

**IN THE DISTRICT COURT OF TETON COUNTY, WYOMING  
NINTH JUDICIAL DISTRICT**

\*,        ) )  
          Petitioner,                             )  
   )  
v.   )     Civil Action No. 1\*  
   )  
\*,        ) )  
          Respondent.                             )

**ORDER APPOINTING GUARDIAN AD LITEM**

It appearing to the Court that one of the issues raised herein concerns the custody of the minor child of the parties; and it further appearing to this Court that a Guardian ad Litem (GAL) should be appointed to represent the best interests of the minor child;

**IT IS ORDERED:**

1. Appointment. \* is hereby appointed to serve as GAL for the minor child of the parties, and shall represent the best interests of the child before this Court.
2. The GAL shall be an officer of the Court, shall be an attorney for the minor whom they are appointed to serve, and shall assist the Court in reaching a decision as to which party shall be awarded temporary and/or permanent legal custody of the minor child. The GAL shall also assist in reaching a decision regarding reasonable visitation.
3. Rates and Billing. The GAL shall be paid at the rate set by the GAL. The parties and counsel are reminded that the GAL is an advocate in the case, not a social worker. Billing rates as advocate counsel reflect the high level of expertise of the GAL. GALs in civil cases are private attorneys and are not paid for through state funds.
4. Apportionment. The fees of the GAL shall be apportioned equally between the parties unless and until otherwise ordered by the Court. If a party seeks a different apportionment due to income and resource disparities, the parties (1) may stipulate to that apportionment or (2) a motion may be filed within fifteen (15) days of this Order. If the motion is based on an alleged income

disparity, then each party shall file their Confidential Financial Affidavits (and the required attachments) with the Motion and the Response to that motion. Resolution of that motion shall not delay the deposit of an initial retainer or delay the start of the GAL's work.

5. *Rolling Retainer.* The parties are each to make an initial deposit against the fees of the GAL in the amount of \$1,000.00 (for a total initial deposit of \$2,000), which deposit shall be made within fifteen (15) days from the date of this Order. The GAL shall keep a record of time expended on the case and bill against the initial deposit. When the initial \$2,000 is depleted, the retainer shall be refilled as a rolling retainer. If, after the GAL's initial review, the matter appears to be particularly high conflict, the GAL may direct the parties to establish a larger rolling retainer. Similarly, in indigent or low-income cases, the GAL may agree to use a lower retainer.
6. *Non-Payment of GAL Fees.* The GAL is not obligated to begin work until the retainer is paid. The Court takes the nonpayment of GAL fees seriously.
  - a. If a party fails to comply with the initial retainer obligations, the GAL shall file a prompt written notice to the Court that the retainer has not been paid and work therefore has been delayed.
  - b. If a party fails to timely make payments or comply with the rolling retainer obligations, the GAL shall give prompt notice to the Court, by filing a motion for an order to show cause.
7. *Billing.* The GAL shall bill the parties no less than bi-monthly, with copies to counsel, and the parties shall promptly pay the fees. Bi-monthly billing is designed to assist the parties in the case and avoid a large sum of GAL fees accruing.

8. In some cases, parties may seek to defer payment of GAL fees until other assets in a divorce are divided. The parties and the GAL may reach an agreement for such a billing arrangement without seeking an order from the Court. If such an agreement is not reached by all parties, then payments shall be made as ordered herein. Even if such an agreement is reached, the initial rolling retainer obligation of \$2,000 remains (or other obligation for the retainer required by the GAL) and billing statements shall continue to be provided bi-monthly to the parties and counsel.
9. Scheduling Order & Additional Deadlines. In most cases, the Scheduling Order is issued prior to the appointment of the GAL. The GAL, and counsel for the parties, may move to add certain deadlines to the Scheduling Order if needed and are directed to confer in good faith prior to any motion. Stipulated motions may be entered promptly by the Court. The motion may be captioned as a “Motion for Supplemental GAL Deadlines.”
10. The GAL and the parties may consider adding the following deadlines, designed to facilitate resolution in this case in accordance with W.R.C.P. 1, and in many instances, to resolve issues without the additional financial expense, uncertainty, and emotional turmoil of trial:
  - a. A date by which the GAL’s initial investigation shall begin. In some cases, after a GAL is appointed, the parties make efforts to settle and resolve the case without the assistance of the GAL. These efforts are worthwhile. However, those efforts must be completed with enough time for the GAL to begin and complete their investigation, without delaying the pretrial conference or other deadlines in the case. This deadline for beginning an initial investigation is designed to achieve that.
  - b. Informal conference deadline for all parties and counsel to meet with the GAL for a conference after the GAL’s preliminary work and well before the pretrial conference.

