

| NEBRASKA  | Legal Authority   |
|---|---|
|   | GENERAL DUTIES AND ACTIVITIES OF THE CHILD’S LEGAL REPRESENTATIVE   |
| <p><b>1. General Duties:</b><br/> <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"> <li>- The court shall appoint a guardian ad litem at the commencement of any dependency case. The GAL shall be an attorney and “act as his or her own counsel and as counsel for the juvenile.” Rev. Stat. § <a href="#">43-272</a>; Rev. Stat. § <a href="#">43-272.01(1)</a>.</li> <li>- The GAL: <ul style="list-style-type: none"> <li>- is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition. . .;</li> <li>- is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile. <a href="#">Rev. Stat. § 43-272.01(2)(a)-(b)</a>.</li> </ul> </li> <li>- A judge may appoint a court appointed special advocate volunteer in any dependency proceeding brought <a href="#">43-292</a> when, in the opinion of the judge, a child who may be affected by such proceeding requires services that a volunteer can provide and the court finds that the appointment is in the best interests of the child. <a href="#">Rev. Stat. §§ 43-272.02</a>; <a href="#">43-3710(1)</a>.</li> <li>- A volunteer shall be appointed pursuant to a court order. The court order shall specify the volunteer as a friend of the court acting on the authority of the judge. The volunteer acting as a friend of the court may offer as evidence a written report with recommendations consistent with the best interests of the child, subject to all pertinent objections. <a href="#">Rev. Stat. § 43-3710(2)</a>.</li> <li>- 1. In serving as advocate for the juvenile to protect his or her best interests, the guardian ad litem shall make an independent determination as to the juvenile’s best interests, by considering all available information and resources. The guardian ad litem’s determination as to best interests is not required to be consistent with any preferences expressed by the juvenile.</li> <li>2. Upon making such determination, the guardian ad litem shall make such recommendations to the court and shall take the necessary actions to advocate and protect the best interests of the juvenile.</li> <li>3. As legal counsel for the juvenile, the guardian ad litem shall be entitled to exercise and discharge all prerogatives</li> </ul> |

to the same extent as a lawyer for any other party in the proceeding.

4. Where the juvenile expresses a preference which is inconsistent with the guardian ad litem's determination of what is in the best interests of the juvenile, the guardian ad litem shall assess whether there is a need to request the appointment of a separate legal counsel to represent the juvenile's legal interests in the proceeding. In making such assessment, the guardian ad litem shall consider:

- a. The juvenile's age,
- b. The juvenile's capacity,
- c. The juvenile's level of maturity, and
- d. The nature of the inconsistency between the juvenile's expressed preference and the guardian ad litem's determination as to the juvenile's best interests.

5. After making such assessment, the guardian ad litem shall request the court to make a determination whether special reasons exist for the court to appoint separate legal counsel to represent the legal interests of the juvenile where the guardian ad litem determines all of the following:

- a. That the juvenile's expressed preference represents a communication that is made by a juvenile of sufficient age, capacity, and maturity;
- b. That the juvenile's expressed preference is of significance to other matters or issues in the case affecting the juvenile, and is within the bounds of law and reality; and
- c. That the guardian ad litem believes that it would be a conflict of interest for the guardian ad litem to continue to act as legal counsel for the juvenile in light of the preference expressed by the juvenile.

6. In any situation where the guardian ad litem has been appointed to represent more than one juvenile within the same case, the guardian ad litem shall ascertain throughout the case whether the guardian ad litem's advocacy of the legal and best interests of any one juvenile would be adverse to or conflict with the legal and best interests of any other juvenile represented by the same guardian ad litem. Where the guardian ad litem reasonably believes that to continue as guardian ad litem for all of the juveniles would be problematic in this specific regard, the guardian ad litem shall apply to the court for the appointment of a separate guardian ad litem and/or legal counsel for the juvenile(s). Where any juvenile has expressed a preference or position regarding a certain matter or issue, the guardian ad litem shall utilize the standards set forth in guideline III.C.5 above.

