

SOUTH CAROLINA	Legal Authority
	<p align="center"><b>GENERAL DUTIES AND ACTIVITIES OF THE CHILD’S LEGAL REPRESENTATIVE</b></p> <p>1. <b>General Duties:</b>  <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> <p>- <a href="#">Volunteer Guardians ad Litem</a> (GALs) are individuals who have been appointed by a family court judge to represent the best interests of children who have entered the family court system due to abuse or neglect. Volunteer GALs have completed mandatory training with the S.C. Guardian ad Litem Program and have been accepted by the Program for court appointment. These volunteers give freely of their time and are governed by the rules and regulations of the Program, as well as the provisions of <a href="#">S.C. Code Ann. 63-11-500 et seq. (2008 Supp)</a>. State law requires that every child who enters the family court system due to abuse or neglect be appointed a guardian ad litem. (<a href="#">S.C. Code Ann. 63-7-1620.</a>) Assistance and supervision of Volunteer GALs is provided by local Program staff, as well as the state office. An attorney is always appointed to represent Volunteer GALs.</p> <p>- Legal representation of children.</p> <p>In all child abuse and neglect proceedings:</p> <p>(1) Children must be appointed a guardian ad litem by the family court. A guardian ad litem serving on behalf of the South Carolina Guardian ad Litem Program or Richland County CASA must be represented by legal counsel in any judicial proceeding pursuant to <a href="#">Section 63-11-530(C)</a>.</p> <p>(2) The family court may appoint legal counsel for the child. Counsel for the child may not be the same as counsel for:</p> <p>(a) the parent, legal guardian, or other person subject to the proceeding;</p> <p>(b) any governmental or social agency involved in the proceeding;</p> <p>(c) the child's guardian ad litem.</p> <p>(3) Parents, legal guardians, or other persons subject to any judicial proceeding are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court.</p> <p>(4) The interests of the State and the Department of Social Services must be represented by the legal representatives of the Department of Social Services in any judicial proceeding. <a href="#">S.C. CODE ANN. § 63-7-1620.</a></p> <p>- Representation by counsel; guardian ad litem.</p> <p>(A) Parents, guardians, or other persons subject to a termination of parental rights action are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court, unless the defendant is in default.</p>

	<p>(B) A child subject to any judicial proceeding under this article must be appointed a guardian ad litem by the family court. If a guardian ad litem who is not an attorney finds that appointment of counsel is necessary to protect the rights and interests of the child, an attorney must be appointed. If the guardian ad litem is an attorney, the judge must determine on a case-by-case basis whether counsel is required for the guardian ad litem. However, counsel must be appointed for a guardian ad litem who is not an attorney in any case that is contested. <a href="#">S.C. CODE ANN. § 63-7-2560.</a></p> <p>- Persons prohibited from appointment as guardians ad litem.</p> <p>No person may be appointed as a guardian ad litem for a child in an abuse or neglect proceeding who has been convicted of any crime listed in <a href="#">Chapter 3 of Title 16</a>, Offenses Against the Person, <a href="#">in Chapter 15 of Title 16</a>, Offenses Against Morality and Decency, in <a href="#">Article 3 of Chapter 53 of Title 44</a>, Narcotics and Controlled Substances, or for the crime of contributing to the delinquency of a minor, provided for in <a href="#">Section 16-17-490</a>. <a href="#">S.C. CODE ANN. § 63-11-520.</a></p>
<p><b>2. Out of Court - Actions to be Taken:</b> <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p>	<p>- Responsibilities of guardian ad litem<sup>1</sup>.</p> <p>The responsibilities and duties of a guardian ad litem are to:</p> <ul style="list-style-type: none"> <li>(1) represent the best interests of the child;</li> <li>(2) advocate for the welfare and rights of a child involved in an abuse or neglect proceeding;</li> <li>(3) conduct an independent assessment of the facts, the needs of the child, and the available resources within the family and community to meet those needs;</li> <li>(4) maintain accurate, written case records;</li> <li>(5) provide the family court with a written report, consistent with the rules of evidence and the rules of the court, which includes without limitation evaluation and assessment of the issues brought before the court and</li> </ul>

<sup>1</sup> Most of the information available in South Carolina concerns the volunteer, non-attorney GALs. There are few sources that discuss the lawyers who represent the GALs or lawyers who may be appointed to represent children.

recommendations for the case plan, the wishes of the child, if appropriate, and subsequent disposition of the case;

...

