

What is a Guardian ad Litem?

A Guardian ad Litem (“GAL”) is an attorney who is licensed in Wisconsin and has met the training requirements. The Guardian ad Litem is an independent party who represents the “best interest” of a child. The child is not the GAL’s client. This is often hard for parents to grasp. While the GAL may consider the wishes of the child, they must ultimately recommend what is in the child’s “best interest”. This may or may not be what the child wants.

A party may object to who the court appoints as the GAL if there is evidence of prior bias on the part of the GAL or a conflict of interest.

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Understanding the Role of the Guardian ad Litem in Family Court

In cases involving the custody, placement, and visitation of children, Wisconsin Courts can appoint a GAL. In some instances, the law requires the court to appoint a GAL. The court must appoint a GAL if there are concerns about the child’s well-being or if parents haven’t come to an agreement on custody and placement for the child.

The court does not have to appoint a GAL if custody and placement were already set in a previous case and the current case is just to make changes to the custody and/or placement. If nothing has changed in the situation, having a GAL won’t help the court make a decision. A GAL might be appointed if the changes would significantly change the time the child spends with either parent. The court will also think carefully about whether the person asking for a GAL is trying to get an unfair strategic advantage by doing so.

What does a Guardian ad Litem Do?

A GAL conducts an investigation and reports their findings to the court. As part of their investigation, the GAL will check to see if either parent has engaged in intimate partner violence, domestic violence, or domestic abuse. Intimate partner violence occurs when one or both partners in an intimate relationship engage in acts of physical abuse against the other. Domestic violence is acts of violence that occur between people who reside together in the same home. Domestic violence can be between domestic partners, roommates, or other relatives in the home. Domestic abuse is physical or emotional abuse leveled against another who resides in the same home.

The investigation includes both formal and informal discovery. When conducting formal discovery, the GAL may send interrogatories, or written questions, to the parties.

When conducting informal discovery, the GAL will meet separately with the parents and the child if appropriate. The meeting may be at the GAL's office or it may be at the parent's homes. When the GAL does a home visit, they are looking for signs of drug use, weapons, or other obvious unsafe conditions for the child(ren). In addition to talking with the parents, the GAL may also ask for releases to speak with staff at the child's school, counselors, daycare providers, and child welfare agencies.

A GAL may ask each parent to identify friends and family members who have first hand knowledge about the child. The GAL may also review documents or other written or electronic information provided by the parents or other witnesses.

As part of the investigation, the GAL will talk with the child if they are old enough to share their opinion. Generally, children under four aren't interviewed. However, the GAL may want to observe them in a place away from their parents.

After conducting a thorough investigation, the GAL reports their findings to the court. Most often, the report is in writing and filed with the clerk of court. However, some GALs only offer an oral report during a fact-finding hearing. The parents can officially disagree with the report. A parent who disagrees with the findings of the GAL, can submit their objections to the court, pointing out what they feel is inaccurate. A parent may also object to the report on the grounds of misconduct by the GAL.

When deciding paternity, custody, placement, and visitation, the court will consider the report of the GAL and the responses of the parents.

What Does the Guardian ad Litem Consider for Their Report?

When deciding what is in the best interest of the child(ren) the GAL must consider the following factors:

1. The wishes of the child's parents.
2. The wishes of the child.
3. The cooperation and communication between the parents and whether any parent is acting unreasonably.
4. Whether both parents can encourage a productive relationship between the child(ren) and the other parent.
5. The relationship of the child(ren) with their siblings and others who affect the best interests of the child(ren),
6. The relationship between the child(ren) and each parent, the amount of time spent with each parent, any changes to custodial roles, and any lifestyle changes that must occur to affect custody and placement,
7. Whether any of the following has or had a significant problem with alcohol or drug abuse:
 - a. A parent.
 - b. A person with whom a parent of the child has a dating relationship.
 - c. A person who resides, has resided, or will reside regularly or intermittently in the proposed custodial household.
8. The child's adjustment to the home, school, religion, and community.
9. The age of the child and the child's developmental and educational needs at different ages.
10. Whether the mental or physical health of a parent, minor child, or other person living in a proposed custodial household negatively affects the child's intellectual, physical, or emotional well-being.
11. Whether any of the following has a criminal record or whether there is evidence that any of the following has engaged in abuse of the child or any other child or neglected the child or any other child:
 - a. A parent.
 - b. A person with whom a parent of the child has a dating relationship.
 - c. A person who resides, has resided, or will reside regularly or intermittently in a proposed custodial household.
12. Whether there is evidence of interspousal battery.
13. The reports of appropriate professionals if admitted into evidence.

14. Any other factor that the court determines to be relevant.

Can I Ask for a Guardian ad Litem to be Appointed?

Yes. A parent can ask the court to appoint a GAL. An attorney who is responsible for enforcing a child support order can also request the appointment of a GAL if paternity hasn't been established and the State is providing aid to the child or an application for legal services has been filed with the child support office.

Each court maintains a list of attorneys who are qualified to practice as a GAL. A GAL will be appointed from this list. Sometimes, the parties will agree on a certain GAL and ask the court to appoint that person.

Who Pays for the Guardian ad Litem?

The court can order one or both parents to pay all or part of the GAL fees. This includes fees for travel and expert witnesses (commonly psychologists or psychiatrists). If both parents are below a certain income level, the court can order the county to pay the GAL's fees.

For cases assigned on or after July 1, 2023, the statutory GAL compensation is \$100.00 per hour for time related to the case. This doesn't include travel time, for which the GAL is compensated at the rate of \$50.00 per hour.

Where Can I Find More Information?

For more information, including forms and guides, visit the [Wisconsin State Law Library](#).

[All about custody and placement](#) [Custody & Placement](#) [Family Law](#)

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