

TENNESSEE

<p>Structure, organization, and delivery of Child Representation</p> <p>State-by-state, county-by-county, etc.</p>	<p>County-by-county system:</p> <p>For example, the Public Defender’s Office in Nashville runs a GAL program, which handles cases in metropolitan Nashville and Davidson County, Tennessee. More information on this program can be found at: http://publicdefender.nashville.gov/about-us/juvenile-division/gal-program/</p> <p>In Memphis the Judicial Department oversees the Office of the Guardian Ad Litem, which “assur[es] competent guardian ad litem representation for children in required Juvenile Court cases in compliance with federal and state laws and Juvenile Court policy and procedure.” https://www.shelbycountyttn.gov/index.aspx?NID=362</p> <p>In other cases, courts maintain rosters of qualified, private attorneys who are able to serve as Public Defenders and GALs. TENN.S.CT.R.13.</p> <p>CASA:</p> <p>Currently there are 28 CASA programs serving 48 counties in Tennessee. This means 47 counties do not have a CASA program available for their children. http://www.tncasa.org/fileLibrary/file_22.pdf</p> <p>CASA volunteers are appointed by the [County] juvenile court judge to watch over and advocate for children, to make sure they don’t get lost in the overburdened legal and social service system or languish in inappropriate groups or foster homes. The court notifies CASA and asks for a volunteer to be assigned. CASA lets the court know its capacity to accept cases.</p>
<p>Funding Child Representation</p>	<p>In Tennessee, if parents are unable to pay a GAL, the GAL will be compensated by the Administrator of Courts pursuant to TENN.S.CT.R.13.</p>
<p>1. General Duties: Timely appointment, mandatory or discretionary, attorney or lay</p>	<p>(b) As used in this Rule, unless the context otherwise requires: (1) "Guardian ad litem" is a lawyer appointed by the court to advocate for the best interests of a child and to ensure that the child’s concerns and preferences are effectively advocated. (2) "Child's best interests" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the</p>

<p>person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</p>	<p>child the guardian ad litem should consider, in consultation with experts when appropriate, the following factors:</p> <ul style="list-style-type: none"> (i) the child's basic physical needs, such as safety, shelter, food, clothing, and medical care; (ii) the child's emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement; (iii) the child's need for family affiliation; (iv) the child's social needs; (v) the child's educational needs; (vi) the child's vulnerability and dependence upon others; (vii) the physical, psychological, emotional, mental, and developmental effects of maltreatment upon the child; (viii) degree of risk; (ix) the child's need for stability of placement; (x) the child's age and developmental level, including his or her sense of time; (xi) the general preference of a child to live with known people, to continue normal activities, and to avoid moving; (xii) whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources; (xiii) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers; (xiv) the importance of continuity in the child's life; (xv) the home, school and community record of the child; (xvi) the preferences of the child; (xvii) the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings <p>...</p> <p><u>TENN. S. CT. R. 40(B)</u></p> <p>(1) The child is the client of the guardian ad litem. The guardian ad litem is appointed by the court to represent the child by advocating for the child's best interests and ensuring that the child's concerns and preferences are effectively advocated. The child, not the court, is the client of the guardian ad litem.</p> <p>(2) Establishing and maintaining a relationship with the child is fundamental to representation. The</p>
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	<p>guardian ad litem shall have contact with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. The age and developmental level of the child dictate the type of contact by the guardian ad litem. The type of contact will range from observation of a very young or otherwise nonverbal child and the child’s caretaker to a more typical client interview with an older child. For all but the very young or severely mentally disabled child, for whom direct consultation and explanation would not be effective, the guardian ad litem shall provide information and advice directly to the child in a developmentally appropriate manner. TENN. S. CT. R. 40(C)</p> <p>(a)(1) The court at any stage of a proceeding under this part, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding if such child has no parent, guardian or custodian appearing on such child's behalf or such parent's, guardian's or custodian's interests conflict with the child's or in any other case in which the interests of the child require a guardian. The court, in any proceeding under this part resulting from a report of harm or an investigation report under §§ 37-1-401 -- 37-1-411, shall appoint a guardian ad litem for the child who was the subject of the report. A party to the proceeding or the party's employee or representative shall not be appointed.\</p> <p>...</p> <p>(b)(1) The court may also appoint a nonlawyer special advocate trained in accordance with that role and in accordance with the standards of the Tennessee Court Appointed Special Advocates Association (CASA) to act in the best interest of a child before, during and after court proceedings. TENN. CODE ANN. § 37-1-149</p> <p>CASA volunteers come from all walks of life and professions. They are trained to work directly with children and families and provide the court recommendations in the child’s best interest. A guardian ad litem in Tennessee is a court appointed attorney appointed that is paid to represent a child legally in the juvenile system. There is often overlap with CASA’s mission and the work of a guardian ad litem in finding the best course of action for a child. Typically, a guardian ad litem has a large case load while CASA volunteers are appointed to one case at a time. In some states, where a guardian ad litem is not required to be an attorney, the programs are combined and a CASA volunteer is treated as the guardian ad litem. Tennessee is a state that requires a guardian ad litem to be an attorney. http://casanashville.org/frequently-asked-questions/</p>
<p>2. Out of Court - Actions to be Taken: Meet with child,</p>	<p>(2) Establishing and maintaining a relationship with the child is fundamental to representation. The guardian ad litem shall have contact with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. The age and developmental level of the child dictate</p>