- c. Interim deadlines for the GAL to provide interim reports to counsel and the parties. This can assist in mediation and settlement efforts prior to the expense of drafting a formal report and recommendations.
- d. A deadline for the GAL to provide their final report and recommendations to the parties and counsel. The report shall be detailed and in writing, which timely informs the parties of the relevant facts and the basis of the GAL's recommendations prior to the trial of this matter. If the parties so stipulate, the report may be presented to the Court. The report should not be filed with the Court or received into evidence without the express agreement of the parties.

11. GAL's Pretrial Memorandum. The GAL's pretrial memorandum shall address the following, in lieu of the parties' pretrial memorandum requirements set forth in the Scheduling Order:

- a. Whether the GAL's investigation is complete;
- b. Whether an informal conference occurred; and
- c. Whether the GAL's final report and recommendations have been provided to counsel and the parties.

12. GAL's Witness and Exhibit Lists. The GAL shall file witness and exhibit lists by the same dates as the parties, pursuant to the deadlines set in the Scheduling Order.

13. Authority and Obligations of the GAL, Counsel, and the Parties. The GAL has the same ethical responsibilities in these proceedings as any other attorney. In order to effectively perform, the GAL shall have full right and authority to completely investigate all aspects of the case and to interview all parties and other persons with an interest in the custody, visitation, maintenance and/or education of the minor child upon request by the GAL with reasonable notice.

14. In the event that a party or other person shall refuse to cooperate or be interviewed, the GAL shall so report to the Court and shall prepare the case without the assistance of the party or witness unless the Court otherwise directs.
15. The GAL shall have the right to inspect all records relating to the minor child maintained by the Clerk of the District Court, the Department of Family Services, the Juvenile Court, any school, daycare provider, hospital, doctor or other medical service provider, any mental health agency or other mental health provider, and any other social or human services agency without necessity of written consent by the parents or the Court. This Order authorizes any individual or organization to release those records to the GAL. The GAL shall have the right upon reasonable notice to examine any residence wherein any person seeking custody proposes to house the minor. The GAL is entitled to request financial, medical, mental health and other records of the parties. The GAL may request this Court to order examination of the child by the medical or mental health professional, if appropriate.
- a. Each parent shall promptly sign any authorizations necessary to allow the GAL access to records and to communicate with the above individuals or entities.
16. The GAL shall be entitled to notice of, and shall be entitled to participate in, all hearings, trials, investigations, depositions, discovery, or other proceedings concerning the child. Counsel for both parties are responsible for insuring that the GAL receives this notice at the earliest possible time.
17. The GAL shall be served with copies of all pleadings, notices, discovery, reports and any other documents filed in this action. The GAL shall also be copied on emails between counsel.

18. The GAL shall be notified of and shall participate in settlement negotiations and offers of settlement as they affect the best interests of the child. The GAL shall participate in any formal mediation that may be scheduled. Counsel are reminded that an informal conference with the GAL may facilitate settlement and informal mediation.
19. The appointment of the GAL shall continue until such time as the matters pertaining to custody, visitation, maintenance or education raised in this action are settled, dismissed or otherwise adjudicated.
20. The GAL shall at all times perform in accordance with the standards enumerated in *Clark v. Alexander*, 935 P.2d 145 (Wyo. 1998) and *Moore v. Moore*, 809 P.2d 261 (Wyo. 1991).
  - a. The GAL is not bound by the client's expressed preferences, but by the client's best interests. If the GAL determines that the child's expressed preference is not in the best interests of the child, both the child's wishes and the basis for the GAL's disagreement must be presented to the Court.
  - b. The confidentiality normally required in the attorney-client relationship must be modified to the extent that relevant information provided by the child may be brought to the Court's attention. While it is always best to seek consent prior to divulging otherwise confidential information, a GAL is not prohibited from disclosure of client communications absent the child's consent. As legal counsel to the child, the GAL is obligated to explain to the child, if possible, that the GAL is charged with protecting the child's best interest and that information may be provided to the Court which would otherwise be protected by the attorney-client relationship.

