

MICHIGAN	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"> - A lawyer-guardian ad litem (L-GAL) must be appointed for a child in every child protective proceeding instituted under the Juvenile Code. The lawyer-guardian ad litem has some responsibilities derived from the attorney-client relationship, and some responsibilities that are derived from the guardian ad litem's position. A L-GAL's purpose is to determine and advocate for a child's best interests. Mich. Comp. Laws § 722.630, Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 1. - If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem. Mich. Comp. Laws 712A.17d(2), Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 3. - “‘Attorney’ means, if appointed to represent a child in a [child protective proceeding under the Juvenile Code], an attorney serving as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney... owes the same duties of undivided loyalty, confidentiality, and zealous representation of the child's expressed wishes as the attorney would to an adult client.” Mich. Comp. Laws 712A.13a(1)(c), Mich. Ct. R. 3.915(B)(2)(b), Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 1. - The Juvenile Code does not contain a definition of the “best interests of the child.” Although not directly applicable to child protective proceedings, the Child Custody Act and Adoption Code contain lists of factors that courts use to determine a child's best interests in custody and adoption proceedings, and a L-GAL may refer to those factors to guide his or her determination of a child's best interests in child protective proceedings. Mich. Comp. Laws 710.22(g) & 722.23. - A L-GAL must identify a child's best interests given the available dispositional options in the case. This may involve identifying the dispositional option that is least detrimental to the child. The L-GAL should focus on the child's particular needs and interests, not on the needs and interests of all children of similar age or developmental level. A L-GAL should consider the child's needs for food, clothing, and shelter; nurturance, stability, and continuity; physical safety; and maintenance, to the extent possible, of relationships with siblings, extended family

	<p>members, and non-biological caretakers. Michigan Judicial Institute, <i>Lawyer- Guardian ad Litem Protocol</i>, § 8.</p> <p>- The appearance of a guardian ad litem must be in writing and in a manner and form designated by the court. The appearance shall contain a statement regarding the existence of any interest that the guardian ad litem holds in relation to the minor, the minor's family, or any other person in the proceeding before the court or in other matters. The appearance entitles the guardian ad litem to be furnished copies of all petitions, motions, and orders filed or entered, and to consult with the attorney of the party for whom the guardian ad litem has been appointed. Mich. Ct. R. 3.916</p> <p>- Court Appointed Special Advocate</p> <p>(A) General. The court may, upon entry of an appropriate order, appoint a volunteer special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division.</p> <p>(B) Qualifications. All court appointed special advocates shall receive appropriate screening.</p> <p>(C) Duties. Each court appointed special advocate shall maintain regular contact with the child, investigate the background of the case, gather information regarding the child's status, provide written reports to the court and all parties before each hearing, and appear at all hearings when required by the court.</p> <p>(D) Term of Appointment. A court appointed special advocate shall serve until discharged by the court.</p> <p>(E) Access to Information. Upon appointment by the court, the special advocate may be given access to all information, confidential or otherwise, contained in the court file if the court so orders. The special advocate shall consult with the child's lawyer-guardian ad litem. Mich. Ct. R. 3.917</p> <p>- The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable. Mich. Comp. Laws § 712A.17d(1)(k).</p>
<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</i></p>	<p>- A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:</p> <p>(a) The obligations of the attorney-client privilege.</p> <p>(b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.</p> <p>(c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. The agency case file shall be reviewed before disposition and before the hearing for termination of</p>

<p><i>settlements</i></p>	<p>parental rights. Updated materials shall be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing. The L-GAL has access to certain otherwise confidential agency records.</p> <p>(d) To meet with or observe the child and assess the child's needs and wishes with regard to the representation and the issues in the case in the following instances: (i) Before the pretrial hearing. (ii) Before the initial disposition, if held more than 91 days after the petition has been authorized. (iii) Before a dispositional review hearing. (iv) Before a permanency planning hearing. (v) Before a post-termination review hearing. (vi) At least once during the pendency of a supplemental petition. (vii) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.</p> <p>(e) The court may allow alternative means of contact with the child if good cause is shown on the record.</p> <p>(f) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.</p> <p>(g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.</p> <p>(h) To attend all hearings and substitute representation for the child only with court approval.</p> <p>(i) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences. Mich. Comp. Laws § 712A.17d(1),</p> <p>- ... Pursuant to MCL 712A.17d(1)(i), a L-GAL must inform the court of the child's wishes and preferences, but such communication must be "[c]onsistent with the law governing attorney-client privilege." "A lawyer[-guardian ad litem] who is asked to produce information that is covered by the attorney-client privilege or that contains confidences and secrets within MRPC 1.6, and with regard to which the client does not consent to disclosure, must await a subpoena, exercise the attorney- client privilege, and await the presiding judge's instruction of whether to release the information." Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 4.</p> <p>- A L-GAL is required to explain his or her role to the child, "taking into account the child's ability to understand the proceedings." Mich. Comp. Laws 712A.17d(1)(f). The L-GAL should meet with and explain the L-GAL's role to the child as soon as possible after appointment. . Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 5.</p> <p>- Consistent with the rules of professional responsibility, the L-GAL should identify common interests among the</p>
---------------------------	--

