

Idaho	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE
1. General Duties: Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.	<p>--"Guardian ad litem" means a person appointed by the court pursuant to a guardian ad litem volunteer program to act as special advocate for a child under this chapter. ID CODE. 16-1602(18).</p> <p>-- The purpose of Guardian ad Litem programs in Idaho shall be to provide court-appointed volunteer advocacy to abused, neglected, abandoned and/or homeless children. ID R JUV 35(a).</p> <p>--In any proceeding under this chapter the court shall appoint a guardian ad litem for the child or children to serve at each stage of the proceeding and in appropriate cases shall appoint counsel to represent the guardian, and in appropriate cases, may appoint separate counsel for the child. ID CODE 16-1614(1).</p> <p>--If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court shall appoint separate counsel for the child. For a child under the age of twelve (12) years the attorney will have the powers and duties of a guardian ad litem. For a child twelve (12) years of age or older, the court may order that the counsel act with or without the powers and duties of a guardian ad litem. ID CODE 16-1614(2).</p> <p>-- (a) The court should appoint counsel to represent the guardian ad litem, unless the guardian ad litem has counsel or has waived counsel.</p> <p>(b) The court may appoint separate counsel for the child in appropriate cases. The court may consider the nature of the case, the child's age, maturity, intellectual ability, and other factors relevant to the child's need for counsel and ability to direct the activities of counsel.</p> <p>(c) If there is no qualified guardian ad litem program or qualified guardian ad litem available, the court shall appoint counsel for the child as provided in I.C. § 16-1614. ID R JUV 37.</p> <p>-- Any person appointed as a guardian ad litem, the coordinator, or a guardian ad litem volunteer program employee shall be personally immune from any liability for acts, omissions or errors in the same manner as if such person were a volunteer officer or director under the provisions of section 6-1605, Idaho Code. ID CODE 16-1635.</p>
2. Out of Court - Actions to be Taken: <i>Meet with</i>	--GUARDIAN AD LITEM -- DUTIES. Subject to the direction of the court, the guardian ad litem shall advocate for the best interests of the child and shall have the following duties which shall continue until resignation of the

<p><i>child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p>	<p>guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:</p> <p>(1) To conduct an independent factual investigation of the circumstances of the child including, without limitation, the circumstances described in the petition.</p> <p>(2) To file with the court prior to any adjudicatory, review or permanency hearing a written report stating the results of the investigation, the guardian ad litem's recommendations and such other information as the court may require. In all post-adjudicatory reports, the guardian ad litem shall inquire of any child capable of expressing his or her wishes regarding permanency and, when applicable, the transition from foster care to independent living and shall include the child's express wishes in the report to the court. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case at least five (5) days before the date set for the hearing. The report submitted prior to the adjudicatory hearing shall not be admitted into evidence at the hearing and shall be used by the court only for disposition if the child is found to be within the purview of the act.</p> <p>. . . (5) To maintain all information regarding the case confidential and to not disclose the same except to the court or to other parties to the case.</p> <p>(6) Such other and further duties as may be expressly imposed by the court order. ID CODE 16-1633.</p> <p>--GUARDIAN AD LITEM -- RIGHTS AND POWERS. The guardian ad litem will have the following rights and powers, which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:</p> <p>(1) The guardian ad litem, if represented by counsel, may file pleadings, motions, memoranda and briefs on behalf of the child, and shall have all of the rights of a party whether conferred by statute, rule of court or otherwise.</p> <p>(2) All parties to any proceeding under this chapter shall promptly notify the guardian ad litem and the guardian's attorney of all hearings, staffings, investigations, depositions and significant changes of circumstances of the child.</p> <p>(3) Except to the extent prohibited or regulated by federal law or by the provisions of chapter 82, title 39 Idaho Code [Idaho's Safe Haven law, which requires hospitals to keep the identity of a parent invoking that law confidential], upon presentation of a copy of the order appointing guardian ad litem, any person or agency, including, without limitation, any hospital, school, organization, department of health and welfare, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the guardian ad litem to inspect and copy pertinent records necessary for the proceeding for which the guardian is appointed relating to the child and parent without consent of the child or parents. ID CODE 16-1634.</p> <p>--A pretrial conference shall be held outside the presence of the court within three (3) to five (5) days before the adjudicatory hearing. Investigative reports required under section 16-1616, Idaho Code, shall be delivered to the court with copies to each of the parents and other legal custodians, guardian ad litem and attorney for the child prior to the pretrial conference. ID CODE 16-1619(2).</p>
--	---

--(1) The department shall prepare a written case plan in every case in which the child is determined to be within the jurisdiction of the court, including cases in which the parent(s) is incarcerated. The case plan shall be filed with the court no later than sixty (60) days from the date the child was removed from the home or thirty (30) days after the adjudicatory hearing, whichever occurs first. Copies of the case plan shall be delivered to the parents and other legal guardians, the guardian ad litem and attorney for the child. Within five (5) days of filing the plan, the court shall hold a planning hearing to determine whether to adopt, reject or modify the case plan proposed by the department.