- c. The GAL is to be an advocate for the best interests of the child and actively participate at the proceedings. The GAL has the opportunity and the obligation to conduct all necessary pretrial preparation and present all relevant information through the evidence offered at trial.
- d. Recommendations from the GAL can be made to the Court through closing argument based on the evidence received.
- e. The credibility of the GAL will not be placed at issue.
- f. The GAL may not be a fact witness at a hearing in this matter.
- g. There shall be no ex parte communications between the GAL and the Court. The recommendations of the guardian shall be made in open court, or to counsel for the parties in writing in advance of the trial.

21. Certification of Counsel. The Court has attached a guidance document that generally describes the work of the GAL. While each case will have nuances, this guidance document is designed to inform the parties and counsel about some things to expect and to help manage expectations. Within fifteen (15) days, counsel for each party shall file a short certification that (1) this Order, and the attached guidance document, have been reviewed with the client, and (2) that counsel has discussed with the client the role of the GAL and the obligations of the parents when a GAL is appointed.

DATED the \_\_\_ day of \*, 2021

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Timothy C. Day  
District Judge

## An Introduction to the Work of the GAL

The GAL has an important role in your custody case. It may seem daunting to have a third lawyer in your case. However, in the adversarial system of law, two sides (each parent) are generally advocating for their own positions. As a result, it is imperative that an additional advocate appear to represent the best interests of the child. Sometimes GALs can help the parents reach a mediated settlement agreement, without the time, expense, uncertainty, and emotional turmoil of a trial.

### 1. For Parents.

- a. The GAL is likely to do a home visit at each parent's home. The GAL is likely to interview each parent and the child, sometimes together and sometimes separately. Some interviews are longer than others, and some are shorter. Time spent with each parent might not be equal. The number of and the length of interviews is at the GAL's discretion. In many instances, quality may be preferred over quantity.
- b. The GAL may interview teachers, school administrators, babysitters, daycare providers, medical doctors, counselors and therapists, friends, other family members, and more. The GAL also has access to records from those individuals or entities. You might be asked to sign a written waiver to allow that access. This may be done to help the GAL to gather a full view of the child and their life with each parent. You have known the child their entire life. The GAL, and later the Court, will need to get to know the child very quickly. The large number of interviews and records reviewed are tools to do that.
- c. The GAL is an attorney representing the best interests of the child. The GAL is not social worker. The GAL is not a lawyer for either party.
- d. The GAL may recommend an interim visitation plan, a telephone/video visitation schedule, and/or an interim custody plan. The GAL may also recommend that the child or either parent enroll in counseling to assist in this difficult transition period.
- e. In cases involving substance abuse, family violence, parental alienation or estrangement, or other unusual circumstances, the GAL may recommend interim conditions for visitation such as: supervised visitation; supervised and facilitated visitation through an entity such as the Hirschfield Center; drug tests; alcohol testing and monitoring, including the use of a SoberLink service; alcohol or substance abuse assessments; domestic violence assessments; anger management counseling; co-parenting counseling; or other conditions to ensure the safety of the child during interim visitation.
- f. In such cases, those conditions may carry over as permanent recommendations for the final custody order. Visitation orders in such cases can sometimes use a graduated or stepped visitation. For example, in cases of estrangement, visitation may graduate from supervised, to unsupervised without overnights, to some overnights, and so on, until the parent-child relationship is re-established. In cases of substance abuse, a visitation plan may also be graduated based on sobriety conditions or benchmarks, and may include conditions to return to supervised or conditional visitation in periods of relapse.