

## **RULE 5:8B. Appointment Of Guardian Ad Litem**

- **(a) Appointment.** In all cases in which custody or parenting time/visitation is an issue, a guardian ad litem may be appointed by court order to represent the best interests of the child or children if the circumstances warrant such an appointment. The services rendered by a guardian ad litem shall be to the court on behalf of the child. A guardian ad litem may be appointed by the court on its own motion or on application of either or both of the parents. The guardian ad litem shall file a written report with the court setting forth findings and recommendations and the basis thereof, and shall be available to testify and shall be subject to cross-examination thereon. In addition to the preparation of a written report and the obligation to testify and be cross-examined thereon, the duties of a guardian may include, but need not be limited to, the following:
  - **1.** Interviewing the children and parties.
  - **2.** Interviewing other persons possessing relevant information.
  - **3.** Obtaining relevant documentary evidence.
  - **4.** Conferring with counsel for the parties.
  - **5.** Conferring with the court, on notice to counsel.
  - **6.** Obtaining the assistance of independent experts, on leave of court.
  - **7.** Obtaining the assistance of a lawyer for the child (Rule 5:8A) on leave of court.
  - **8.** Such other matters as the guardian ad litem may request, on leave of court.
- **(b) Objection or Refusal of Appointment.** A proposed guardian ad litem shall have the right to consent or to decline to serve as such, notice of such decision to be in writing to the court with copies to counsel. The parties shall have the right to object to the person appointed as guardian ad litem on good cause shown.
- **(c) Term.** The term of the guardian ad litem shall be coextensive with the application pending before the court and shall end on the entry of a judgment of divorce, dissolution of a civil union or termination of a domestic partnership or an order terminating the application for which the appointment was made, unless continued by the court. The guardian ad litem shall have no obligation to file a notice of appeal from a judgment or order nor to participate in an appeal filed by a party.
- **(d) Fee.** The hourly rate to be charged by the guardian ad litem shall be fixed in the initial appointing order and the guardian ad litem shall submit informational monthly statements to the parties. The court shall have the power and discretion to fix a retainer in the appointing order and to allocate final payment of the guardian ad litem fee between the parties. The guardian ad litem shall submit a certification of services at the conclusion of the matter, on notice to the parties, who will thereafter be afforded the right to respond prior to the court fixing the final fee.

Note: Adopted November 6, 1989, to be effective January 2, 1990; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended July 21, 2011 to be effective September 1, 2011.

### **Official Comment for Rules 5:8A and 5:8B**

The purpose of Rules 5:8A and 5:8B is to eliminate the confusion between the role of a court-appointed counsel for a child and that of a court-appointed guardian ad litem (GAL). The Supreme Court's Family Division Practice Committee in its 1987-1988 Annual Report distinguishes the roles.

A court-appointed counsel's services are to the child. Counsel acts as an independent legal advocate for the best interests of the child and takes an active part in the hearing, ranging from subpoenaing and cross-examining witnesses to appealing the decision, if warranted. If the purpose of the appointment is for legal advocacy, then counsel would be appointed.

A court-appointed guardian ad litem's services are to the court on behalf of the child. The GAL acts as an independent fact finder, investigator and evaluator as to what furthers the best interests of the child. The GAL submits a written report to the court and is available to testify. If the purpose of the appointment is for independent investigation and fact finding, then a GAL would be appointed. The GAL can be an attorney, a social worker, a mental health professional or other appropriate person. If the primary function of the GAL is to act in the capacity of an expert, then the court should ordinarily appoint a GAL from the appropriate area of expertise. Attorneys acting on behalf of children in abuse or neglect cases and in termination of parental rights cases should act as counsel for the child pursuant to Rule 5:8A rather than in the capacity of a GAL pursuant to Rule 5:8B. See, *Matter of M.R.*, 135 N.J. 155, 174, 638 A.2d 1274, 1283 (1994)).

These rules are not intended to expand the circumstances when such appointments are to be made; neither are these appointments to be made routinely.

**Note: Adopted November 6, 1989, to be effective January 2, 1990, amended July 13, 1994 to be effective September 1, 1994**