(7) protect and promote the best interests of the child until formally relieved of the responsibility by the family court. [S.C. CODE ANN. § 63-11-510.](#)

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(A)(1) The guardian ad litem is charged in general with the duty of representation of the child's best interests. After appointment by the family court to a case involving an abused or neglected child, the guardian ad litem shall receive appropriate notice of all court hearings and proceedings regarding the child. The obligation of the guardian ad litem to the court is a continuing one and continues until formally relieved by the court.

...

(B) The guardian ad litem is authorized to:

(1) conduct an independent assessment of the facts;

(2) confer with and observe the child involved;

(3) interview persons involved in the case;

(4) participate on any multidisciplinary evaluation team for the case on which the guardian ad litem has been appointed...[S.C. CODE ANN. § 63-11-530.](#)

- Right of access to information and records.

All reports made and information collected as described in [Section 63-7-1990\(A\)](#) must be made available to the guardian ad litem by the Department of Social Services. Upon proof of appointment as guardian ad litem and upon the guardian ad litem request, access to information must be made available to the guardian ad litem by the appropriate medical and dental authorities, psychologists, social workers, counselors, schools, and any agency providing services to the child. [S.C. CODE ANN. § 63-11-540.](#)

Volunteer non-attorney GALs are mandated reporters in South Carolina. [S.C. CODE ANN. § 63-7-310.](#)

- Any party, including a guardian ad litem, during a family court proceeding relating to abuse or neglect, may request a videotaped deposition of a child with appropriate notice to all other parties who shall be given the right of cross-examination. Failure without good cause to attend the deposition or to cross-examine shall not be a ground for objection to the admissibility of the deposition in any proceeding related to the pending action. [S.C. CODE ANN. § 15-28-30.](#)

- As a GAL investigator, you will independently assess the allegations that led to the initial involvement of the Department of Social Services and the court. You will visit with and interview the child, depending upon his or her developmental age. The child may be staying with relatives, or placed in a temporary shelter or foster home. Whatever the child's location, it is important to assess the child's well-being and determine the child's particular needs so that you can make appropriate recommendations during the pendency of the action in court.

The parents and/or Guardians of the minor child will need to be interviewed, particularly if they are also named as the alleged perpetrator of the abuse or neglect which is the subject of the court action. Information gleaned from this interview will help you to assess the condition of the home, as well as the strengths and weaknesses of the child's family and primary custodian(s).

It will also be necessary to make an appointment with the Department of Social Services so that you can read and review records and information connected with the case. These records contain valuable information regarding the child and the family's history that will assist you in assessing the allegations and determining what additional records you may need.

After your initial interviews with the family and child, you may decide that it is either appropriate or necessary to interview other individuals or professionals such as law enforcement officers, teachers, medical and mental health professionals, relatives, and neighbors.

Throughout this part of your role as investigator, it is important to keep any information regarding the child and family confidential. Such information can only be shared with appropriate parties who are confined to or connected with the court process.

