§ 6-1705. Practice standards for guardians ad litem for juveniles in separate juvenile court proceedings.

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(A) Purpose.

The purpose of these practice standards is to ensure that the legal and best interests of juveniles in dependency and abuse/neglect proceedings initiated under the Nebraska Juvenile Code are effectively represented by their court-appointed guardians ad litem. These practice standards are also intended to ensure that such interests of juveniles involved in delinquency, status offense, or other proceedings initiated under the Nebraska Juvenile Code are effectively protected when a guardian ad litem has been appointed.

(B) Appointment.

(1) In accordance with the Nebraska Juvenile Code, specifically Neb. Rev. Stat. § 43-272(3), only a lawyer duly licensed by the Nebraska Supreme Court may be appointed to serve as a guardian ad litem for a juvenile.

(2) When feasible, the duties of a guardian ad litem should be personal to the appointed lawyer and should not normally be delegated to another person or lawyer.

(3) Any lawyer who serves as a guardian ad litem should fulfill the training requirements described in the Nebraska Supreme Court Rule Regarding Guardian Ad Litem Training for Attorneys.

(C) Role of Guardian Ad Litem.

(1) 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:

(a) 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

(b) Legal counsel for the juvenile.

(2) Where a lawyer has already been appointed to represent the legal interests of the juvenile, for example in a delinquency case, another lawyer appointed to serve as a guardian ad litem for such juvenile shall function only in a single role as guardian ad litem for the juvenile concerning the juvenile’s best interests, and shall be bound by all of the duties and shall have all of the authority of a guardian ad litem, with the exception of acting as legal counsel for the juvenile.

(3) Accordingly, the following shall apply:

(a) 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.

(b) 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.

(c) 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.

(d) 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:

(i) The juvenile's age,

(ii) The juvenile's capacity,

(iii) The juvenile's level of maturity, and

(iv) 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.

(e) 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:

(i) That the juvenile's expressed preference represents a communication that is made by a juvenile of sufficient age, capacity, and maturity;

(ii) 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

(iii) 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.

(f) 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 § 6-1705(C)(3)(e) above.

(g) 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.

(D) Authority of Guardian Ad Litem.

(1) Access to information and juvenile.

(a) 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.

(b) The guardian ad litem is entitled to receive copies of all case plans and court reports prepared by the Nebraska Department of Health and Human Services, the Nebraska Foster Care Review Office, and any Court Appointed Special Advocate (CASA), as well as reports, summaries, evaluations, records, letters, and documents prepared by any other provider which the guardian ad litem deems relevant to the best interests or legal rights of any juvenile represented by the guardian ad litem. Where these documents are not provided as a matter of course to the guardian ad litem, they shall be provided upon the request of the guardian ad litem.

(c) The guardian ad litem, standing in lieu of the parent for a protected juvenile who is the subject of a juvenile court petition shall also have the same right as the juvenile's legal guardian to (1) obtain information from all professionals and service providers, including, but not limited to, verbal communications and written reports, summaries, opinions, and evaluations, and information regarding the juvenile's placement; and (2) to receive notice of and participate in all conferences, staffings or team meetings, and hearings relating to the juvenile's health, education, placement, or any other matter which in the opinion of the guardian ad litem is relevant to, or which affects, the best interests or legal rights of the juvenile.

(d) The guardian ad litem is authorized to communicate with and respond to inquiries for information regarding the juvenile made by the Nebraska Foster Care Review Office, the Department of Health and Human Services case manager, or CASA.

(e) 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.

(f) The court should facilitate the guardian ad litem's authority to obtain information regarding the juvenile by including the following language, or language substantially similar thereto, in its initial order of appointment of the guardian ad litem:

"The guardian ad litem appointed herein by this Court shall have full legal authority to obtain all information which relates to the above-named juvenile.

