

When you Disagree with a Guardian Ad Litem Report

What is a Guardian ad Litem or evaluator?

In a family law case where the parties are fighting about the parenting plan, the judge may appoint a Guardian ad Litem (GAL) or an Evaluator. A GAL or Evaluator investigates both households to recommend to a residential plan in the child's best interest.

A GAL may be a lawyer, social worker, psychologist, or trained community volunteer called a Court Appointed Special Advocate (CASA). [Guardian ad Litem in Family Law Cases](#) has more info. The judge may limit the Evaluator, GAL, or CASA's report to specific issues, such as domestic violence or substance abuse by a parent.

❖ "GAL" here means GALs, CASAs and parenting evaluators.

The GAL makes recommendations to the court about:

- Whom the children should live with.
- How much visitation time the other parent should have.
- Whether a parent should have supervised time with the children.
- Who gets to make decisions about the children.
- Whether either parent should meet certain requirements to be able to spend time with the children.

The GAL usually writes a report for the court describing.

- What they did.
- Their recommendations.
- The reasons for their recommendations.

When will I get the GAL Report?

It depends. The order appointing the GAL should say when the report is due. If not, ask the GAL when to expect it. If you have a hearing coming up, ask the commissioner/judge to set a date at that hearing.

❖ Some counties have a local rule that the GAL should give the parties the report ten days before a hearing. Under [RCW 26.12.175\(1\)\(b\)](#), the GAL shall file his/her report at least sixty days before trial. [RCW 26.09.220\(3\)](#) requires any investigator to provide both parties a report at least ten days before a hearing.

Can I respond to the report?

Yes. You may have only a short time to do so. Have a set of blank Declaration forms ready for you and your witnesses to fill out as soon as you see the report. Call the court clerk or check local rules ahead of time. Find out how many days before your hearing/trial you must file Declarations and other documents at the courthouse and have them served on the other parties and GAL. If you get the report too late to respond, explain that to the judge/commissioner. Ask for more time.

If you have strong objections to the GAL's report when you get a copy, the tips below may help. The report is usually important and can sway the court. The judge/commissioner does not have to follow what it says. If you disagree with the report, you must show the court why it should not follow the GAL's recommendations.

1. **Take a deep breath.** Getting a report you do not agree with can be upsetting. Try to calm down.
2. **Try to meet with a lawyer before your response is due.** See "What if I Need Legal Help," below. You can take the steps below yourself so your lawyer has better info to help you.
3. **Carefully review the report.** Make a copy of it for yourself. Keep a clean copy in case someone else needs to review it. Write down or mark any major errors. This includes things the GAL wrote that you feel are wrong and recommendations you feel are inappropriate. Look for things you or others told the GAL that s/he left out. Think about ways to counter what the GAL has said. The best way is to use "objective" evidence. That means evidence from someone with no personal interest in your case, like testimony or declarations from professionals who work with you or your children. The GAL may include statements from the other party or witnesses you disagree with. The GAL must interview all relevant witnesses. S/he may not necessarily believe these statements. You must review each part of the report in relation to the conclusions.
4. **List important things you told the GAL that s/he left out of the report.** At your trial, you can ask the GAL why s/he ignored or left out those items.
5. **Ask the GAL for a copy of her file on your case.** You should be able to see all non-confidential info, including info from/about the other party. You may have to send a formal "discovery request" if the GAL will not agree, but you are entitled to review the file. ["Doing Discovery" in Family Law Cases: Interrogatories and Requests for Production](#) has more info about discovery requests. The GAL (or other court-appointed evaluator) must allow either party, even if s/he does not have a lawyer, to view the file. [RCW 26.09.220](#). You may be able to persuade the GAL to copy the file for you. You may have to do it yourself. You may have to pay a fee for copying. Look for:
 - Info from the other party.
 - Notes of conversations with witnesses.
 - Negatives about the other party that the GAL did not put in the report.

- Positives about yourself that the GAL did not put in the report.
- Phone calls from witnesses who the GAL did not call back.
- Declarations that are in the court file but not the GAL's.
- Records from school, CPS, and/or treatment providers.

