

NEBRASKA

<p>Structure, organization, and delivery of Child Representation</p> <p>State-by-state, county-by-county, etc.</p>	<p>Governed by local rules in individual juvenile courts:</p> <p>(A) Every judicial district shall have a transparent process for appointment of counsel as provided by Neb. Rev. Stat. <a href="#">§ 43-272</a>.</p> <p>(B) On or before January 1, 2015, the separate juvenile court judges of each separate juvenile court shall adopt a local rule for the juvenile court regarding appointment of counsel in juvenile cases. Such local rule shall be made public and shall include, but not be limited to:</p> <p>(1) Provision for maintenance of a list of all licensed attorneys who may be expected to accept appointments in juvenile cases, and information on obtaining such list from the court;</p> <p>(2) The separate juvenile court’s process for appointments under Neb. Rev. Stat. <a href="#">§ 43-272</a>; and</p> <p>(3) Information as to how an attorney may be added to or, if permitted, removed from the court-appointed attorney list. <a href="#">Neb. Ct. R. § 6-1704</a>.</p>
<p>Funding Child Representation</p>	<p>-For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination. <a href="#">Rev. Stat. § 43-272.01(4)</a></p> <p>-Counsel and guardians ad litem appointed as provided in section <a href="#">43-272</a> shall apply to the court before which the proceedings were had for fees for services performed. The court upon hearing the application shall fix reasonable fees. The county board of the county wherein the proceedings were had shall allow the account, bill, or claim presented by any attorney or guardian ad litem for services performed under section <a href="#">43-272</a> in the amount determined by the court. No such account, bill, or claim shall be allowed by the county board until the amount thereof shall have been determined by the court. <a href="#">Rev. Stat. § 43-273</a></p>
<p>1. General Duties: Timely appointment, mandatory or discretionary, attorney or lay person, represent child’s interests, undertake</p>	<p>-The Court shall appoint an attorney as guardian ad litem in every abuse and neglect proceeding who shall act as his or her own counsel and as counsel for the juvenile. <a href="#">Rev. Stat. § 43-272(3)</a>; <a href="#">Rev. Stat. § 43-272.01(1)</a></p> <p>-A guardian ad litem shall have the duty to protect the interests of the juvenile for whom he or she has been appointed guardian <a href="#">Rev. Stat. § 43-272(2)</a></p>

basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.

-The guardian ad litem is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, 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 . . . [and] 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. [Rev. Stat. § 43-272.01\(2\)\(a\)-\(b\)](#)

-The court may appoint a court appointed special advocate volunteer. [Rev. Stat § 43-272.02](#)

-(1) A judge may appoint a court appointed special advocate volunteer in any proceeding brought pursuant to section [43-247](#) or [43-292](#) 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.

(2) 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. [Rev. Stat § 43-3710](#)

Neb. Rev. Stat. [§ 43-272\(3\)](#) authorizes a guardian ad litem in juvenile proceedings to fulfill a “dual role” with respect to the juvenile, that is, to serve as:

1. An *advocate* for the juvenile who is deemed as the parent of the juvenile and charged with a duty to investigate facts and circumstances, determine what is in the juvenile’s best interests, report to the court and make recommendations as to the juvenile’s best interests, and take all necessary steps to protect and advance the juvenile’s best interests; and
2. *Legal counsel* for the juvenile. [Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §III\(A\)](#)

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

	<p>be consistent with any preferences expressed by the juvenile.</p> <p>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.</p> <p>3. As legal counsel for the juvenile, the guardian ad litem shall be entitled to exercise and discharge all prerogatives to the same extent as a lawyer for any other party in the proceeding.</p> <p>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:</p> <ul style="list-style-type: none"> <li>a. The juvenile's age,</li> <li>b. The juvenile's capacity,</li> <li>c. The juvenile's level of maturity, and</li> <li>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.</li> </ul> <p>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:</p> <ul style="list-style-type: none"> <li>a. That the juvenile's expressed preference represents a communication that is made by a juvenile of sufficient age, capacity, and maturity;</li> <li>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</li> <li>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</li> </ul> <p>...</p> <p>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 interests as defined under the Nebraska Juvenile Code. <a href="#">Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §III(C)</a></p>
<p>3. Out of Court - Actions to be Taken: Meet with child, undertake an investigation, provide</p>	<p>-The guardian ad litem:</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 <u>43-258</u>. The guardian ad litem shall have access to all reports resulting from any examination ordered under section <u>43-258</u>, and such reports</p>

advice and counseling,  
file pleadings, request  
services, address special  
needs, negotiate  
settlements

shall be used for evaluating the status of the protected juvenile;  
(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...  
(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case [Rev. Stat. § 43-272.01\(2\)](#)