<p>undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</p>	<p>the type of contact by the guardian ad litem. The type of contact will range from observation of a very young or otherwise nonverbal child and the child’s caretaker to a more typical client interview with an older child. For all but the very young or severely mentally disabled child, for whom direct consultation and explanation would not be effective, the guardian ad litem shall provide information and advice directly to the child in a developmentally appropriate manner. TENN. S. CT. R. 40(C)</p> <p>(d) The responsibilities and duties of the guardian ad litem include, but are not limited to the following:</p> <p>(1) Conducting an independent investigation of the facts that includes:</p> <ul style="list-style-type: none"> (i) Obtaining necessary authorization for release of information, including an appropriate discovery order; (ii) Reviewing the court files of the child and siblings and obtaining copies of all pleadings relevant to the case; (iii) Reviewing and obtaining copies of Department of Children’s Services’ records; (iv) Reviewing and obtaining copies of the child’s psychiatric, psychological, substance abuse, medical, school and other records relevant to the case; (v) Contacting the lawyers for other parties for background information and for permission to interview the parties; (vi) Interviewing the parent(s) and legal guardian(s) of the child with permission of their lawyer(s) or conducting formal discovery to obtain information from parents and legal guardians if permission to interview is denied; (vii) Reviewing records of parent(s) or legal guardian(s), including, when relevant to the case, psychiatric, psychological, substance abuse, medical, criminal, and law enforcement records; (viii) Interviewing individuals involved with the child, including school personnel, caseworkers, foster parents or other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians and other potential witnesses; (ix) Reviewing relevant photographs, video or audio tapes and other evidence; and (x) Engaging and consulting with professionals and others with relevant special expertise. <p>(2) Explaining to the child, in a developmentally appropriate manner:</p> <ul style="list-style-type: none"> (i) the subject matter of litigation; (ii) the child’s rights; (iii) the court process; (iv) the guardian ad litem’s role and responsibilities; (v) what to expect before, during and after each hearing or review; (vi) the substance and significance of any orders entered by the court and actions taken by a review board
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or at a staffing.

(3) Consulting with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. If the child is very young or otherwise nonverbal, or is severely mentally disabled, the guardian ad litem should at a minimum observe the child with the caretaker.

(4) Assessing the needs of the child and the available resources within the family and community to meet the child's needs.

(5) Considering resources available through programs and processes, including special education, health care and health insurance, and victim's compensation.

(6) Ensuring that if the child is to testify, the child is prepared and the manner and circumstances of the child's testimony are designed to minimize any harm that might be caused by testifying.

(7) Advocating the position that serves the best interest of the child by:

(i) Petitioning the court for relief on behalf of the child and filing and responding to appropriate motions and pleadings;

(ii) Participating in depositions, discovery and pretrial conferences;

(iii) Participating in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child;

...

(vi) Filing briefs and legal memoranda;

(vii) Preparing and submitting proposed findings of facts and conclusions of law;

(viii) Ensuring that written orders are promptly entered that accurately reflect the findings of the court;

(ix) Monitoring compliance with the orders of the court and filing motions and other pleadings and taking other actions to ensure services are being provided;

(x) Attending all staffings, reviews and hearings, including permanency plan staffings, foster care review board hearings, judicial reviews and the permanency hearing;

(xi) Attending treatment, school and placement meetings regarding the child as deemed necessary.