parties and, to the extent possible, promote a cooperative resolution of the matter through consultation with the child's parent, foster care provider, guardian, and caseworker. [Mich. Comp. Laws. § 712A.17d\(1\)\(k\)](#).

- The court may review placement decisions when the child's lawyer-guardian ad litem determines the decision is not in the child's best interest. [Mich. Ct. R. 3.966\(B\)\(1\)\(e\)](#).

- If necessary, the L-GAL should obtain authorizations for release of confidential information. If necessary, the L-GAL should use subpoenas, discovery under [Mich. Ct. R. 3.922](#), or the procedures set forth in [Mich. Ct. R. 3.923\(A\)](#) to obtain records or other information regarding the child, a sibling, or a parent.

- A L-GAL may also ask the court to order an examination or evaluation of a child, parent, guardian, or legal custodian, [Mich. Ct. R. 3.923\(B\)](#), the results of which may be used in dispositional and post-dispositional hearings notwithstanding the rules of privilege. [Mich. Ct. R. 3.973\(E\)\(1\)](#) and [Mich. Ct. R. 3.975\(E\)](#).

- A L-GAL should present to the court relevant and admissible evidence and information. A L-GAL may file a motion or petition for review of the child's placement when the L-GAL finds that placement to be inappropriate or unsafe. [Mich. Ct. R. 3.966\(A\)-\(B\)](#). If necessary, a L-GAL may also file a report of suspected child abuse or neglect with DHS. At trial, at the conclusion of the proofs, the L-GAL may make a recommendation to the fact finder as to whether one or more of the statutory grounds in the petition have been proven by a preponderance of the evidence. [Mich. Ct. R. 3.972\(D\)](#). Before entering dispositional orders, the court must consider any written or oral information concerning the child provided by the L-GAL. [Mich. Comp. Laws 712A.18f\(4\)](#) and [712A.19\(11\)](#). A L-GAL may file a petition on behalf of the child seeking court jurisdiction or termination of parental rights. [Mich. Comp. Laws 712A.11\(1\)](#) & [712A.19b\(6\)](#); [Mich. Ct. R. 3.977\(A\)\(2\)\(b\)-\(d\)](#). [Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 4.](#)

- The L-GAL should be notified of the date and time of a case plan development conference to allow him or her to participate in constructing a case plan and parent-agency agreement. However, the L-GAL should not be present at the conference with a respondent unless that respondent's attorney is also present or has been made aware that the L-GAL will attend the conference. As required by the Michigan Rules of Professional Conduct, the L-GAL must first contact a respondent's attorney and ask permission to speak with that respondent. [MRPC 4.2](#). A L-GAL should obtain the attorney's permission in writing or confirm it in writing once permission has been granted. Parents should be informed that they are not obligated to discuss the case with the L-GAL, and that the L-GAL may be required to use the information gained against the parent in representing the child. [Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 4.](#)