	<p>As a GAL reporter, it is your duty to collect critical information prior to trial and to submit your recommendations to the court in the form of a written report. Your local Program office will provide you assistance in preparing your report, which should contain a summary of the information gained, as well as recommendations regarding placement of the child and treatment issues related to the family. As a volunteer GAL, your focus should always be on the best interests of the child throughout your involvement with the case. <a href="#">Guardian ad Litem Program, FAQ</a>.</p>
<p><b>3. In Court - Active Participation in Hearings:</b> <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>- Guardian ad litem to represent best interests of the child; removal of volunteer guardian ad litem. ...</p> <p>(B) The guardian ad litem is authorized to: ... (5) make recommendations to the court concerning the child's welfare; (6) make motions necessary to enforce the orders of the court, seek judicial review, or petition the court for relief on behalf of the child.</p> <p>(C) The guardian ad litem is authorized through counsel to introduce, examine, and cross-examine witnesses in any proceeding involving the child and participate in the proceedings to any degree necessary to represent the child adequately. <a href="#">S.C. CODE ANN. § 63-11-530</a>.</p> <p>- In all matters relating to children, the family court judge shall have the right, within his discretion, to talk with the children, individually or together, in private conference. Upon timely request, the court, in its discretion, may permit a guardian <i>ad litem</i> for a child who is being examined, and/or the attorneys representing the parents, if any, to be present during the interview. <a href="#">S.C. FAM. CT. R. 22</a>.</p> <p>- <b>(a) Presence in Courtroom.</b> Generally, in actions of parents against each other, or where the conduct of either parent is an issue, the children should not be allowed in the courtroom during the taking of testimony.</p> <p><b>(b) Testimony.</b> Children should not be offered as witnesses as to the misconduct of either parent, except, when, in the discretion of the court, it is essential to establish the facts alleged. <a href="#">S.C. FAM. CT. R. 23</a>.</p>

	<p>- As a GAL spokesperson, you will be present at all court hearings to serve as the voice for the child during the proceedings. At the time of your court appointment, you will be assigned an attorney who will serve to assist you in preparing for any hearings. It is important to meet with your attorney prior to trial so that you can determine what action, if necessary, is needed in advance of your hearing. This might include filing certain pre-trial motions and subpoenaing witnesses who may have valuable information to share with the court.</p> <p>It is also likely that you will be asked to testify in court regarding your investigation and the basis of your recommendations. Because the court's ultimate decision must be consistent with the best interests of the child, judges are particularly interested in hearing your perspective in the matter. They value your role in the system and appreciate the input which you contribute in helping them reach an informed decision in the matter.</p> <p>As GAL monitor, you will monitor the child's physical, emotional, psychological, and educational needs throughout the case. In between hearings, you will serve as the eyes of the court to ensure that the family is making progress towards the completion of any court-ordered treatment, and that the agencies involved are providing all necessary services.</p> <p>Until treatment objectives are met, most children remain in foster care or other temporary placement for a period of time. In your role as monitor, it is important to periodically visit this placement to make sure that the child has adequately adjusted to the situation and is doing well.</p> <p>As GAL protector, you will provide emotional support for the child and take any and all action necessary to protect the child's interests throughout the case. As previously mentioned, you should be present for all staffings and hearings concerning the child so that you can clearly state the child's position in the matter. If it appears that any issues related to the case can be settled by the parties outside the courtroom arena, you must be included in the discussions, negotiations, and settlement, so that the child's best interests are represented and considered. <a href="#">Guardian ad Litem Program, FAQ.</a></p>
<p>4. <b>Post-Hearing:</b> Review courts order, communicate order to child, and monitor</p>	<p>- Responsibilities of guardian ad litem.</p> <p>The responsibilities and duties of a guardian ad litem are to:</p>

<p><i>implementation of orders.</i></p>	<p>...</p> <p>(6) monitor compliance with the orders of the family court and to make the motions necessary to enforce the orders of the court or seek judicial review...<a href="#">S.C. CODE ANN. § 63-11-510.</a></p>
<p><b>5. Appellate Advocacy:</b> <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p><b>(b) Who May Appeal.</b> Only a party aggrieved by an order, judgment, sentence or decision may appeal. <a href="#">S.C. APP. CT. R. 201.</a></p> <p>"Party in interest" includes the child, the child's attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board. <a href="#">S.C. CODE ANN. § 63-7-20(15).</a></p>
<p><b>6. Cessation of Representation:</b> <i>Contacts post representation, if any.</i></p>	<p>- <b>(a) Continued Representation.</b> The attorneys and/or guardians <i>ad litem</i> of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule.</p> <p><b>(b) Withdrawal.</b> An attorney of record in a matter pending before an appellate court may not withdraw from representation of his client without justifiable cause, or the consent of his client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party. <a href="#">S.C. APP. CT. R. 264.</a></p> <p>(A)(2) The South Carolina Guardian ad Litem Program, or a county guardian ad litem program operating pursuant to <a href="#">Section 63-11-500</a>, whichever is appropriate, may intervene in an abuse or neglect proceeding in order to petition the court to relieve the volunteer, lay guardian ad litem from appointment for the following reasons:</p> <p>(a) incapacity;</p> <p>(b) conflict of interest;</p> <p>(c) misconduct;</p>