"To that end, the guardian ad litem is hereby authorized by this Court to communicate verbally or in writing with any agency, organization, person, or institution, including, but not limited to, any school personnel, counselor, or drug or alcohol treatment provider; or police department or other law enforcement agency; any probation, parole, or corrections officer; any physician, psychiatrist, psychologist, therapist, nurse, or mental health care provider; or any hospital, clinic, group home, treatment group home, residential or mental health treatment facility, or youth rehabilitation treatment center; any social worker, case manager, or social welfare agency, including the Nebraska Department of Health and Human Services and its employees and administrators; any person or agency or institution charged with supervising visitation; or any family member, guardian, foster parent, or any other person.

"The guardian ad litem is further hereby authorized to obtain from all persons, organizations, or entities, including, but not limited to, those described in the paragraph above, all information, including, but not limited to, the inspection of, and obtaining of complete copies of records, reports, summaries, evaluations, correspondence, written documents, or other information, orally or in any media form, which relate to the above-named juvenile even if such information concerns his or her parents, or any other person or any situation that the guardian ad litem deems necessary in order to properly represent the juvenile's interests."

(E) Duties of Guardian Ad Litem.

(1) Consultation with juvenile.

(a) The phrase "consultation with the juvenile," as used in the Nebraska Juvenile Code, generally means meeting in person with the juvenile, unless prohibited or made impracticable by exceptional circumstances, as set forth in § 6-1705(E)(1)(d) below.

(b) The guardian ad litem should consult with the juvenile when reasonably possible and at those times and intervals as required by the Nebraska Juvenile Code.

(c) In addition to the statutorily required intervals for consulting with the juvenile, when possible, the guardian ad litem should consult with the juvenile when:

(i) The juvenile requests that the guardian ad litem meet with him or her;

(ii) 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

(iii) Prior to any hearing at which substantive issues affecting the juvenile's legal or best interests are anticipated to be addressed by the court.

(iv) 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.

(d) Where an unreasonable geographical distance is involved between the location of the juvenile and the guardian ad litem, the guardian ad litem should explore the possibility of obtaining from the court an advance determination that the court will arrange for the payment or reimbursement of the guardian ad litem's reasonable expenses incurred in connection with the travel to meet with the juvenile.

(e) "Exceptional circumstances" generally include, but are not limited to, those situations where an unreasonable geographical distance is involved between the location of the guardian ad litem and the juvenile. Where such exceptional circumstances exist, the guardian ad litem should attempt consultation with the juvenile by other reasonable means, including, but not limited to, telephonic means, assuming that the juvenile is of sufficient age and capacity to participate in such means of communication and there are no other barriers preventing such communication. Where consultation by telephonic means is also not feasible, the guardian ad litem should seek direction from the court as to any other acceptable method by which to accomplish such consultation with the juvenile.

(2) Inquiry and consultation with others.

(a) 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 persons who have knowledge or information relevant to the juvenile's best interests. The guardian ad litem may obtain such information through the means of direct inquiry, interview, or the discovery process.

(b) 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 Office, the CASA volunteer, and from all other persons or providers assigned to the case who prepare and present such reports to the court.

(3) Report and recommendations to court.

(a) 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.

(b) The guardian ad litem is required to submit a written report to the court at every dispositional hearing and review hearing. The information contained in the report of the guardian ad litem should include, but is not limited to, the following information:

(i) Dates of, and description of, the type of contact and communication with the juvenile;

(ii) Listing of documents reviewed;

(iii) 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

(iv) 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.

(c) To assist the guardian ad litem in preparing the written report, the guardian ad litem shall use the "Report of Guardian Ad Litem" form found at Appendix 1.

(4) Participation in court proceedings.

(a) The guardian ad litem shall attend all hearings unless expressly excused by the court.

(b) The guardian ad litem may testify only to the extent allowed by the Nebraska Rules of Professional Conduct.

(c) 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.

(d) 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.

(5) Duty to provide quality representation.

(a) 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.

(b) 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.

(c) 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.

(F) Termination of Authority of Guardian Ad Litem.

(1) 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.

(2) 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.

(3) 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 § 6-1705.

(G) Compensation for Guardians Ad Litem Not Covered by Multi-Case Contract.

(1) The Supreme Court may establish a statewide uniform minimum hourly rate of compensation for guardians ad litem.

(2) 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.

(3) Guardians ad litem shall be compensated for all hours reasonably necessary to provide quality legal representation as documented in fee applications.

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