(8) Ensuring that the services and responsibilities listed in the permanency plan are in the child's best interests.

(9) Ensuring that particular attention is paid to maintaining and maximizing appropriate, non- detrimental contacts with family members and friends.

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[TENN. S. CT. R. 40\(D\).](#)

(e) Responsibilities and duties of a guardian ad litem when the child's best interests and the child's

preferences are in conflict.

(1) If the child asks the guardian ad litem to advocate a position that the guardian ad litem believes is not in the child's best interest, the guardian ad litem shall:

(i) Fully investigate all of the circumstances relevant to the child's position, marshal every reasonable argument that could be made in favor of the child's position, and identify all the factual support for the child's position;

(ii) Discuss fully with the child and make sure that the child understands the different options or positions that might be available, including the potential benefits of each option or position, the potential risks of each option or position, and the likelihood of prevailing on each option or position.

(2) If, after fully investigating and advising the child, the guardian ad litem is still in a position in which the child is urging the guardian ad litem to take a position that the guardian ad litem believes is contrary to the child's best interest, the guardian ad litem shall pursue one of the following options:

(i) Request that the court appoint another lawyer to serve as guardian ad litem, and then advocate for the child's position while the other lawyer advocates for the child's best interest.

(ii) Request that the court appoint another lawyer to represent the child in advocating the child's position, and then advocate the position that the guardian ad litem believes serves the best interests of the child.

(3) If, under the circumstance set forth in subsection (b), the guardian ad litem is of the opinion that he or she must advocate a position contrary to the child's wishes and the court has refused to provide a separate lawyer for the child to help the child advocate for the child's own wishes, the guardian ad litem should:

(i) subpoena any witnesses and ensure the production of documents and other evidence that might tend to support the child's position;

(ii) advise the court at the hearing of the wishes of the child and of the witnesses subpoenaed and other evidence available for the court to consider in support of the child's position.

[TENN. S. CT. R. 40\(E\)](#)

(f) Guardian ad litem to function as lawyer, not as a witness or special master.

(1) A guardian ad litem may not be a witness or testify in any proceeding in which he or she serves as guardian ad litem, except in those extraordinary circumstances specified by Supreme Court Rule 8, §§ EC 5-9, 5-10 and DR 5-101.

(2) A guardian ad litem is not a special master, and should not submit a "report and recommendations" to the court.

(3) The guardian ad litem must present the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents his or her case on behalf of a

	<p>client: by calling, examining and cross examining witnesses, submitting and responding to other evidence in conformance with the rules of evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented. TENN. S. CT. R. 40(F)</p> <p>(b)(2) The court-appointed special advocate shall conduct such investigation and make such reports and recommendations pertaining to the welfare of a child as the court may order or direct. TENN. CODE ANN. § 37-1-149</p>
<p>3. In Court – Active Participation in Hearings: Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</p>	<p>(d) The responsibilities and duties of the guardian ad litem include, but are not limited to the following: ... (7) Advocating the position that serves the best interest of the child by: (iv) Making opening statements and closing arguments; (v) Calling, examining and cross-examining witnesses, offering exhibits and introducing independent evidence in any proceeding ... (x) Attending all staffings, reviews and hearings, including permanency plan staffings, foster care review board hearings, judicial reviews and the permanency hearing TENN. S. CT. R. 40(D).</p>
<p>4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders</p>	<p>(d) The responsibilities and duties of the guardian ad litem include, but are not limited to the following: ... (7) Advocating the position that serves the best interest of the child by: ... (ix) Monitoring compliance with the orders of the court and filing motions and other pleadings and taking other actions to ensure services are being provided ... (8) Ensuring that the services and responsibilities listed in the permanency plan are in the child’s best interests. TENN. S. CT. R. 40(D).</p> <p>(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein</p>