7. If the court exercises its statutory authority to appoint separate legal counsel, such counsel shall represent the juvenile's legal interests. The guardian ad litem shall continue to advocate and protect the juvenile's social and best

|  |  |
|--|--|
|  | <p>interests as defined under the Nebraska Juvenile Code.</p> <p><a href="#">Nebraska Supreme Court, Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings, § III(C).</a></p> <p>[It should be noted that these Guidelines “set forth ‘best practice’ recommendations only and are not intended as Supreme Court rules.” <i>Guidelines</i> § I.]</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>- In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem:</p> <p>. . . .</p> <p>(c) May at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section <a href="#">43-258</a>. The guardian ad litem shall have access to all reports resulting from any examination ordered under section <a href="#">43-258</a>, and such reports shall be used for evaluating the status of the protected juvenile;</p> <p>(d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile within two weeks after the appointment and once every six months thereafter and inquiry of the most current caseworker, foster parent, or other custodian and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;</p> <p>...</p> <p>(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case. <a href="#">Rev. Stat. § 43-272.01(2).</a></p> <p>- The GAL should receive all pleadings and court documents and should have access to all agency records and those of any CASA or private provider deemed relevant by the GAL. Providers should honor a GAL’s request for such information, and courts should include language in their GAL appointment orders granting such access.</p> <p><a href="#">Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings, § IV.</a></p> |

- The GAL should meet with the child in accordance with the timeframes provided by Rev. Stat. § 43-272.01(2)(d), as well as whenever the child requests it; whenever there is an emergency or significant change in circumstances; and before any hearing at which substantive issues affecting the child's best interests will be addressed by the court. The GAL should meet the child at his or her placement, at least once per placement. [Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings, § V\(A\)\(3\).](#)

- The GAL should make inquiry of the caseworker, foster parent, and anyone else directly involved with the child who has information about the case or the child. The GAL should read all reports prepared for court by the agency, providers, the Foster Care Review Board, and CASA. [Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings, § V.](#)

- (1) Upon appointment in a proceeding, a court appointed special advocate volunteer shall:

(a) Conduct an independent examination regarding the best interests of the child that will provide factual information to the court regarding the child and the child's family. The examination may include interviews with and observations of the child, interviews with other appropriate individuals, and the review of relevant records and reports; and

(b) Determine if an appropriate permanency plan has been created for the child, whether appropriate services are being provided to the child and the child's family, and whether the treatment plan is progressing in a timely manner.

(2) The volunteer, with the support and supervision of the court appointed special advocate program staff, shall make recommendations consistent with the best interests of the child regarding placement, visitation, and appropriate services for the child and the child's family and shall prepare a written report to be distributed to the court and the parties to the proceeding.

(3) The volunteer shall monitor the case to which he or she has been appointed to assure that the child's essential needs are being met.

... [Rev. Stat. § 43-3712.](#)

- The contents of any document, record, or other information relating to a case to which the court appointed special advocate volunteer has access are confidential, and the volunteer shall not disclose such information to persons other than the court, the parties to the action, and other persons authorized by the court. A violation of this section is a Class III misdemeanor. [Rev. Stat. § 43-3714.](#)

- Nothing in the Court Appointed Special Advocate Act affects the attorney-client privilege. [Rev. Stat. § 43-3715.](#)

|   |   |
|---|---|
|   | <p>- A court appointed special advocate volunteer shall be immune from civil liability to the full extent provided in the federal Volunteer Protection Act of 1997. <a href="#">Rev. Stat. § 43-3716.</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>- In the course of discharging duties as guardian ad litem, the guardian ad litem:</p> <p>...(a) shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;</p> <p>(e) May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings. In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence;</p> <p>(f) Shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing;</p> <p>...</p> <p>(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section <a href="#">43-291</a>. <a href="#">Rev. Stat. § 43-272.01(2).</a></p> <p>-The GAL should advocate for the child to be present at all court proceedings as appropriate, and take steps to facilitate such attendance. <a href="#">Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings, § V(D)(4).</a></p> <p>- (1) Upon appointment in a proceeding, a court appointed special advocate volunteer shall:</p> <p>...</p> <p>(4) The volunteer shall make every effort to attend all hearings, meetings, and any other proceeding concerning the case to which he or she has been appointed.</p> <p>(5) The volunteer may be called as a witness in a proceeding by any party or the court. <a href="#">Rev. Stat. § 43-3712.</a></p> |
| <p><b>4. Post-Hearing:</b> <i>Review courts order, communicate order to</i></p>   | <p>- In the course of discharging duties as guardian ad litem, the guardian ad litem:</p> <p>...</p>  |

