

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1562

Amending Child in Need of Aid (CINA)
Rule 11 concerning Guardians Ad
Litem.

IT IS ORDERED:

Child in Need of Aid (CINA) Rule 11 is rescinded and new CINA Rule 11 is adopted as follows:

~~Rule 11. — Guardians Ad Litem.~~

~~(a) — **For Whom Appointed.** The court shall appoint a guardian ad litem to represent the best interests of a child alleged to be abused or neglected. The court may appoint a guardian ad litem for any other child subject to a CINA proceeding when necessary to promote the child's best interests.~~

~~(b) — **Appointment.** The court shall appoint a guardian ad litem as soon as the court has notice that a child is entitled to one. In its order of appointment, the court shall specify the duties of the guardian ad litem and the duration of the appointment.~~

~~(c) — **Service.** A guardian ad litem is a party and must be served with pleadings and notices according to the Civil Rules.~~

Rule 11. Guardians Ad Litem.

(a) Appointment.

(1) The court shall appoint a guardian ad litem (GAL) in all Child in Need of Aid (CINA) proceedings as soon as

possible after the CINA petition is filed. The appointment shall continue through all phases of the CINA proceeding unless the court orders otherwise.

(2) If the Office of Public Advocacy (OPA) is appointed, OPA shall, in accordance with the qualifications set forth in subsection (c) of this rule, designate a specific person to serve as the guardian ad litem for the child. If OPA designates an OPA employee to be the GAL, the GAL for the child is deemed to be OPA. If OPA designates an independent contractor, or another person who is not employed by OPA, to be the GAL, the GAL for the child is deemed to be that designated person.

(3) Within seven days of the court's appointment, the designated GAL must file an entry of appearance indicating whether or not the GAL is an attorney and certifying that the GAL has completed guardian ad litem training through OPA.

(4) Throughout the period of appointment, the GAL is a party to the proceeding, and must be served with copies of all pleadings and papers relating to the child and must be given notice of all court proceedings. The GAL, whether an attorney or a non-attorney, has the right to appear and participate at hearings on behalf of the child. Because the GAL stands in the place of the child in court, a GAL may also engage in motion practice, conduct discovery, introduce evidence, examine and cross-examine witnesses, make objections, make opening statements and closing arguments, and take or participate in an appeal.

Commentary: In all cases in which the GAL is to be appointed at public expense, the court must appoint the Office of Public Advocacy, which must designate a specific person to serve as the GAL.

The court may appoint an attorney to advise or represent a non-attorney GAL. If the court takes this action, and if the GAL was appointed at public expense, the court must appoint OPA as the attorney for the GAL. If the court appoints an attorney, it should take care to specify the scope and duration of the appointment. Under AS 47.10.050 and CINA Rule 12(b)(3), the court may also appoint an attorney for the child.

(b) Role of Guardian ad Litem. The GAL must represent and advocate for the best interests of the child in light of federal and state law.

Commentary: The GAL must decide, based on thorough and ongoing investigation, what course of action is in the child's best interests. The GAL must then advocate for this course of action, regardless of whether the child agrees with the GAL's position.

(c) Qualifications.

(1) A GAL should possess knowledge, skill, experience, training, or education that allows the GAL to conduct an independent, thorough, and impartial investigation, and to advocate effectively for the best interests of the child.

(2) The GAL should have an understanding of the following as appropriate to the case:

(A) child development from infancy through adolescence;

(B) the impact of child abuse and neglect on the child;

(C) the impact of CINA proceedings, including out-of-home placement and the restriction or termination of parental rights, on the child;

(D) unique issues related to families involved in CINA proceedings, including such issues as substance abuse, domestic violence, and disabilities;

(E) community and other resources available for placement, treatment, and other necessary services for abused or neglected children;

(F) the ethnic, cultural, and socio-economic backgrounds of the population to be served;

(G) the Indian Child Welfare Act and the prevailing social and cultural standards of the Indian community in which the child, parent, Indian custodian, or extended family resides or with which the child, parent, Indian custodian, or extended family members maintain social and cultural ties;

(H) Alaska and applicable federal statutes, rules, and supreme court decisions relating to CINA proceedings; and

(I) the ability to research and develop special areas of knowledge as appropriate or necessary in a given case.

(d) **Order Authorizing Access.** An order appointing a GAL should authorize the GAL to have access, without further court order, to all records of the child, including confidential and privileged records such as mental health records; medical records; law enforcement records; juvenile justice records; vital statistics records; financial records; and educational records, including special education records.

Commentary. Although the appointment order authorizes the GAL to review confidential and privileged records pertaining to the child, the GAL must file a motion requesting access to records pertaining to a parent unless the parent signs a release.

(e) **Disclosure of Conflicts.** The GAL shall promptly disclose any relationships or associations between the GAL and any party which might reasonably cause the GAL's impartiality to be questioned.