	<p>arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of any party, after such notice, if any, as the court orders. During the pendency of an appeal such mistakes may be so corrected before the record on appeal is docketed in the appellate court and thereafter, while the appeal is pending, may be so corrected with leave of the appellate court.</p> <p>(b) Extraordinary Relief. An order of the court shall be vacated if it appears that it was obtained by fraud or mistake sufficient therefor in a civil action, or the court lacked jurisdiction over a necessary party or of the subject matter, or newly discovered evidence so requires.</p> <p>(c) Modification for Best Interest of Child. An order of the court may also be modified or vacated on the ground that changed circumstances so require in the best interest of the child, except an order committing a delinquent child to the Department of Children's Services, or an institution for delinquent children, an order terminating parental rights or an order of dismissal. An order granting probation to a child found to be delinquent or unruly may be revoked, according to the provisions of Rule 35, on the ground that the conditions of probation have not been observed. Placements after a child has been committed to the Department of Children's Services shall be reviewed as provided in T.C.A. § 37-1-137, and, in the case of termination of home placement, Rule 35.</p> <p>(d) Petitions to Modify or Vacate Orders. Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in the child may petition the court for the relief provided in subsections (b) and (c) of this rule... TENN. JUV. CT. R. 34.</p>
<p>5. Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>(d) The responsibilities and duties of the guardian ad litem include, but are not limited to the following:</p> <p>(10) Providing representation with respect to appellate review including:</p> <p>(i) discussing appellate remedies with the child if the order does not serve the best interest of the child, or if the child objects to the court's order;</p> <p>(ii) filing an appeal when appropriate; and</p> <p>(iii) representing the child on appeal, whether that appeal is filed by or on behalf of the child or filed by another party. TENN. S. CT. R. 40(D).</p> <p>(b) Right to an Attorney. Right to an attorney at all stages of the proceedings shall include the right to an attorney in an appeal. TENN. JUV. CT. R. 36</p>
<p>6. Cessation of Representation: Contacts post</p>	<p>The obligation of the guardian ad litem to the child is a continuing one and does not cease until the guardian ad litem is formally relieved by court order. The guardian ad litem shall represent the child at preliminary, adjudicatory, dispositional and post-dispositional hearings, including the permanency plan</p>

<p>representation, if any</p>	<p>staffings, court reviews, foster care review board hearings and permanency hearings. The guardian ad litem should maintain contact with the child and be available for consultation with the child between hearings and reviews. For a child who is very young or severely mentally disabled, the guardian ad litem should regularly monitor the child’s situation through contacts with the child’s caretakers and others working with the child and through periodic observations of the child. TENN. S. CT. R. 40(C)(3)</p>
<p>7. General Representation Rules: Administrative structure is clear for appointment, support and accountability of the CR. The child’s representative is independent from the court</p>	<p>(b) In any proceeding resulting from a report of harm or an investigation report under T.C.A. §§ 37-1-401 – 37-1-411 and T.C.A. § 37-1-101, et. seq., the court shall appoint a guardian ad litem for the child who is or may be the subject of such report. The guardian ad litem shall comply with the requirements of Tennessee Supreme Court Rule 40. TENN. JUV. CT. R. 37</p>
<p>8. Lawyer Training: Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</p>	<p>(a)...</p> <p>(2) Any guardian ad litem appointed by the court shall receive training appropriate to that role prior to such appointment. Such training shall include, but is not limited to, training in early childhood, child and adolescent development provided by a qualified professional.</p> <p>(b)(1) The court may also appoint a nonlawyer special advocate trained in accordance with that role and in accordance with the standards of the Tennessee Court Appointed Special Advocates Association (CASA) to act in the best interest of a child before, during and after court proceedings.</p> <p>TENN. CODE ANN. § 37-1-149</p> <p>- The Tennessee State Courts’ Court Improvement Project offers various training courses to attorneys practicing in dependency. http://www.tncourts.gov/programs/court-improvement/trainings</p>
<p>9. Lawyer Compensation: Adequate and timely compensation,</p>	<p>Section 2. Compensation of counsel in non-capital cases.</p> <p>(a)(1) Appointed counsel, other than public defenders, shall be entitled to reasonable compensation for services rendered as provided in this rule. Reasonable compensation shall be determined by the court in which services are rendered, subject to the limitations in this rule, which limitations are declared to be</p>