(2) Notice of the case plan hearing shall be provided to the parents, legal guardians, guardians ad litem and foster parents. Although foster parents are provided notice of this hearing, they are not parties to the child protective act action. [ID CODE 16-1621.](#)

--Notice of the permanency hearing shall be provided to the parents, legal guardians, guardians ad litem and foster parents, provided however, that foster parents are not thereby made parties to the child protective act action. [ID CODE 16-1620\(2\).](#)

-- Federally-recognized protection and advocacy agencies or duly appointed guardians ad litem have access to an individual's file as necessary to perform their legal functions. Guardians ad litem have access to records as provided in Section 16-1623, Idaho Code, except for:

- a. Drug abuse and sickle cell anemia records maintained by the Veteran's Administration (VA), as required by 38 USC Section 7332;
 - b. Claims under laws administered by the VA as required by 38 USC Section 3301; and
 - c. Drug abuse prevention programs that receive federal assistance, as required by 42 USC Section 290ee - 3.
- [IDAPA 16.05.01.100\(1\).](#)

-- If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and if the court vests legal custody of the child in the department, and the court does not find that the parent subjected the child to aggravated circumstances, then the court shall order the department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the hearing on the case plan. The department shall consult with the guardian ad litem and the child's parents in preparing the plan. [ID R JUV 41\(g\).](#)

-- If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and the court places the child in the child's own home under the protective supervision of the department, then the court shall order the department to prepare a written case plan, to be filed with the court and served upon the parties five days prior to the hearing on the case plan. The department shall consult with the guardian ad litem and the child's

	<p>parents in preparing the plan. ID R JUV 41(h).</p> <p>-- If the court finds that the child is within the jurisdiction of the court under the Child Protective Act, and finds that the parent has subjected the child to aggravated circumstances, then the court shall order the department to prepare a written permanency plan, to be filed with the court and served upon the parties five days prior to the hearing on the permanency plan. The department shall consult with the guardian ad litem, and the child's parents in preparing the plan. ID R JUV 41(i).</p> <p><i>There are no explicit requirements regarding the duties of lawyers who represent children directly in Child Protective Act cases.</i></p>
<p>3. In Court - Active Participation in Hearings: <i>Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</i></p>	<p>-- Subject to the direction of the court, the guardian ad litem shall . . . have the following duties: . . .</p> <p>(3) To act as an advocate for the child for whom appointed at each stage of proceedings under this chapter. To that end, the guardian ad litem shall participate fully in the proceedings and to the degree necessary to adequately advocate for the child's best interests, and shall be entitled to confer with the child, the child's siblings, the child's parents and any other individual or entity having information relevant to the child protection case. ID CODE 16-1633.</p> <p>--After the adjudicatory hearing, a child eight (8) year of age or older, shall be provided with notice of, and have a right to be heard, either in person or in writing, in any further hearings to be held with respect to the child. The Department of Health and Welfare shall provide this notice and shall confirm to the court that the notice was given. ID R JUV 40(b).</p> <p>--...The child may be excluded from hearings at any time at the discretion of the court... ID CODE 16-1613.</p>
<p>4. Post-Hearing: <i>Review courts order, communicate order to child, and monitor implementation of orders.</i></p>	<p>-- Subject to the direction of the court, the guardian ad litem . . . shall have the following duties: . . .</p> <p>(4) To monitor the circumstances of a child and to assure that the terms of the court's orders are being fulfilled and remain in the best interest of the child. ID CODE 16-1633.</p>
<p>5. Appellate Advocacy: <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p>-- APPEAL -- EFFECT ON CUSTODY. (1) An aggrieved party may appeal the following orders or decrees of the court to the district court, or may seek a direct permissive appeal to the supreme court as provided by rules adopted by the supreme court:</p> <p>(a) An adjudicatory decree entered pursuant to section 16-1619, Idaho Code;</p> <p>(b) Any order subsequent to the adjudicatory decree that vests legal custody of the child in the department or other authorized agency;</p>