	<p>(d) persistent neglect of duties;</p> <p>(e) incompetence; or</p> <p>(f) a knowing and wilful violation of program policies and procedures that affect the health, safety, and welfare of the child.</p> <p>(3) The court shall determine what is in the best interest of the child when ruling on the petition. <a href="#">S.C. CODE ANN. § 63-11-530.</a></p>
	<p style="text-align: center;"><b>Organizational and Administrative Supports for the Child Representative</b></p>
<p><b>7. General Representation Rules:</b>  <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>- <a href="#">The South Carolina Guardian ad Litem Program</a> is state-funded and currently operates in 45 counties within the state's 16 judicial circuits. The Richland County Guardian ad Litem Program operates independently from the statewide Program and is funded as a public-private partnership through various county funds, grants, and donations.</p> <p>- Creation, purpose, and administration of program.</p> <p>(A) There is created the Cass Elias McCarter Guardian ad Litem Program in South Carolina. The program shall serve as a statewide system to provide training and supervision to volunteers who serve as court-appointed special advocates for children in abuse and neglect proceedings within the family court, pursuant to Section <a href="#">63-7-1620</a>. This program must be administered by the Office of the Governor.</p> <p>(B) Notwithstanding the provisions of subsection (A), a county providing the guardian ad litem services set forth in subsection (A) prior to the effective date of this act may continue to provide such services, provided the county guardian ad litem program is a member of the National Court Appointed Special Advocate Association. However, a county guardian ad litem program operating pursuant to this subsection must comply with all state and federal laws, even if compliance with state or federal laws would result in the violation of a requirement for membership in the National Court Appointed Special Advocate Association. <a href="#">S.C. CODE ANN. § 63-11-500.</a></p> <p>- Funds.</p> <p>The General Assembly shall provide the funds necessary for the South Carolina Guardian ad Litem Program to</p>



	<p>carry out the provisions of <a href="#">Sections 63-11-500 through 63-11-560</a> and <a href="#">63-7-1990(B)(5)</a>. The General Assembly shall not provide any funding for a county guardian ad litem program. <a href="#">S.C. CODE ANN. § 63-11-570</a>.</p>
<p><b>8. <i>Lawyer Training:</i></b> <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>- Volunteer GALs must complete a <a href="#">30-hour training course</a>, and undergo an interview with a local Program Coordinator and background check.</p> <p><i>There are no training requirements for attorneys appointed to represent children.</i></p> <p>-</p>
<p><b>9. <i>Lawyer Compensation:</i></b> <i>Adequate and timely compensation, reimbursement provided expenses.</i></p>	<p>- If a guardian <i>ad litem</i> is represented by an attorney, the court in its discretion may assess reasonable attorneys' fees and costs. <a href="#">S.C. FAM. CT. R. 12</a>.</p> <p>- <b>(a) Limitation on Fees.</b> In all child abuse and neglect proceedings, the court shall grant to legal counsel appointed for the child subject to child abuse and/or neglect proceedings, a fee not to exceed One Hundred (\$100.00) Dollars. The court shall grant to a guardian <i>ad litem</i> appointed for a child subject to such proceedings a fee not to exceed Fifty (\$50.00) Dollars.</p> <p><b>(b) Exceptions.</b> If the court determines that extraordinary circumstances require the award of a fee larger than that which is specified in this rule, the court shall set forth in its order the salient facts upon which the extraordinary circumstances are based and shall award a fee to appointed legal counsel or guardian <i>ad litem</i> in an amount which the court determines to be just and proper. <a href="#">S.C. FAM. CT. R. 41</a>.</p>
<p><b>10. <i>Caseload Levels:</i></b> <i>Caseloads are of a manageable size.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>