Take notes about any of the above to remind you how to respond to any negatives in the report and to question the GAL about what they left out of their report.

- 6. Check with your witnesses who spoke with the GAL.** The GAL report is sealed. You cannot show it to your witness without court permission. Explain to your witness how the report described her interview. Ask your witness if the report accurately summarizes what s/he told the GAL. If not, ask the witness to write a declaration and/or testify at hearing/trial. You must file with the court any declarations you want it to consider, and send copies to all other parties and the GAL. You might also have to leave "working copies" of the declarations for the judge. Ask the clerk if they require working copies. [What are Working Copies?](#) has more info. Keep copies of any declarations you file.

If the report you are responding to is for a trial, you must have your witnesses testify in person. Do not have them write declarations. If you plan to call witnesses to testify at trial, you must disclose those witnesses to the other party before trial. Your court might have a witness form you must use.

- 7. Check with the witnesses or references you asked the GAL to contact, but whose names were not in the GAL's notes or report.** Some GAL's will not contact witnesses who are not professionally involved with you or your family. If you think the witness is important, ask him/her to write a declaration. File the declaration with the court. Send the other parties and the GAL copies. Keep a copy for yourself. Ask the witness to testify at trial.
- 8. If you feel parts of the evaluation went poorly** because, for example, you were nervous or the children misbehaved more than usual, ask for another meeting or explain to the GAL why things went poorly. You should put your requests for another meeting in writing. If the GAL refuses, write down what the GAL said, when, and how the conversation took place – by phone, in person, or by letter. You can also give a declaration explaining why the evaluation went poorly. It should focus on what happened during the meeting. Do not personally attack the GAL. You may also testify about the evaluation during the hearing/trial.
- 9. If you feel you could not communicate with the Evaluator or s/he misunderstood you** because of disabilities or language barriers, put that in a declaration. If you feel the GAL was influenced by stereotypes about your disability, race, ethnicity, or culture, try to find a witness with expertise about your disability, race, and so on, who can explain your behavior in relation to your background. Ask that person to make a declaration or be a court witness.
- 10. Ask any professionals, counselors, or an advocate who regularly spend time with you and your children** to submit declarations and/or testify at trial. Add up

how much time these people have spent with you and/or your children. Compare it to the time the GAL had to observe you and/or your children. Someone who has spent time with you and/or your children may have much more info about the situation, especially if they have known you a long time. If your witnesses are trained psychologists, psychiatrists, social workers, or otherwise trained in child development, you can compare their training and experience to the GAL's. If you ask your treatment providers or others to testify for you, the other party and judge will question them, too. When you ask people for declarations, the other party and judge will read the declarations.

- 11. If the GAL has made conclusions about your mental health that seem wrong,** try to get a psychological evaluation by another professional. Do not tell the GAL you are having an evaluation unless it goes well and you want the person to testify at trial. If you cannot get a more positive evaluation, try to show how you are working to stabilize or improve your mental health. If you are in regular counseling or taking medication, ask your health care provider to write a declaration and/or testify about how the treatment is helping you.
- 12. Read the GAL's report over very carefully for places where she has overstated her position.** Example: The GAL made conclusions and had little supporting evidence from the file or in the report. You should point this out to the court during your hearing or trial. Let the court know the GAL did not back up his/her conclusions.
- 13. Get ready for the hearing/trial.** You must file your Declarations and other documents the required number of days before your hearing and serve them on the other parties and GAL. Check if you must also submit "working copies." (See paragraph #6.) If you cannot meet the deadline and you have good reason (**example:** the GAL provided the report too late for you to respond), bring your originals and copies to the hearing. The commissioner/judge may agree to read them. Hearings are usually short. Witnesses may not usually testify at a hearing. For trial, be sure you have given the court and other party by your county's deadlines the names, contact info, and summary of testimony about each person you want to call as a witness. Usually you cannot call a witness if you have not given his/her required info in advance.