-The guardian ad litem is entitled to receive all pleadings; notices, to include timely notices of change of placement; and orders of the court filed in the proceeding, and should make reasonable efforts to obtain complete copies of the same. [Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §IV\(1\)](#)

-The guardian ad litem is authorized to make announced or unannounced visits to the juvenile at his or her home or placement or at any location at which the juvenile may be present. [Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §IV\(5\)](#)

When possible, the guardian ad litem should consult with the juvenile when:

- a. The juvenile requests that the guardian ad litem meet with him or her;
- b. The guardian ad litem has received notification of any emergency, or other significant event or change in circumstances affecting the juvenile, including a change in the juvenile's placement; and
- c. Prior to any hearing at which substantive issues affecting the juvenile's legal or best interests are anticipated to be addressed by the court.
- d. The guardian ad litem should make every effort to see the juvenile in his or her placement at least once, with respect to each such placement. [Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §V\(A\)\(3\)](#)

1. The guardian ad litem is required to make inquiry of the juvenile's caseworker, foster parent, or legal custodian and any other person directly involved with the juvenile who may have knowledge about the case or the development of the juvenile. The guardian ad litem should also make inquiry of any other

	<p>persons who have knowledge or information relevant to the juvenile’s best interests.[2] The guardian ad litem may obtain such information through the means of direct inquiry, interview, or the discovery process.</p> <p>2. The guardian ad litem has a duty to read and comprehend the court reports prepared by the Nebraska Department of Health and Human Services, the Nebraska Foster Care Review Board, the CASA volunteer, and from all other persons or providers assigned to the case who prepare and present such reports to the court. <a href="#">Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §V(B)</a></p> <p>A court-appointed special advocate shall:</p> <p>(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</p> <p>(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. <a href="#">Rev. Stat § 43-3710(1)</a></p> <p>-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. <a href="#">Rev. Stat § 43-3712(2)</a></p> <p>-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. <a href="#">Rev. Stat § 43-3712(3)</a></p>
<p>4. In Court – Active Participation in Hearings: Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation</p>	<p>-The guardian ad litem:</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>

into other needed areas, and undertake certain obligations post-disposition.

(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section 43-291. [Rev. Stat. § 43-272.01\(2\)](#)

1. The guardian ad litem has a duty to make written recommendations to the court in the form of a report regarding the temporary and permanent placement of the protected juvenile. Because the guardian ad litem is also required by statute to consider any other information “as is warranted by the nature and the circumstances of the particular case,” the guardian ad litem’s report should include written recommendations to the court regarding any other matter that affects or would affect the legal and best interests of the protected juvenile.
2. The guardian ad litem is required to submit a written report to the court at every dispositional hearing and review hearing.[6] The information contained in the report of the guardian ad litem should include, but is not limited to, the following information:
  - a. Dates of, and description of, the type of contact and communication with the juvenile;
  - b. Listing of documents reviewed;
  - c. The guardian ad litem’s concerns regarding any specific matters or problems which, in the opinion of the guardian ad litem, need special, further, or other attention in order to protect or facilitate the juvenile’s legal and best interests; and
  - d. The guardian ad litem’s assessment of and recommendations regarding the juvenile’s placement in light of his or her needs and legal and best interests. [Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §V\(C\)](#)

1. The guardian ad litem shall attend all hearings unless expressly excused by the court.
2. The guardian ad litem may testify only to the extent allowed by the Nebraska Rules of Professional Conduct.
3. Where the guardian ad litem is unable or unavailable to attend a hearing due to reasons such as personal illness, emergency, involvement in another court hearing, or absence from the jurisdiction, such guardian ad litem may make proper arrangements for another attorney to attend the hearing as long as no other party objects and as long as the hearing is not anticipated to be a contested evidentiary hearing. In such a situation, the guardian ad litem does not need to be excused from attendance at the hearing.
4. The guardian ad litem should advocate for the juvenile to be present at all court hearings as appropriate and take steps where necessary to ensure such attendance on the part of the juvenile. [Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §V\(D\)](#)

	<p>-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. <a href="#">Rev. Stat § 43-3712(4)</a></p> <p>-The volunteer may be called as a witness in a proceeding by any party or the court. <a href="#">Rev. Stat § 43-3712(5)</a></p> <p>-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. <a href="#">Rev. Stat § 43-3714</a></p> <p>-Nothing in the Court Appointed Special Advocate Act affects the attorney-client privilege. <a href="#">Rev. Stat § 43-3715</a></p> <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>5. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders</p>	<p>The guardian ad litem 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. <a href="#">Rev. Stat. § 43-272.01(2)(f)</a></p>
<p>6. Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>(1) 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. The appellate court shall conduct its review in an expedited manner and shall render the judgment and write its opinion, if any, as speedily as possible.</p> <p>(2) An appeal may be taken by the juvenile, the guardian ad litem, the juvenile's parent, custodian, or guardian, or the county attorney or petitioner. <a href="#">Rev. Stat § 43-2,106.01</a></p>
<p>7. Cessation of Representation: Contacts</p>	<p>-The authority of the guardian ad litem shall commence upon appointment by the court and shall continue in that case until such time as the court terminates its jurisdiction. <a href="#">Guidelines for Guardians</a></p>

