

## Attorney ad Litem Policies and Procedures

### **I. STATUS OF ATTORNEY AD LITEM**

A dependency-neglect attorney ad litem (“AAL”) will be either a contractor for professional services with the state or a full-time employee of the state.

#### A. Contractors

(1) An AAL may work under a part-time or full-time professional services contract through the Administrative Office of the Courts (“AOC”).

(2) Contracts are for a specified term and are renewable at the discretion of the AOC.

#### B. Full-time employees

(1) An AAL may be a full-time employee of the AOC.

(2) A full-time AAL is prohibited from any outside employment of any type, whether the attorney is compensated or not. The employee is to provide no legal representation of any type to any client other than as concerns the dependency-neglect cases in his/her areas of assignment. Any exceptions must be approved in writing by the AOC.

#### C. Compensation

##### 1. Contractors

a. Contractors are paid a flat rate of \$800 per case, per year, calculated on an average caseload for the prior 12 month period. The funding formula is developed and approved by the Juvenile Judges’ Committee of the Arkansas Judicial Council.

b. Caseloads may fluctuate by 25% without a change in the contract value. If, for three consecutive months, the caseload remains at a number greater than 25% above or below the caseload average upon which the contract was calculated, the contract may, at the discretion of A.O.C., be recalculated to reflect the new average caseload if state funding allows.

c. Contractors may be reimbursed up to \$750 per year for ordinary and reasonable operating expenses.

- d. Contractors may be reimbursed for mileage at the official state rate (31¢ per mile in 2003) up to a maximum of \$1,000 per year for travel directly relating to their contractual duties. In some cases, the number of counties served may be considered.

[Caveat: AOC works with the Department of Finance and Administration [“DFA”] to make contract recommendations and help facilitate contract construction. The General Assembly must approve most contracts before they can be authorized by DFA]

2. Full-time employees

- a. Salaries for full-time employees are negotiated between the AOC and the employee utilizing the funding formula developed and approved by the Juvenile Judges’ Committee of the Arkansas Judicial Council.

<u>Current Entry Level Salary Scale – Grade 25 State position with benefits</u>		
Level 1	\$37,000	Entry level, 0 – 3 years experience
Level 2	\$40,000	3.1 years to 5.0 years experience
Level 3	\$43,000	5.1 years to 7.0 years experience
Level 4	\$46,000	7.1 years to 9.0 years experience
Level 5	\$49,000	9.1 years or more experience

Years experience is defined as:

1. Years as an ad litem pursuant to act 708 of 1999 with AOC (either contract or employee status).
2. Years as a full-time ad litem with payment from a county prior to 1/1/2000.
3. Years as a full-time OCC attorney.
4. Years serving in a significant number of cases as an ad litem or parents’ counsel in dependency-neglect cases in juvenile court; OR Years serving as an ad litem or parents’ counsel in a significant percentage of all dependency-neglect cases in your county or judicial district.
5. Years serving as a public defender appointed as an AAL or parents’ counsel in a significant number of dependency-neglect cases in conjunction with public defender responsibilities.

- b. As state employees, full-time AALs will receive COLA (cost of living) raises as approved by the General Assembly and as state funding allows.
- c. Full-time AALs may be given retention salary increases as state funding is available.
- d. Full-time AALs may be reimbursed up to \$6,000 per year for ordinary and reasonable operating expenses. Full-time AALs are not required to maintain office space separate from their homes.
- e. Full-time AALs may be reimbursed for mileage at the official state rate (31¢ per mile in 2003) up to a maximum of \$1,000 per year for each county they serve for travel directly relating to their duties as employees.
- f. Full-time AALs will be provided with a computer and printer for their use. The computer and printer will remain the property of the AOC. The AOC will not set up, upkeep, maintain, or repair the computer equipment and software. If the equipment is no longer used or is broken beyond repair, it must be returned to the AOC. All equipment must be returned to the AOC upon termination of employment.
- g. A full-time AAL shall not have a caseload of more than 75 cases pursuant to Administrative Order No 15. The AAL shall notify the AOC anytime his or her caseload exceeds the 75 caseload maximum.