	<p>(c) Any order subsequent to the adjudicatory decree that authorizes or mandates the department to cease reasonable efforts to make it possible to return the child to his home, including an order finding that the parent subjected the child to aggravated circumstances as set forth in section 16-1619(6)(d), Idaho Code; or</p> <p>(d) An order of dismissal.</p> <p>(2) Where the order affects the custody of a child, the appeal shall be heard at the earliest practicable time. The pendency of an appeal shall not suspend the order of the court regarding a child, and it shall not discharge the child from the legal custody of the authorized agency to whose care he has been committed, unless otherwise ordered by the district court. No bond or undertaking shall be required of any party appealing to the district court under the provisions of this section. Any final order or judgment of the district court shall be appealable to the supreme court of the state of Idaho in the same manner as appeals in other civil actions. The filing of the notice of appeal shall not, unless otherwise ordered, stay the order of the district court. ID CODE 16-1625.</p> <p><i>No explicit authority regarding the GAL's role in appeals other than that ID CODE 16-1634 provides that a GAL, if represented by counsel, "shall have all the rights of a party."</i></p>
<p>6. Cessation of Representation: <i>Contacts post representation, if any.</i></p>	<p>-- Counsel of record and guardians ad litem shall continue in the case unless there is a stipulation for substitution of counsel and/or guardians ad litem with the new counsel or guardians ad litem or an order of the receiving court allowing withdrawal of counsel or guardians ad litem. ID R JUV 50(d).</p> <p>--The GAL's statutory duties "shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs." ID CODE 16-1633.</p>
	<p>Organizational and Administrative Supports for the Child Representative</p>
<p>7. General Representation Rules: <i>Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</i></p>	<p>--GUARDIAN AD LITEM COORDINATOR -- DUTIES -- ANNUAL REPORT. (1) Under rules, policies and procedures adopted by the Idaho supreme court which may include, but are not limited to, provisions establishing fiscal controls and requiring compliance with all or part of the standards adopted by the national court appointed special advocate association, the persons or entities receiving moneys from the grant administrator to coordinate a guardian ad litem program in a judicial district may be required by the terms of the grant to perform any or all of the following duties:</p> <p>(a) To establish, maintain and coordinate a district-wide guardian ad litem program consistent with the provisions of this chapter;</p> <p>(b) To furnish the necessary administrative and staffing services as may from time to time be required;</p> <p>(c) To act as a coordinator for the purpose of providing guardians ad litem for children brought within the purview</p>

	<p>of this chapter;</p> <p>(d) To seek to have each child brought within the purview of this chapter available to him a guardian ad litem throughout each stage of any child protective proceeding;</p> <p>(e) To establish a program for attorneys to represent guardians ad litem, whether or not appointed by the court in conjunction with the local, district-wide, and state bar associations;</p> <p>(f) To the extent possible to establish a district-wide program to recruit volunteer guardians ad litem sufficient to provide services in each county of the judicial district;</p> <p>(g) In conjunction with the department, prosecuting attorneys and city and county law enforcement officials, mental health professionals, social workers, school counselors and the medical community, the coordinators may assist in the development and implementation of a statewide uniform protocol for the investigation of allegations of abuse, neglect or abandonment pursuant to the provisions of this chapter;</p> <p>(h) To develop uniform criteria to screen, select, train and remove guardians ad litem;</p> <p>(i) To establish a priority list of those proceedings under this chapter in which a guardian ad litem shall be appointed in districts where there are insufficient numbers of guardians ad litem. ID CODE 16-1632(1).</p> <p>-- “The Idaho State Guardian ad Litem (GAL) programs goals are to optimize the ability of local GAL/CASA programs to serve abused and neglected children, to improve the scope, quality and impact of GAL/CASA advocacy by strengthening local programs, promoting improvements in advocacy practice and sharing the insights and work of volunteers across the state. . . Guardians ad Litem are also called Court Appointed Special Advocates (CASA). The CASA organization is a national organization dedicated to providing support for Guardians ad Litem/Court Appointed Special Advocates across the country. There are seven GAL programs in the state and each program has chosen to associate with the CASA organization. Each local GAL/CASA program is a non-profit 501(c)(3) corporation governed by a Board of Directors. Funding for the programs consists of foundation grants, government grants, state funds and fundraising support from the community.” Idaho State Guardian ad Litem Program.</p>
<p>8. <i>Lawyer Training:</i> <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>-- Each GAL Program shall develop and follow written policies for its volunteers regarding recruitment; application, selection and screening; training; supervision; volunteer roles and responsibilities; and dismissal.</p> <p>(1) Each GAL Program shall require that volunteers complete at least 30 hours of required pre-service training and 12 hours of required in-service training per year</p> <p>(2) Pre-service training shall include the following topics:</p> <p>(A) Roles and responsibilities of a GAL volunteer;</p> <p>(B) Court process;</p> <p>(C) Dynamics of families including mental health, substance abuse, domestic violence, and poverty;</p> <p>(D) Relevant state laws, regulations and policies;</p>