<p>post representation, if any</p>	<p><a href="#">Ad Litem for Juveniles in Juvenile Court Proceedings §VI(A)</a></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. <a href="#">Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §VI(B)</a></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 Ad Litem for Juveniles in Juvenile Court Proceedings §VI(C)</a></p> <p>-The volunteer's appointment shall conclude:</p> <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.</li> </ul> <p><a href="#">Rev. Stat § 43-3710(4)</a></p>
<p>8. General Representation Rules: Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the</p>	<p>-The authority of the guardian ad litem shall commence upon appointment by the court and shall continue in that case until such time as the court terminates its jurisdiction. <a href="#">Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §VI(A)</a></p> <p>- (A) Every judicial district shall have a transparent process for appointment of counsel as provided by Neb. Rev. Stat. <a href="#">§ 43-272</a>.</p> <p>(B) On or before January 1, 2015, the separate juvenile court judges of each separate juvenile court shall adopt a local rule for the juvenile court regarding appointment of counsel in juvenile cases. Such</p>

court	<p>local rule shall be made public and shall include, but not be limited to:</p> <p>(1) Provision for maintenance of a list of all licensed attorneys who may be expected to accept appointments in juvenile cases, and information on obtaining such list from the court;</p> <p>(2) The separate juvenile court’s process for appointments under Neb. Rev. Stat. <a href="#">§ 43-272</a>; and</p> <p>(3) Information as to how an attorney may be added to or, if permitted, removed from the court-appointed attorney list. <a href="#">Neb. Ct. R. § 6-1704</a>.</p>
9. Lawyer Training: Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.	<p>An attorney to be appointed by the courts as a guardian ad litem for a juvenile in a proceeding brought under <a href="#">Neb. Rev. Stat. § 43-247(3)(a)</a> of the Nebraska Juvenile Code shall have completed six (6) hours of specialized training provided by the Administrative Office of the Courts Judicial Branch Education Division (see <a href="#">Appendix A</a>). Thereafter, in order to maintain eligibility to be appointed and to serve as a guardian ad litem, an attorney shall complete three (3) hours of specialized training per year as provided by the Administrative Office of the Courts Judicial Branch Education Division. Courts shall appoint attorneys trained under this rule in all <a href="#">§ 43-247(3)(a)</a> cases when available; provided, however, that if the judge determines that an attorney with the training required herein is unavailable within the county, he or she may appoint an attorney without such training and the attorney must agree to complete the six-hour on-line training within thirty (30) days of the appointment. <a href="#">Neb. Ct. R. § 4-401(A)</a></p>
10. Lawyer Compensation: Adequate and timely compensation, reimbursement provided for expenses.	<p>-The guardian ad litem shall be paid a reasonable fee set by the court and paid from the general fund of the county. <a href="#">Rev. Stat. § 43-292.01</a></p> <p>-For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination. <a href="#">Rev. Stat. § 43-272.01(4)</a></p> <p>-Counsel and guardians ad litem appointed as provided in section <a href="#">43-272</a> shall apply to the court before which the proceedings were had for fees for services performed. The court upon hearing the application shall fix reasonable fees. The county board of the county wherein the proceedings were had shall allow the account, bill, or claim presented by any attorney or guardian ad litem for services performed under section <a href="#">43-272</a> in the amount determined by the court. No such account, bill, or claim shall be allowed by the county board until the amount thereof shall have been determined by the court. <a href="#">Rev. Stat. § 43-</a></p>

	<p><a href="#">273</a></p> <p>A. The Supreme Court may establish a statewide uniform minimum hourly rate of compensation for guardians ad litem.</p> <p>B. Generally, no distinction should be made between rates for services performed in and outside of court, and the same rate should be paid for any time the attorney spends traveling in fulfilling his or her obligations as the guardian ad litem.</p> <p>C. Guardians ad litem shall be compensated for all hours reasonably necessary to provide quality legal representation as documented in fee applications submitted by the guardian ad litem. <a href="#">Guidelines for Guardians Ad Litem for Juveniles in Juvenile Court Proceedings §VII</a></p>
<p>11. Caseload Levels: Caseloads are of a manageable size</p>	<ol style="list-style-type: none"> <li>1. Any attorney appointed by the court to serve as a guardian ad litem for a juvenile, or to provide guardian ad litem services for juveniles, is expected to provide quality representation and advocacy for the juveniles whom he or she is appointed to represent, throughout the entirety of the case.</li> <li>2. To that end, a guardian ad litem should 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.</li> <li>3. 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)</a></li> </ol>