

## CHAPTER 11 – GUARDIAN AD LITEM

**STATUTORY REFERENCES:**      **RSA 173-B:6 (Guardian *ad litem*)**  
                                                 **RSA 490:26-f (Guardian *ad litem* Services)**  
                                                 **RSA 461-A (Parenting Rights & Responsibilities)**

**CROSS REFERENCE:**                      **Chapter 7 - Final Hearing**

### **INTRODUCTION**

In certain very limited circumstances, when considering an order for custody and/or visitation of the parties' children, the court may appoint a guardian *ad litem*.

#### *COMMENT*

The appointee must be certified as a guardian *ad litem* for domestic violence cases. Certifications are done by the Guardian *ad Litem* Board.

A guardian *ad litem* is not appropriately appointed in every domestic violence case in which the question of visitation or custody is raised. The court should be careful to advise the parties of the need to seek orders under RSA 458 or 461-A in the event a legal separation, divorce or parenting action is contemplated. The court should also carefully remind the parties that the domestic violence process is not a permanent process. The final order typically expires after one year. Nevertheless, in certain limited cases, such an appointment may be appropriate.

#### **PROTOCOL 11-1**

A guardian *ad litem* is not appropriately appointed in every domestic violence case in which the question of visitation or custody is raised. The court should be careful to advise the parties of the need to seek orders under RSA 458 or 461-A in the event a legal separation, divorce or parenting action is contemplated. The court should also carefully remind the parties that the domestic violence process is not a permanent process. The final order typically expires after one year. Nevertheless, in certain limited cases, such an appointment may be appropriate. The court should consider the following prior to appointment:

- a. Whether the physical/emotional safety of the children is at issue;
- b. Whether the parties will be able, with or without the assistance of the court, to reach agreement on visitation/custody issues;
- c. Whether the parties are represented by counsel;
- d. Whether a divorce, legal separation, or custody action is pending or contemplated by either of the parties and whether a GAL has already been appointed who could cross-assign here; or
- e. Seriousness of any allegation of drug or alcohol abuse.

#### **PROTOCOL 11-2 Scope of Services**

When a guardian *ad litem* is appointed, the court must carefully define the scope of services expected. Those shall not extend beyond the following:

- a. Limited preliminary investigation to ascertain the facts necessary to make a recommendation regarding the best custody and/or visitation plan for the children and parents;
- b. Report and recommendation to the court based upon the findings of the investigation. The report may be written or oral, as specified by the judge; and
- c. Advocating on behalf of the children's best interest at the final hearing.

*COMMENT*

It is not the role of the guardian *ad litem* to serve as counsel to either of the parties nor should the guardian *ad litem* ever mediate in these cases. Under no circumstances should the guardian *ad litem* serve the role as supervisor during either party's visits with the children.

**PROTOCOL 11-3**

The appointment responsibilities of the guardian *ad litem* should terminate with the issuance of the final order in the case.

**PROTOCOL 11-4 Payment**

Payment of the guardian *ad litem* shall be borne by the parties in a proportional amount, as the court may determine. Where the parties are indigent, guardian *ad litem* compensation shall be based upon the applicable fee schedule established by the supreme court of New Hampshire and paid by funds from the general fund subject to such limitations as may be established by administrative order of the family division and district court.