## **II. SCOPE OF WORK**

- A. The AAL shall provide legal representation in the areas, counties, and judicial districts assigned by the AOC. The AAL will provide services to other areas, counties, and judicial districts as needed and when requested to do so by the AOC. Legal representation of the dependent-neglected juvenile shall continue to be provided by the AAL from the time of appointment to the juvenile's case until final disposition and closure of the case or until another AAL is assigned to the case and is prepared to provide representation. Final disposition may include termination of parental rights, adoption, permanent placement of the juvenile, and includes appeals.
- B. The AAL shall represent the clients in accordance with the Arkansas Model Rules of Professional Conduct and all other applicable laws.

- C. The AAL shall meet all requirements set forth in the Standards of Practice for Attorneys Ad Litem in Dependency-Neglect Cases and the Qualifications for Attorneys Ad Litem in Dependency-Neglect Cases in Supreme Court Administrative Order Number 15 issued on September 28, 2001. Administrative Order Number 15 is included in the appendix and incorporated herein.
- D. Full time employees shall adhere to the policies contained in the Employee Handbook of the Administrative Office of the Courts.

**III. CONFLICT OF INTEREST**

The AAL shall have no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required by the Arkansas Model Rules of Professional Conduct and Supreme Court Administrative Order Number 15. The AAL shall avoid future situations that would be in conflict with his/her duties or that would give the appearance of impropriety.

**IV. COVERAGE FOR ILLNESSES AND EXTENDED LEAVE**

- A. When an AAL will miss a court date due to illness or injury, the AAL should notify his/her client (if practical to do so), the ad litem coordinator, the court, and any other parties or entities the AAL believes should be informed. The AAL should attempt to get his/her cases covered for that day, if practical to do so, by another AAL. The AAL coordinator will assist the AAL in getting coverage upon request. **Only qualified AALs who are under contact with the A.O.C. or who are full-time AALs with the A.O.C. may stand in.** If the illness or injury is such that the AAL cannot reasonably contact all necessary parties, the AAL should attempt to get a message to the AOC attorney ad litem coordinator as soon as is practical.
- B. When an AAL will be taking an extended leave, he/she shall notify the AOC as soon as possible so coverage can be arranged in advance and all parties notified.
- C. In keeping with state and federal goals of timely case progress, cases should not be continued unless no other alternative exists

**V. RECORDS**

- A. The AAL shall maintain all files, pleadings, and documents necessary for competent representation of his or her clients. The AOC may review such files at any time without notice.
- B. The AAL is responsible for the proper handling, maintenance, and storage of closed files for which he/she was the final attorney of record. The AAL will make all files available to the AOC upon request.
- C. Upon termination of employment, or upon termination of contract, the AAL will provide the original and complete case files and records for all open cases to the AOC, or at the direction of the AOC to the AAL who will be the next attorney of record on the case. All files and records for open cases shall be provided no later than the final date of employment or the final date of the contract. The transferring attorney may keep a copy of files transferred.

**VI. DATA REPORTING**

- A. The AAL shall comply with all reporting requirements of the AOC. Data reporting is required in the areas of general case history and information, legal and court actions, services rendered, time expended, travel, operating expenses, absenteeism, dockets, and other subjects deemed necessary by the AOC for data analysis, time measurement, cost/benefit considerations, and judicial and legislative reporting.
- B. The AAL shall provide all requested information in a timely manner and all monthly reports, as well as time and expense reports, shall be submitted to, and received by, the AOC no later than the 15<sup>th</sup> of each month.
- C. Failure to comply with all reporting requirements may result in termination of employment, cancellation of the AAL's contract, and/or withholding of contract payments.

**VII. EQUAL OPPORTUNITY EMPLOYMENT AND NON-DISCRIMINATION**

The AAL, in the performance of his or her duties, shall not discriminate against any client or other person on the basis of race, color, religion, national origin, sex, age, or disability.

