

MONTANA	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD’S LEGAL REPRESENTATIVE
<p>1. General Duties: <i>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.</i></p>	<ul style="list-style-type: none"> - In every dependency proceeding, the court shall appoint a guardian ad litem for any child alleged to be abused or neglected. The department or any member of its staff who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. The GAL need not be an attorney. MCA 41-3-112. -In addition to the GAL, the court may appoint traditional counsel for the child “when appropriate.” MCA 41-3-425(3)(b). Or the court may appoint a lawyer to represent the GAL. MCA 41-3-425(3)(a). The court <i>must</i> appoint traditional counsel if there is no GAL. MCA 41-3-425(2)(b). - A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. MCA 41-3-607(4). - The guardian ad litem is charged with the representation of the child's best interests. MCA 41-3-112(3).
<p>2. Out of Court - Actions to be Taken: <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p>	<ul style="list-style-type: none"> - The guardian ad litem is charged with the representation of the child's best interests and shall perform the following general duties: <ul style="list-style-type: none"> (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect; (b) to interview or observe the child who is the subject of the proceeding; (c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians; ... MCA 41-3-112(3). <p>Lawyers playing a traditional counsel role (not GAL) are governed by the Montana Rules of Professional Conduct:- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.</p> <p>(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may</p>

	<p>take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.</p> <p>(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests. Montana Rules of Professional Conduct, Rule 1.14.</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>- The guardian ad litem shall: make written reports to the court concerning the child's welfare; appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; perform other duties as directed by the court; and, if an attorney, file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights. MCA 41-3-112(3)(e)-(g).</p> <p>- Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child. MCA 41-3-112(4).</p>
<p>4. Post-Hearing: <i>Review courts order, communicate order to child, and monitor implementation of orders.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>
<p>5. Appellate Advocacy: <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>

<p>6. Cessation of Representation: <i>Contacts post representation, if any.</i></p>	<ul style="list-style-type: none"> - The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any appointed or assigned counsel requested by the minor parent. MCA 41-3-607(4). - Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment. MCA 41-3-112(5).
	<p style="text-align: center;">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>	<ul style="list-style-type: none"> - "The Court Appointed Special Advocate/Guardian ad Litem (CASA/GAL) program provides support to statewide non-profit groups that train volunteer advocates. These advocates are appointed by judges to provide information and advice about a child to the courts. CASA volunteers go through an intensive 30-hour training program to become a Guardian ad Litem before being appointed by a district court judge." http://courts.mt.gov/cao/ct_services/casa.mcp - The Montana Office of the Public Defender (OPD) provides lawyers appointed as traditional counsel for both children and parents in abuse and neglect cases.
<p>8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<ul style="list-style-type: none"> - The guardian ad litem must have received appropriate training that is specifically related to serving as a child's court-appointed representative. MCA 41-3-112(2).
<p>9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i></p>	<ul style="list-style-type: none"> - Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender. MCA 41-5-111; 47-1-201. - Reasonable compensation of a guardian ad litem appointed by the court must be paid out of the district court budget. MCA 41-5-111; MCA 3-5-901(1)(e)(4).

10. Caseload Levels: <i>Caseloads are of a manageable size.</i>	<i>No explicit legal authority or requirement.</i> The Montana OPD suggests that attorneys handling dependency cases have no more than 20 such open cases at a time. http://publicdefender.mt.gov/forms/pdf/caseloadsuggestions.pdf