

**4-402. Order appointing guardian *ad litem*.**

[For use with District Court Rule 1-053.3 NMRA]

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_,  
Petitioner,

v. \_\_\_\_\_ No. \_\_\_\_\_

\_\_\_\_\_,  
Respondent.

**ORDER APPOINTING GUARDIAN *AD LITEM***

THIS MATTER came before the court on \_\_\_\_\_, 20\_\_\_\_. The petitioner was present and was represented by \_\_\_\_\_. The respondent was present and was represented by \_\_\_\_\_. The court having reviewed the file and being otherwise advised FINDS:

1. The court has jurisdiction over the parties and subject matter.
2. This action concerns the following minor [child] [children]:  
 \_\_\_\_\_, DOB \_\_\_\_\_, age \_\_\_\_\_;  
 \_\_\_\_\_, DOB \_\_\_\_\_, age \_\_\_\_\_;  
 \_\_\_\_\_, DOB \_\_\_\_\_, age \_\_\_\_\_;  
 \_\_\_\_\_, DOB \_\_\_\_\_, age \_\_\_\_\_.
3. Good cause exists to appoint a Guardian *Ad Litem* (hereinafter “GAL”) pursuant to Section 40-4-8 NMSA 1978 and Rule 1-053.3 NMRA to represent the [child’s] [children’s] best interests in this case.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. **Appointment and duties to the court:** \_\_\_\_\_ is hereby appointed as GAL. The GAL shall perform each of the following duties on behalf of the court:
  - (a) monitor, investigate, and protect the best interests of the [child] [children];
  - (b) interview the [child] [children] face-to-face outside the presence of the parties and counsel if the [child is] [children are] six (6) years of age or older; If the [child is] [children are] under the age of six (6), the GAL may interview the [child] [children] outside the presence of the parties and counsel at the GAL’s discretion;

(c) interview all available parties in conformity with Rule 16-402 NMRA outside the presence of the [child] [children];

(d) interview each mental health professional treating the [child] [children];

(e) interview any other [person] [persons] and review any relevant records the GAL deems reasonably necessary;

(f) determine the [child's] [children's] wishes, if appropriate;

(g) submit, but do not file, a written report of investigation and separate written recommendations to all parties and counsel at least eleven (11) days before the recommendations are filed with the court, except in the case of emergency;

(h) file the recommendations, but not the report, with the court;

(i) perform the duties to the [child] [children] as set forth in Paragraphs H and I of Rule 1-053.3 NMRA; and

(j) in addition to the foregoing, the court directs the GAL to: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. Adoption of GAL recommendations:**

(a) If the parties are willing to adopt the GAL's recommendations, they shall submit a stipulated order adopting the recommendations within eleven (11) days after the recommendations are filed.

(b) If one or both parties are not willing to adopt the recommendations, such party may file objections to the recommendations within eleven (11) days after the recommendations are filed and a request and notice for hearing on the objections. The objections shall specifically state what recommendations are objected to and the basis for the objection. The court will set a hearing on the objections.

(c) A party's failure to file timely objections to the recommendations of the GAL shall be deemed a waiver of the right to object, and the court shall, without the necessity of a hearing, enter an order adopting the GAL's recommendations.

**3. Acceptance of appointment.** If the named GAL is willing to serve, the named GAL shall forthwith file an entry of appearance. If the named GAL is unable or unwilling to serve, the named GAL shall promptly advise the court.

**4. Expiration of appointment.** This appointment shall expire on \_\_\_\_\_.

5. **Immunity of GAL.** The GAL serves as an arm of the court and assists the court in discharging its duty to adjudicate the [child's] [children's] best interests.

6. **Duties of parties.** The parties and minor children over the age of fourteen (14) shall assist the GAL in carrying out the duties set forth in this order, including providing information and documents requested by the GAL and signing any releases requested by the GAL.

7. **GAL fees.**

(a) On or before \_\_\_\_\_, 20\_\_\_\_, petitioner shall advance \$\_\_\_\_\_ and respondent shall advance \$\_\_\_\_\_ to the GAL as a retainer toward the GAL's fees and expenses. The GAL shall be paid at an hourly rate of \_\_\_\_\_. When the GAL fees exceed the retainer, petitioner shall pay \_\_\_\_\_% and respondent shall pay \_\_\_\_\_% of the additional fees.

(b) The GAL shall submit itemized monthly invoices for professional services to the parties.

(c) The GAL may recommend reallocation of GAL fees and expenses.

(d) Either party or the GAL may request a hearing on the GAL fees and costs. The GAL shall request a review hearing if the GAL fees and expenses exceed \_\_\_\_\_.

(e) GAL fees are considered in the nature of support of the child.

(f) The GAL shall not begin work until receiving a copy of the endorsed order appointing the GAL and full payment of the retainer.

8. **Hearings.** The GAL may request an expedited hearing if there is non-compliance with this order.

\_\_\_\_\_  
District court judge

### CERTIFICATE OF MAILING

I, \_\_\_\_\_, certify that I caused an endorsed copy of this order appointing guardian *ad litem* to be served on the following persons by (delivery) (mail) on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_:

\_\_\_\_\_  
(Name of petitioner)

\_\_\_\_\_  
(Name of petitioner's attorney)

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*(Name of respondent)*

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*(Name of respondent's attorney)*

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*(Name of guardian ad litem)*

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*(Name of person signing certificate)*

[4A-342 NMRA; provisionally approved by Supreme Court Order No. 06-8300-029, effective January 15, 2007 until January 15, 2008; approved and recompiled by Supreme Court Order No. 07-8300-021, effective August 21, 2007; as amended by Supreme Court Order No. 17-8300-017, effective for all cases pending or filed on or after December 31, 2017.]