**VIII. COMMUNICATIONS**

- A. AALs are required to have an e-mail address to receive e-mail correspondence from the AOC. The e-mail account must be kept active and in a state allowing it to receive e-mails (i.e.: not too full to receive). The AAL must respond to e-mails in a timely manner.
- B. AALs must keep the AOC apprised of their current mailing address, physical address, telephone numbers, fax numbers, cell phone numbers, and e-mail addresses at all times.
- C. AALs must answer all communications in a timely manner whether the correspondence is by telephone, fax, mail services, e-mail, or otherwise.
- D. At all times, the AAL must have an emergency telephone number and said number must be provided to the Department of Human Services, Division of Children and Family Services, as well as to the AOC, AAL Coordinator.
  - 1. The phone number for DCFS must be provided to the caseworker supervisor of each county the AAL represents in, and may be provided to others at the AALs discretion.

**IX. ATTORNEY LIABILITY**

- A. Administrative Order No 15, Section 2, Paragraph f, states that an attorney ad litem, functioning as an arm of the court, is afforded immunity against ordinary negligence for action taken in furtherance of his or her appointment.
- B. This immunity applies only to actions as outlined in Administrative Order No. 15. Any actions that do not constitute ordinary negligence and any actions outside the scope of the attorney's representation are not immune. The AAL should consider any areas for which he or she may wish to procure malpractice insurance.
- C. The immunity provision of Administrative Order No. 15 does not include other types of liability such as premises general liability, automotive liability, or any other types of negligence or liability outside the scope of the AALs representation as defined by the Administrative Order. Consequently, the AAL may wish to procure insurance for any other risks such as these.

**X. CONFIDENTIALITY**

Any confidential information provided for or developed by the AAL in the performance of his or her duties shall be kept confidential and shall not be made available to any individual or organization by the AAL without the prior written approval of the AOC or the juvenile court. This provision shall extend indefinitely beyond the duration of the AAL's employment or contract.

**XI. COLLATERAL LEGAL ISSUES**

A. In the course of representing a child in a dependency-neglect case, the child may have legal issues arise not relating directly to their dependency-neglect case, or that would be inappropriate for the ad litem to handle, or that would be outside of the ad litem's scope of representation. Examples of these might include a child involved in a car accident, an estate property issue, or a liability claim against another entity. When such a claim arises, the following procedure will be followed:

1. Contact the AOC coordinator to advise the nature of the legal issue, the parties involved, and recommendations for resolution of the issue.
2. The Department of Human Services has a contract with Treeca Dyer to handle some collateral cases for foster children. The AAL may contact Pat Page with DCFS in Little Rock to have the case reviewed for referral to Treeca Dyer.

**XII. TRANSPORTING CLIENTS**

AALs shall not transport their clients or their clients' friends or families.

**XIII. TALKING TO MEDIA/REPORTERS**

Some of the materials and information received and handled by the AOC are confidential as defined by the law, the provisions of judicial ethics, and the policies of the Supreme Court. Requests for copies of or information from published AOC reports should be handled in the AAL's discretion. Other requests by the press should be referred to the AOC Director or the Public Information Officer.

**XIV. INTRODUCTION OF CASA REPORTS**

- A. In dependency-neglect cases, the court may appoint a CASA volunteer to investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem, court testimony, or court reports. **Ark .Code Ann. §9-27-316(g).**
- B. If the CASA volunteer has prepared a court report and no other attorney is proposing that the report be introduced into the record, the AAL shall introduce the report into the record during the hearing for which it was prepared so long as the report was provided to all parties seven (7) business days prior to the court date. Introduction of the CASA court report by the AAL does not constitute the AAL's agreement with the contents of the report and the AAL may present evidence to refute the report.