	<p>(E) Relevant federal laws, regulations and policies, including the Adoption and Safe Families Act (ASFA), the Child Abuse Prevention and Treatment Act (CAPTA), the Indian Child Welfare Act (ICWA), and the Multi Ethnic Placement Act (MEPA):</p> <p>(F) Confidentiality and record keeping practices;</p> <p>(G) Child development;</p> <p>(H) Child abuse and neglect;</p> <p>(I) Permanency planning;</p> <p>(J) Community agencies and resources available to meet the needs of children and families;</p> <p>(K) Communication and information gathering;</p> <p>(L) Effective advocacy;</p> <p>(M) Cultural competency</p> <p>(N) Special needs of the children served</p> <p>(O) Volunteer safety</p> <p>(P) Educational advocacy ID R JUV 35(e).</p> <p><i>There are no explicit training requirements for lawyers who represent children directly in Child Protective Act cases.</i></p>
<p>9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i></p>	<p>-- Counsel appointed for the child under the provisions of this section shall be paid for by the county unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs. ID CODE 16-1614(3).</p> <p>-- GALs, and attorneys appointed to represent GALs, are expected to serve as unpaid volunteers. State funds are available for administrative costs of operating GAL programs:</p> <p>--GUARDIAN AD LITEM ACCOUNT -- CREATION. (1) There is hereby created an account in the agency asset fund in the state treasury to be designated the guardian ad litem account.</p> <p>(2) The account shall consist of:</p> <p>(a) Moneys appropriated to the account;</p> <p>(b) Donations, gifts and grants to the account from any source; and</p> <p>(c) Any other moneys which may hereafter be provided by law.</p> <p>(3) Moneys in the account may be expended for the purposes provided in sections 16-1632 through 16-1638, Idaho Code. Interest earned on the investment of idle money in the guardian ad litem account shall be returned to the guardian ad litem account.</p> <p>(4) Disbursements of moneys from the account shall be by appropriation from the legislature to the supreme court, which moneys shall be used for the payment of grants to qualified recipients and for expenses incurred for carrying out the provisions of this chapter. ID CODE 16-1638.</p>

	<p>--GUARDIAN AD LITEM GRANTS. The grant administrator is hereby authorized and directed to award and administer grants from the money which shall be from time to time available to the grant administrator from the guardian ad litem account. The foregoing power and authorization shall be subject to requirements imposed by the supreme court and the following provisions:</p> <p>(1) Grants may be made available to any person, organization, corporation, or agency for any of the following purposes:</p> <p>(a) To enable such entity to act as the guardian ad litem coordinator in any judicial district.</p> <p>(b) To enable such entity to recruit, organize and administer a panel of guardians ad litem and volunteer lawyers to represent guardians ad litem.</p> <p>(c) To enable such entity to recruit, organize, train and support persons or entities to act as guardian ad litem coordinators in judicial districts which do not yet have guardian ad litem coordinators.</p> <p>(d) To enable such entity to pay the administrative and other miscellaneous expenses incurred in carrying out the provisions of the guardian ad litem program.</p> <p>(2) The grant administrator shall endeavor in allocating available funds to foster the development and operation of a guardian ad litem program in each judicial district in the state; provided, however, the grant administrator shall have no obligation to seek out or organize guardian ad litem coordinators or persons willing to act as such in judicial districts lacking a guardian ad litem coordinator.</p> <p>(3) Funds available to the grant administrator from the guardian ad litem account may be also used to pay the grant administrator's cost of performing its duties and obligations pursuant to this chapter. ID CODE 16-1639.</p>
10. Caseload Levels: <i>Caseloads are of a manageable size.</i>	<i>No explicit legal authority or requirement.</i>