tasks performed for the hours claimed on form DC-40, LIST OF ALLOWANCES (e.g. "meeting with client," interviewing parent," etc.) The court then has the responsibility to seek reimbursement for the costs of the guardian *ad litem* services from the parents (or from the parties with a legitimate interest). The court

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<sup>1</sup> When a circuit court appoints a guardian *ad litem* pursuant to the exercise of its equity powers, the circuit court may continue to order the appropriate party or parties to pay the guardian *ad litem* directly. See [Verrocchio v. Verrocchio](#), 16 Va. App. 314 (1993).

should not direct the guardian *ad litem* to seek reimbursement of his/her fee from the parents (or from the parties with a legitimate interest).

The amount awarded the guardian *ad litem* by the court should conform to the Supreme Court-approved hourly rate for in-court (\$75 per hour) and out-of-court (\$55 per hour) fees, plus expenses, and should be reviewed by the judge based on current principles governing the submission of form DC-40, LIST OF ALLOWANCES. The amount the parents (or the parties with a legitimate interest) are ordered to pay the Commonwealth is limited to the amount approved by the court for payment to the guardian *ad litem*.

Under Chapter 9.1 of Title 19.2 (Va. Code §§19.2-152.7:1 through 19.2-152.12), when representation is required for the respondent in protective order proceedings, Va. Code§19.2-152.12 allows the Court to appoint either a Court appointed attorney or GAL when required by the Servicemembers Civil Relief Act or a “person under a disability” as defined by Va. Code §8.01-2 (See Va. Code §8.01-9). Compensation for the Court appointed attorney or GAL shall be paid pursuant to Va. Code §19.2-163, and is limited to a cap of \$120.00 in district courts and to a cap of \$158.00 in circuit courts.

## V. DETERMINING WHO SHOULD PAY

When ordering the parents (or the parties with a legitimate interest) to reimburse the Commonwealth, the court should consider the total amount for which the parents (or other parties with a legitimate interest) will be responsible and apportion this amount, as appropriate, between identified parents (or other parties with a legitimate interest). When a determination concerning paternity is pending, the court should suspend imposition of an order seeking reimbursement from the parent (or other party with a legitimate interest) until such a determination is finalized.

## VI. DETERMINING WHEN TO ASSESS

When the guardian *ad litem* appointment is made in the context of a multi-stage set of proceedings, such as child dependency cases, this reimbursement assessment should be made by the court at each discrete stage of the process, when an appealable order is entered, and payment for the guardian *ad litem* is authorized. A guardian *ad litem* can serve for a series of proceedings, and the identified parents can change as the case progresses.

If a Guardian *ad litem* is appointed to represent a juvenile, the assessment of the GAL fee only applies in cases arising under [Va. Code 16.1-241\(a\)](#), which includes most abuse, neglect, foster care, CHINS, CHINSUP and custody/visitation.

**NOTE:** No GAL fee should be assessed to the parent of a juvenile when appointed to cases involving protective orders.

## VII. DETERMINING THE ABILITY TO PAY

The Appropriations Act does not specify a threshold or a mechanism for determining the ability of the parents (or the other parties with a legitimate interest) to pay all or a portion of the costs of the guardian *ad litem*. In order to lend some regularity and practicality to this process, OES recommends that the court employ procedures that are parallel with existing procedures, to the extent possible. The assessment of costs to the parents (or to the other parties with a legitimate interest) of guardian *ad litem* fees is authorized by [Va. Code § 16.1-267](#) and by the Appropriations Act, Acts of Assembly.

Financial information should be collected from the potentially responsible parties using form DC-333, [FINANCIAL STATEMENT – ELIGIBILITY FOR INDIGENT DEFENSE SERVICES](#). Collection of information through this vehicle will provide the court with a picture of the relative abilities of the parties to pay and afford some consistency in the court's determinations about the ability to pay over the range of cases affected.

One important difference between the financial inquiry presumed by the mandate of the Appropriation Act and the appointment of counsel in criminal matters is that the latter has a clear threshold. The Appropriation Act does not define “ability to pay” and does not tie this determination to indigency. To assist courts in making the ability to pay determination, it is recommended the Table to Govern the Reimbursement of GAL Fees and Expenses Using Federal Poverty Guidelines Plus 25% be used. This table of graduated available funds is associated with graduated reimbursement amounts of guardian *ad litem* service costs. The Committee on District Courts has endorsed this approach.