**XV. PERSONAL VISITS WITH CLIENTS**

**Section 2. Standards of practice for attorneys ad litem in dependency-neglect cases.**

a. An attorney ad litem shall conduct personally or in conjunction with a trained Court Appointed Special Advocate (CASA) volunteer an independent investigation consisting of review of all relevant documents and records including but not limited to: police reports, DCFS records, medical records, school records, and court records. The ad litem shall interview the child, and in conjunction with a trained CASA volunteer, when one has been appointed, shall interview the parents, foster parents, caseworker, service providers, school personnel and others having relevant knowledge to assist in representation. Continuing investigation and regular contact with the child are mandatory.

- A. Pursuant to Administrative Order No. 15, Standards of Practice For Attorneys Ad Litem in Dependency-Neglect Cases, the AAL must interview with his or her client and also maintain regular contact during the case. This requires that the AAL have meaningful personal contact with the child(ren) during the case.
  - 1. The AAL must have personal contact with his/her client(s) outside of court. This may include personal visits and telephone calls. It is insufficient to only meet with the child at court or on court days unless the meeting is separate from the hearing and more than a cursory visit in a populated area of the courthouse. Personal contact can take place at home, at the foster home or other

residential placement, at school, in the attorney's office, at a treatment facility, at a detention center, a private meeting area at the courthouse, or other places conducive to a *personal and meaningful consult* between the attorney and the client.

- a. Adequate trial preparation should be done **prior** to the hearing date. Trial preparation includes, in most circumstances, consultation with the client.
  2. The AAL shall arrange and attend a personal meeting with the child at the DYS or detention facility during any period of time in which the child is committed or incarcerated.
- B. See also the Model Rules of Professional Conduct, Rule 1.4 Communication, and Rule 1.14, Client Under a Disability.

## **XVI. COMPLAINTS PROCEDURE**

- A. In order to assure quality representation for children and adherence to the Standards of Practice set forth in the Supreme Court Administrative Order No. 15, the following procedure will be followed by the AOC in addressing complaints against an AAL:
1. A complaint registered by a DHS employee, a DHS attorney, a CASA affiliate, a party, a party's attorney, a client or family member, a foster parent, an AAL, or a witness, will be in written format on a prescribed form. [Complaint form sample is included in the appendix]
  2. A copy of the written complaint will be provided to the AAL so that he or she may enter a response to the complaint.
  3. AOC will investigate the complaint and notify the person filing the complaint and the AAL of the determination as to whether the complaint is deemed to have merit.
  4. If the complaint is found to have merit, the AOC will assist as needed to find a resolution to the issues of the complaint.
  5. Complaints having been found to have merit will be entered into the AAL's AOC contract file or personnel file. Complaints having been found to be without merit, will not be entered into the AAL's contract file or personnel file. The AAL's response to the complaint will be made part of the complaint documentation.

**XVII. DISPUTE RESOLUTION**

Should the AAL have a dispute or problem involving the court or other persons or entities involved in a dependency-neglect case, the AAL may refer the issue to the attorney ad litem coordinator.

**XVIII. LEGISLATIVE PROPOSALS**

AALs are encouraged to notify AOC of any ideas or suggestions for legislative changes.

**XIX. RESOURCES**

A. There are several resources available to assist the AAL.

Attorney Ad Litem Resource Manual

Manual contains a comprehensive resource section for publications and services.

Other publications are made available such as:

What I Wish I'd Learned in Law School

Resource Guidelines, Improving Court Practice,

Insuring the Healthy Development of Foster Children

The Myth of Best Interest

Questions Every Judge & Lawyer Should Ask About

Infants & Toddlers in the Child Welfare System

[Additional publications as they become available]

Other AALs can be contacted to share their experience and knowledge as needed.

AOC personnel are available to provide assistance as needed.

Brief bank of appeal briefs is available for reference

CLE and regional training sessions are provided to update and train AALs.

Training and CLE opportunities are offered during each year such as the Children and the Law Conference, the CASA conference, and others.

AOC Library of over 35 training video tapes.

B. Upon termination of employment or termination of a part-time contract, the AAL must return all manuals and books to the AOC so they can be redistributed.