(f) **Duties of Guardian ad Litem.**

(1) *Purpose.* The GAL represents the best interests of the child in a CINA proceeding. The GAL determines and advocates for the best interests of the child given the child's situation, taking into account the child's age, maturity, culture and ethnicity, and public laws and policies regarding family preservation and timely permanency planning.

(2) *Duty to the child.* The GAL shall

(A) conduct ongoing independent investigations, including, as reasonable and appropriate: in-person visits

with the child; review of records; interviews with parents, social workers, teachers, and other persons as necessary to assess the child's situation; and observations of the child's interactions with parents or other potential caregivers;

(B) identify relatives, family friends, or other persons who are potential placement options, and take such steps as may be necessary to offer such persons to the Department and/or to the court for placement determinations;

(C) advocate for early tribal identification and paternity determinations;

(D) consult professionals as necessary to determine the child's best interests;

(E) participate in the case planning process;

(F) monitor the provision and utilization of family support services;

(G) determine whether to seek appointment of a GAL or attorney in related legal proceedings;

(H) monitor services to the child provided by educational, medical, mental health, and other community systems and ensure these services are promoting the best interests of the child;

(I) when appropriate, seek cooperative solutions to disputes concerning the child's situation that serve the child's best interests;

(J) explain the court proceedings, the role of the

GAL, and the child's rights to the child, when appropriate, in language and terms the child can understand; encourage older children to attend and participate in court hearings as appropriate; and determine whether and under what conditions younger children should attend court hearings; and

(K) determine whether to call the child as a witness or determine appropriate action if others seek the child's testimony, and familiarize the child with the process of testifying.

(3) Duty to the court. The GAL will:

(A) appear at all hearings, present appropriate witnesses to testify at hearings, and present relevant information about the child's status and needs to the court;

(B) provide timely written reports as required by court order or rule;

(C) request specific court orders for evaluation, services, visitation, treatment for the child and the child's family, and placement of the child;

(D) take appropriate and timely action when services are not being made available to the child, the family or both; when the child or family fails to take advantage of such services; or when services are not achieving their purpose;

(E) take appropriate action when informed of any violations of orders, new developments, or material changes in the child's circumstances; and

(F) advise the court promptly if appointment of counsel for the child should be considered.

(g) Contact with Child, Other Parties, and the Court.

(1) Contact with Child. The GAL may meet with the child as often as necessary to ascertain and represent the child's best interests. Reasonable access by the GAL cannot be denied, absent court order, by any party or service provider, or by the child's attorney, if one has been appointed. An attorney or representative for a party other than the child shall not communicate with the child concerning the substance of the case without reasonable notice to the GAL and the social worker and the consent of the GAL and the social worker, or a court order authorizing the communication.

(2) Contact with Other Parties. A GAL shall not communicate about the substance of the case with a party or person the GAL knows to be represented by a lawyer in the matter unless the GAL has the consent of the lawyer. The lack of consent shall not prevent the GAL from having incidental contact with a party, or contact for the purpose of scheduling a visit with a child or making an unannounced home visit to the child.

(3) Contact with Court. Unless all parties consent, a GAL shall not engage in ex parte communications with the court concerning a pending case except for scheduling and other administrative purposes when circumstances require.

(h) Testimony.

(1) The GAL shall not testify at a trial or hearing unless the court determines that:

(A) the testimony relates to an uncontested issue;

(B) the testimony is necessary to present factual evidence on a material issue that is not available from another source; or

(C) there is a compelling need for the testimony.

(2) A GAL who intends to testify, or the party who intends to call the GAL as a witness, shall file and serve a motion identifying the subject of the testimony and stating the reasons why the testimony would be permissible under subsection (h)(1) of this rule.

(3) If the court grants the motion for testimony from the GAL, the court should consider whether the GAL can still effectively represent the best interests of the child. If not, the court may require OPA to discharge the GAL, appoint another GAL, or appoint an attorney for the GAL or the child.

(4) A GAL who testifies may be cross-examined like any other witness.

Commentary: *A GAL, as an advocate, rarely testifies. See Alaska Rule of Professional Conduct 3.7. In extraordinary circumstances under which a court order authorizing GAL testimony cannot be timely obtained prior*

to trial, the court may waive the requirement of a written motion contemplated in subsection (h)(2) above.

(i) Confidentiality.

(1) The child's statements to the GAL are not confidential.

(2) The GAL may disclose information if the GAL determines that disclosure is in the child's best interests.

(3) The GAL shall advise the child in advance of any interview that the child's statements may be disclosed.

Commentary. If the GAL is an attorney, he or she acts in a capacity as a GAL rather than as an attorney, and information received from the child is not subject to the attorney-client privilege. Cf. Ethics Opinion 85-4, Alaska Bar Association. Notwithstanding these provisions, the GAL may seek a protective order to keep certain communications confidential in accordance with discovery rules.

DATED: November 29, 2005

EFFECTIVE DATE: April 15, 2006

/s/
Chief Justice Bryner

/s/
Justice Matthews

/s/
Justice Eastaugh

/s/
Justice Fabe

/s/
Justice Carpeneti