	<p>- A L-GAL must inform the court “if . . . services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.” Mich. Comp. Laws 712A.17d(1)(j). The L-GAL may do so immediately, by motion, or at a scheduled review hearing. The L-GAL may also attempt to remedy the problem by contacting the caseworker, service provider, and parent’s attorney. Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 4.</p> <p>- A L-GAL must review the agency case file prior to hearings. Mich. Comp. Laws 712A.17d(1)(c) states in part as follows: “The agency case file shall be reviewed before disposition and before the hearing for termination of parental rights. Updated materials shall be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress relating to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.” “Agency case file” is defined in Mich. Comp. Laws 712A.13a(1)(b) as “the current file from the agency providing direct services to the child, that can include the child protective services file if the child has not been removed from the home or the family independence agency or contract agency foster care file as defined under 1973 PA 116, MCL 722.111 to 722.128.” Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 7.</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 court shall ensure that the lawyer-guardian ad litem for the child is notified of each hearing. Mich. Ct R. 3.921(B)(1); Dispositional Review Hearings and Permanency Planning Hearing. Mich. Ct. R. 3.921(B)(2); and Termination of Parental Rights hearing. Mich. Ct. R. 3.921(B)(3).</p> <p>- A L-GAL is “entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.” Mich. Comp. Laws 712A.17d(1)(b). A L-GAL must attend all hearings, including the preliminary hearing. Mich. Ct. R. 3.915(B)(2)(a) & 3.965(B)(2). If the DHS is considering filing a petition requesting termination of parental rights at the initial disposition hearing, the L-GAL should attend the conference required by Mich. Comp. Laws 722.638(3) to determine an appropriate course of action. A L-GAL should attend local Foster Care Review Board meetings involving a review of the child’s or a sibling’s case. The L-GAL should attend mediation sessions if held. Substitution may occur only for sufficient cause and only with court approval. Mich. Comp. Laws 712A.17d(1)(h). Courts and L-GALs should discourage the routine use of substitution by “emergency house counsel” or any other attorney for the L-GAL appointed to represent the child. Frequent substitution of L-GALs undermines the purpose of Mich. Comp. Laws 712A.17d. Nonetheless, Mich. Ct. R. 3.915(D)(2) allows for temporary substitution in certain circumstances. Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 4.</p> <p>- A L-GAL must decide whether a child should testify at a hearing regarding alleged abuse. When deciding whether</p>

the child should testify, the L-GAL may consider the child's need or desire to testify, the necessity of the child's testimony, the use of a hearsay exception to obviate the need for the child's direct testimony, and the child's ability to provide testimony and to withstand cross-examination. The L-GAL should be familiar with the law governing competence of witnesses. If the child is to testify, the L-GAL should prepare the child prior to his or her appearance in the courtroom by showing the child the courtroom, allowing the child to sit in the witness stand, providing a booster seat if necessary, telling the child where others will sit, and the like. If the L-GAL determines that it is not in the child's best interests to testify, the L-GAL should seek a stipulation from the other parties not to call the child as a witness. If the child will be called as a witness by another party, the L-GAL should explore the use of alternative procedures to obtain the child's testimony in the least detrimental manner [Mich. Comp. Laws 712A.17\(7\) & 712A.17b](#), [Mich. Ct. R. 3.922\(E\)](#). The L-GAL may file a motion to ensure developmentally appropriate questions and should make every effort to prevent cross-examination by leading questions. In all cases, the L-GAL should seek direction from the court. [Michigan Judicial Institute, Lawyer-Guardian ad Litem Protocol, § 4](#).

- The child's lawyer-guardian ad litem must be present to represent the child at the preliminary hearing. The court may make temporary orders for the protection of the child pending the appearance of an attorney or pending the completion of the preliminary hearing. The court must direct that the lawyer-guardian ad litem for the child receive a copy of the petition. [Mich. Ct. R. 3.965\(C\)](#).

- Before the court enters an order of disposition, the court shall consider the case service plan; any written or oral information offered concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, lawyer-guardian ad litem, attorney, or guardian ad litem; and any other evidence offered, including the appropriateness of parenting time, which information or evidence bears on the disposition. The order of disposition shall state whether reasonable efforts have been made to prevent the child's removal from his or her home or to rectify the conditions that caused the child's removal from his or her home. The court may order compliance with all or any part of the case service plan as the court considers necessary. [Mich. Comp. Laws § 712A.18f\(4\)](#).

- An agency report filed with the court shall be accessible to all parties to the action and shall be offered into evidence [at the review hearing]. The court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom a child is placed, attorney, lawyer-guardian ad litem, or guardian ad litem, in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing. [Mich. Comp. Laws § 712A.19c\(11\)](#).