|  |   |
|--|---|
| <p><i>child, and monitor implementation of orders.</i></p>   | <p>(f) Shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing;</p> <p>(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case. <a href="#">Rev. Stat. § 43-272.01(2).</a></p>   |
| <p><b>5. Appellate Advocacy:</b><br/><i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p> | <p>- Any final order or judgment entered by a juvenile court may be appealed to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.</p> <p>An appeal may be taken by the juvenile; the guardian ad litem; the juvenile's parent, custodian, or guardian, including the agency; or the county attorney or petitioner. <a href="#">Rev. Stat. § 43-2,106.01.</a></p> <p>- The attorneys of record and guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians ad litem of the same parties on appeal, until a withdrawal of appearance has been filed together with an affidavit that a copy of such withdrawal has been sent to counsel's client by certified mail to the client's last-known address and by regular mail to the adverse party or that party's attorney of record. <a href="#">Neb. Ct. R. App. Prac. § 2-101(F).</a></p>  |
| <p><b>6. Cessation of Representation:</b><br/><i>Contacts post representation, if any.</i></p>                                 | <p>- The authority of the guardian ad litem should continue until such time as the court terminates its jurisdiction.</p> <p>The guardian ad litem may voluntarily withdraw from representation in any case where the guardian ad litem files a motion to withdraw, and the court, in its discretion, enters a corresponding order granting such withdrawal.</p> <p>A guardian ad litem may be removed from a case by the court for cause, where the court finds that the guardian ad litem's performance is inadequate, that the guardian ad litem has substantially failed to discharge duties or act to protect the best interests of the juvenile(s) for whom the guardian ad litem was appointed, or that any other factor or circumstance prevents or substantially impairs the guardian ad litem's ability to fairly and fully discharge his or her duties. In determining whether removal of the guardian ad litem is warranted in a particular case, the court should assess the guardian ad litem's performance under the requirements and standards of practice imposed upon a guardian ad litem by both the Nebraska Juvenile Code as well as by these guidelines. <a href="#">Guidelines for Guardians</a></p> |

|  |   |
|--|---|
|  | <p><a href="#"><u>ad Litem for Juveniles in Juvenile Court Proceedings, § VI.</u></a></p> <ul style="list-style-type: none"> <li>- The CASA volunteer's appointment shall conclude: <ul style="list-style-type: none"> <li>(a) When the court's jurisdiction over the child terminates;</li> <li>(b) Upon discharge by the court on its own motion;</li> <li>(c) With the approval of the court, at the request of the program director of the court appointed special advocate program to which the volunteer is assigned; or</li> <li>(d) Upon successful motion of a party to the action for the removal of the volunteer because the party believes the volunteer has acted inappropriately, is unqualified, or is unsuitable for the appointment. <a href="#"><u>Rev. Stat. § 43-3710(4).</u></a></li> </ul> </li> </ul>   |
|  | <b>Organizational and Administrative Supports for the Child Representative</b>  |
| <p><b>7. General Representation Rules:</b><br/> <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>In Nebraska, each county is responsible for the structure of legal services for children.</p>  |
| <p><b>8. Lawyer Training:</b><br/> <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>   | <ul style="list-style-type: none"> <li>- To receive GAL appointments, an attorney must have six hours of relevant training. To remain eligible, three hours of relevant, annual CLE are required. However, if the appointing judge determines that no attorneys who have met the training requirement are available, the court may appoint another attorney. <a href="#"><u>Neb. Ct. R. § 4-401.</u></a></li> <li>- The Administrative Office of the Courts makes training programs available for GALs, via the <a href="#"><u>Through the Eyes of the Child Initiative</u></a>, in partnership with the University of Nebraska-Lincoln.</li> <li>- (1) All court appointed special advocate volunteers shall participate fully in preservice training, including, but not limited to, instruction on recognizing child abuse and neglect, cultural awareness, socioeconomic issues, child development, the juvenile court process, permanency planning, volunteer roles and responsibilities, advocacy,</li> </ul> |