reimbursement provided for expenses.	reasonable. (2) These limitations apply to compensation for services rendered in each court municipal, juvenile, or general sessions; criminal, circuit, or chancery; Court of Appeals or Court of Criminal Appeals; Tennessee Supreme Court; and United States Supreme Court. (b) Co-counsel or associate attorneys in non-capital cases shall not be compensated. (c)(1) The hourly rate for appointed counsel in non-capital cases shall not exceed forty dollars (\$40) per hour for time reasonably spent in trial preparation and fifty dollars (\$50) per hour for time reasonably spent in court. (2) For purposes of this rule, “time reasonably spent in trial preparation” means time spent preparing the case to which the attorney has been appointed to represent the indigent party. “Time reasonably spent in court” means time spent before a judge on the case to which the attorney has been appointed to represent the indigent party. (d)(1) The maximum compensation allowed shall be determined by the original charge or allegations in the case. Except as provided in section 2(e), the compensation allowed appointed counsel for services rendered in a non-capital case shall not exceed the following amounts: ... (5) Maximum compensation for juvenile dependency and neglect proceedings and termination of parental rights proceedings is as follows: (A) Seven Hundred and Fifty dollars (\$750) for: (i) Dependent or neglected child cases, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings; (ii) Guardian ad litem representation in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings; and (iii) Counsel appointed pursuant to Tennessee Supreme Court Rule 40(e)(2) and in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings; (B) One Thousand Dollars (\$1,000) for:
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(i) Dependent or neglected child cases, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews and permanency hearings;

(ii) Guardian ad litem representation in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews, and permanency hearings; and

(iii) Counsel appointed pursuant to Tennessee Supreme Court Rule 40(e)(2) and in accordance with section 1(d)(2)(D) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews, and permanency hearings.

(C) One thousand dollars (\$1000) for:

(i) Proceedings against parents in which allegations against the parents could result in termination of parental rights;

(ii) Guardian ad litem representation in termination of parental rights cases in accordance with section 1(d)(2)(D); and

(iii) Counsel appointed pursuant to Tennessee Supreme Court Rule 40(e)(2) and in accordance with section 1(d)(2)(C) for a child or sibling group in termination of parental rights cases;

(e)(1) Notwithstanding the provisions of section (2)(d), an amount in excess of the maximum, subject to the limitations of section (2)(e)(3), may be sought by filing a motion in the court in which representation is provided. The motion shall include specific factual allegations demonstrating that the case is complex or extended. The court shall enter an order which evidences the action taken on the motion. The following, while neither controlling nor exclusive, indicate the character of reasons that may support a complex or extended certification:

(A) The case involved complex scientific evidence and/or expert testimony;

(B) The case involved multiple defendants and/or numerous witnesses;

(C) The case involved multiple protracted hearings;

(D) The case involved novel and complex legal issues.

(E) If the motion is granted, an order shall be forwarded to the Director of the AOC (herein “director”) certifying the case as complex or extended. The order shall either recite the specific facts supporting the finding or incorporate by reference and attach the motion which includes the specific facts supporting the finding. To qualify for payment under this section, the order certifying the claim as extended or complex must be signed contemporaneously with the court’s approval of the claim. Nunc pro tunc certification

	<p>orders are not sufficient to support payment under this section.</p> <p>(2) All payments under section 2(e)(1) must be submitted to the director for approval. If a payment under section 2(e)(1) is not approved by the director, the director shall transmit the claim to the chief justice for disposition. The determination of the chief justice shall be final.</p> <p>(3) Upon approval of the complex or extended claim by the director or the chief justice, the following maximum amounts apply:</p> <p>(A) One thousand dollars (\$1,000) in those categories of cases where the maximum compensation is otherwise five hundred dollars (\$500);</p> <p>(B) One thousand, five hundred dollars (\$1,500) in those categories of cases where the maximum compensation is otherwise seven hundred and fifty dollars (\$750);</p> <p>(C) Except as provided in section (2)(e)(3)(D), two thousand dollars (\$2,000) in those categories of cases where the maximum compensation is otherwise one thousand dollars (\$1,000);</p> <p>...</p> <p>(f) Attorneys shall not be compensated for time associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a document. TENN.S.C.T.R.13</p> <p>(b) In those cases in which the parents are financially able, the court may order such parent or parents to reimburse the court to the extent of insurance coverage; provided, that the court shall order the perpetrator in all cases, whether such person is a parent or other person, to fully reimburse the court for such expenses, for the cost of provision of guardian ad litem services and any medical and treatment costs resulting from the child sexual abuse. Reimbursement to the individual providing such services shall not be contingent upon successful collection by the court from the parent or parents. TENN. CODE ANN. § 37-1-610.</p>
<p>10. Caseload Levels: Caseloads are of a manageable size</p>	<p>No explicit legal authority or requirements</p>