- MCL 712A.17d(1)(l) requires a L-GAL "[t]o request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment." The L-GAL should pursue issues related to the

	<p>child protective proceeding, such as custody, guardianship, paternity, termination of parental rights, adoption, and appeals. In addition, the L-GAL may request court authorization and payment by the court to pursue issues on behalf of the child that do not arise specifically from the court appointment. Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 4.</p>
<p>4. <i>Post-Hearing:</i> Review courts order, communicate order to child, and monitor implementation of orders.</p>	<p>- The lawyer-guardian ad litem's powers and duties include at least all of the following: To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose. Mich. Comp. Laws § 712A.17d(j).</p>
<p>5. <i>Appellate Advocacy:</i> Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>- A L-GAL may seek review of a decision or order by filing a request for review of a referee's recommended findings and conclusions, a petition for rehearing, or an appeal. Mich. Ct. R. 3.991, 3.992, and 3.993.</p> <p>- Mich. Ct. R. Chapter 7 governs all appeals, unless altered by Mich. Ct. R. 3.993.</p> <p>- (A) The following orders are appealable to the Court of Appeals by right:</p> <p>(1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home,</p> <p>(2) an order terminating parental rights,</p> <p>(3) any order required by law to be appealed to the Court of Appeals, and (4) any final order</p> <p>(B) All orders not listed in subrule (A) are appealable to the Court of Appeals by leave.</p> <p>(C) Procedure; Delayed Appeals.</p> <p>(1) Applicable Rules. Except as modified by this rule, chapter 7 of the Michigan Court Rules governs appeals from the family division of the circuit court.</p> <p>(2) Delayed Appeals; Termination of Parental Rights. The Court of Appeals may not grant an application for leave to appeal an order of the family division of the circuit court terminating parental rights if filed more than 63 days after entry of an order of judgment on the merits, or if filed more than 63 days after entry of an order denying reconsideration or rehearing. Mich. Ct. R. 3.993.</p> <p>- (1) An appeal of right in a civil action must be taken within</p> <p>(a) 21 days after entry of the judgment or order appealed from;</p> <p>(b) 21 days after the entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal</p>

	<p>period or within further time the trial court has allowed for good cause during that 21-day period;</p> <p>(c) 14 days after entry of an order of the family division of the circuit court terminating parental rights under the Juvenile Code, or entry of an order denying a motion for new trial, rehearing, reconsideration, or other postjudgment relief from an order terminating parental rights, if the motion was filed within the initial 14-day appeal period or within further time the trial court may have allowed during that period; or</p> <p>(d) another time provided by law.</p> <p>“If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within 14 days after the final judgment or order, the 14-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within 14 days after the decision on the motion.” Mich. Ct. R. 7.204(A)(1)</p>
<p>6. Cessation of Representation: <i>Contacts post representation, if any.</i></p>	<p>- An attorney or lawyer-guardian ad litem appointed by the court under this section shall serve until discharged by the court. The court shall not discharge the lawyer-guardian ad litem for the child as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or other agency, unless the court discharges the lawyer-guardian ad litem for good cause shown on the record. If the child remains subject to the jurisdiction, control, or supervision of the court, or the Michigan children's institute or other agency, the court shall immediately appoint another lawyer-guardian ad litem to represent the child. Mich. Comp. Laws § 712A.17c(9).</p> <p>- An attorney retained by a party may withdraw only on order of the court. An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by the court. Mich. Ct. R. 3.915(d)(1) & (2). In most cases, this will entail representing the child in appeal proceedings. Following termination of parental rights, a L-GAL must ensure that reasonable efforts are made to finalize a child’s adoption or other permanent placement. Mich. Comp. Laws 712A.19c and Mich. Ct. R. 3.978. If the child has been committed to the Michigan Children’s Institute (MCI), the L-GAL may consult with the MCI superintendent regarding that commitment, the child’s placement, and permanency planning for the child. If the L-GAL has an objection regarding these issues, the L-GAL and MCI superintendent must consult with one another. Mich. Comp. Laws 400.204(2). Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 4.</p>
	<p>Organizational and Administrative Supports Provided the Representative</p>
<p>7. General Representation Rules: <i>Uniform legally binding</i></p>	<p>[The court appoints a lawyer-GAL, and if needed, an attorney for the child, a CASA, or a guardian ad litem as well.]</p>

<i>rules and procedures; the child's representative is independent from the court.</i>	
8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i>	<i>No explicit legal authority or requirement.</i>
9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i>	<p>- When an attorney is appointed for a party under this rule, the court may enter an order assessing costs of the representation against the party or against a person responsible for the support of that party, which order may be enforced as provided by law. Mich. Ct. R. 3.915(E).</p> <p>- A court-appointed representative must submit SCAO Form MC 221 along with JC 82 to request payment for services rendered. Fees paid by the courts to L-GALs vary. Michigan Judicial Institute, Lawyer- Guardian ad Litem Protocol, § 1.</p>
10. Caseload Levels: <i>Caseloads are of a manageable size.</i>	<i>No explicit legal authority or requirement.</i>