In determining the ability of the parents (or the other parties with a legitimate interest) to pay all or a portion of the costs of the services of the guardian *ad litem*, the following principles are recommended:

- Each potentially responsible parent (or party with a legitimate interest) should complete form DC-333, [FINANCIAL STATEMENT – ELIGIBILITY FOR INDIGENT DEFENSE SERVICES](#).
- Any parent (or party with a legitimate interest) who currently receives public assistance as noted on the DC-333, [FINANCIAL STATEMENT – ELIGIBILITY FOR INDIGENT DEFENSE SERVICES](#) shall not be assessed any portion of the costs of the GAL's services.
- Any parent (or party with a legitimate interest) who has been determined to be indigent for the purpose of the appointment of counsel shall not be assessed any portion of the costs of the GAL's services.
- Any parent (or party with a legitimate interest) who is otherwise determined to be indigent shall not be assessed any portion of the costs of the GAL's services. A threshold determination in making this judgment is that a parent who has

available funds at or below 125% of the Federal Poverty Guideline should not be assessed any portion of the costs of the GAL's services.

- After consideration of the information provided on form DC-333, [FINANCIAL STATEMENT – ELIGIBILITY FOR INDIGENT DEFENSE SERVICES](#) by the parent (or the party with a legitimate interest) and a determination of his/her available funds, the court should consult the Table to Govern the Reimbursement of GAL Fees and Expenses Using Federal Poverty Guidelines Plus 25% in order to identify the expected parent's (or the expected party's with a legitimate interest) contribution to the GAL's fees and expenses.
- Utilization of the table and the assessment of the GAL's costs of services against the parents (or the parties with a legitimate interest) are within the discretion of the court, considering the unique circumstances of the litigants in each case.

### VIII. ORDERING PAYMENT OF THE ASSESSMENT; DUE DATE

Following a determination that the parents (or the parties with a legitimate interest) are able to pay all or a portion of the costs of services of the GAL, the court should prepare an order assessing the parents (or the parties with a legitimate interest) in full or in part for the GAL's costs. The recommended practice is to serve form DC-533, ASSESSMENT/PAYMENT ORDER on the parent (or the party with a legitimate interest) in person at the conclusion of the court hearing. Otherwise, form DC-533, ASSESSMENT/PAYMENT ORDER should be mailed to the parents (or the parties with a legitimate interest) and the guardian *ad litem*. The amount assessed by the court is due on the date on which the order is entered if the parent (or the party with a legitimate interest) is before the court or within fifteen days if the order is mailed, unless the judge authorizes the parent (or the party with a legitimate interest) to pay at a date in the future.

### IX. COLLECTION OF THE ASSESSMENT

The procedures for collection of fees assessed by the courts against parents (or parties with a legitimate interest) parallel those for court-appointed counsel assessments. The judge may delegate to the clerk's office responsibility for establishing the time and method for the parent (or party with a legitimate interest) to pay a deferred assessment that has been authorized by the judge. See [Va. Code § 19.2-354](#). However, the parent (or party with a legitimate interest) shall not be assessed the \$10 time-to-pay fee noted in this statute. The J&DR courts should use the petition section of form DC-210, ACKNOWLEDGMENT OF SUSPENSION OR REVOCATION OF DRIVER'S LICENSE and Circuit Courts should use form CC-1379, ORDER AND NOTICE OF DEFERRED/ INSTALLMENT PAYMENT to document these arrangements with the parent (or the party with a legitimate interest). Suspension or revocation of the driver's license is not authorized in these cases upon default of payment.

An individual account in the Financial Management System (FMS) for the amount assessed against the parents (or parties with a legitimate interest) will be established by the Clerk's Office. Ten days before the due date of an unpaid assessment the Financial Management

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System (FMS) will generate form DC-224, NOTICE TO PAY for the court to mail to the delinquent parent (or party with a legitimate interest). If the parents (or the parties with a legitimate interest) do not meet their established financial obligations, that account will be considered delinquent and will be processed in the manner courts use to collect delinquent accounts, whether through the Commonwealth's Attorney, a collection agent utilized by the Commonwealth's Attorney, or the [Department of Taxation](#). See [Va. Code § 19.2-349](#). An additional collection remedy is authorized by the Setoff Debt Collection Act in [Va. Code §§ 58.1-520](#) through 58.1-535. To assist the court with identifying these cases, the Case Management System (CMS) for J&DR and Circuit courts indicates whether or not the court has addressed the issue of assessment against the parents/guardian (or other party with a legitimate interest).