|  |   |
|--|---|
|  | <p>information gathering, and documentation. Volunteers shall be required to participate in observation of court proceedings prior to appointment.</p> <p>(2) All volunteers shall receive a training manual that includes guidelines for service and duties.</p> <p>(3) Each court appointed special advocate program shall provide a minimum of ten hours of inservice training per year to volunteers. <a href="#">Rev. Stat. § 43-3708.</a></p> <p>- (1) The minimum qualifications for any prospective court appointed special advocate volunteer are that he or she shall:</p> <ul style="list-style-type: none"> <li>(a) Be at least twenty-one years of age or older and have demonstrated an interest in children and their welfare;</li> <li>(b) Be willing to commit to the court for a minimum of one year of service to a child;</li> <li>(c) Complete an application, including providing background information required pursuant to subsection (2) of this section;</li> <li>(d) Participate in a screening interview; and</li> <li>(e) Participate in the training required pursuant to section <a href="#">43-3708.</a></li> </ul> <p>(2) As required background screening, the program director shall obtain the following information regarding a volunteer applicant:</p> <ul style="list-style-type: none"> <li>(a) A check of the applicant's criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol;</li> <li>(b) A check of his or her record with the central register of child protection cases maintained under section <a href="#">28-718;</a></li> <li>(c) A check of his or her driving record; and</li> <li>(d) At least three references who will attest to the applicant's character, judgment, and suitability for the position of a court appointed special advocate volunteer.</li> </ul> <p>(3) If the applicant has lived in Nebraska for less than twelve months, the program director shall obtain the records required in subdivisions (2)(a) through (2)(c) of this section from all other jurisdictions in which the applicant has lived during the preceding year. <a href="#">Rev. Stat. § 43-3709.</a></p> |
| <p><b>9. Lawyer Compensation:</b><br/>Adequate and timely compensation, reimbursement provided</p> | <p>- Compensation for GALs is a county charge. Bills must generally be approved by the appointing court prior to payment. <a href="#">Rev. Stat. Ann. § 43-273.</a></p> <p>- The court may also assess GAL costs to the parents. <a href="#">Rev. Stat. § 43-272.01(4).</a></p>   |



|   |  |
|---|--|
| <p><i>expenses.</i></p>   | <p>- A court appointed special advocate volunteer shall not:</p> <p>(1) Accept any compensation for the duties and responsibilities of his or her appointment;</p> <p>...</p> <p>(5) Use the position to seek or accept gifts or special privileges. <a href="#">Rev. Stat. § 43-3711.</a></p>   |
| <p><b>10. Caseload Levels:</b><br/><i>Caseloads are of a manageable size.</i></p> | <p>- The Nebraska Supreme Court recommends that GALs “not accept workloads or caseloads that by reason of their excessive size or demands, including but not limited to factors such as the number of children represented at any given time, interfere with or lead to the breach of the professional obligations or standards required to be met by a guardian ad litem by statute or by court rules.</p> <p>Attorneys should not accept caseloads or appointments to serve as a guardian ad litem or to provide guardian ad litem services that are likely to, in the best professional judgment of the appointed attorney, lead to the provision of representation or service that is ineffective to protect and further the interests of the juvenile, or likely to lead to the breach of professional obligations of the guardian ad litem.” <a href="#">Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings, § V(E)(2)-(3).</a></p> |