- a. **Focus on your positives.** Try to find witnesses who will testify about why you are a good parent, especially if they are not friends or family. Put them on the witness list for trial. The deadline for disclosure of witnesses you want to testify at trial is often before the date you will actually get the GAL report. Try to guess what witnesses you should have testify, so you can disclose them by the deadline.

Your witnesses should know and be able to testify about these “**parenting functions:**”

- Maintaining a loving, stable, consistent, and nurturing relationship with the child.
 - Taking care of the child’s daily needs, such as feeding, clothing, physical care and grooming, supervision, health care, and day care.
 - Getting the child to school.
 - Helping the child develop and keep appropriate relationships.
 - Using good judgment about the child’s welfare.
 - Supporting the child financially.
- b. **Look at what the GAL left out.** If s/he left out important info from witnesses related to the parenting functions above, ask your witnesses to testify about your positives and about how well you perform those functions.

If the GAL did not speak to witnesses you believe are important, or left info the witnesses provided out of the report, be ready to explain why that testimony or declaration is important. **Example:** Jody spends a lot of time with you and your children, or has had a long, stable relationship with your child. You should explain to the court why the GAL’s report might be different if the GAL had Jody’s testimony.

- c. **Make sure the report does not leave out the other party’s behavior that matters to parenting plan restrictions.** The court would consider harmful to the children:
- Voluntarily abandoning the child or not seeing her/him for a long time
 - Substantial refusal to perform parenting functions
 - Physical, sexual, or pattern of emotional abuse of any child
 - History of domestic violence, assault, or sexual assault, or conviction for a sex offense
 - Long-term emotional or physical problem that would interfere with the person’s ability to be a good parent
 - Long-term drug, alcohol, or other substance abuse problem affecting the person’s parenting ability

- Lack of emotional ties between parent and child, or impairment or estrangement in their relationship
- Abusive use of conflict creating danger of damage to child's psychological development
- Keeping a child away from you for a long period without a good reason, such as a court order

If any of this info was not in the GAL report, try to get documents like police, medical, or counseling reports or declarations to show the court why it should place limits on the other parent. File these documents/declarations with the court. Send the other parties copies. Keep a copy for yourself. Disclose these documents to the other party and the court as potential trial exhibits before any discovery deadlines in your county and in the court-approved form.

Try not to "bash" (say negative things about) the other party. The judge will not think well of you if you come across as angry with the other parent. Let the court know your concerns about the harmful effect of the other party's actions on the child, not how the other party is a bad person. You can ask the court for evaluations or services you think would help the other party strengthen his/her parenting skills, so in the future the other party can have more time with the child.

- d. **Countering the negatives about you.** If the GAL has concerns about your ability to perform the parenting functions listed above, or mentions there should be restrictions due to the factors in (C), show how you have been working to address these issues. [How to Work with GAL's and Parenting Evaluators](#) has more info. Explain to the court how you have been working to resolve your problems and are taking advantage of any resources available to improve your position.

14. If you have a grievance against the GAL. Even if your case is still active, you may file a grievance with the court. Each court's local rules should have its own Guardian ad Litem Rule 7 (LGALR 7). LGALR 7 should tell you how to file a grievance against the GAL with the court. **Do not do this lightly.** Get legal advice about the possible consequences before filing a motion or a complaint. There are no self-help forms for filing this motion. Talk to a lawyer. If you are very low-income, CLEAR's contact info is below. If you have a lawyer, talk with him/her about this before filing a complaint.

❖ **If the case is over, filing a grievance will not change the decision in your case.**

You should address the written grievance to the GAL Program Manager or Court Administrator. Grievance procedures vary. Check with the court clerk or GAL Program Manager to find out how to file a grievance in your county.

-
- ❖ If you can prove that the GAL made a false statement under oath, or otherwise made a materially false statement during your case, the court will remove the GAL from the registry. That means the court will not appoint that person as a GAL again.
-

15. To file your complaint with a professional organization to which the GAL or Evaluator is a member, contact the appropriate organization below. Ask them to investigate your claim that the GAL/Evaluator did not perform the job properly.

- If your GAL is a Court Appointed Special Advocate (CASA), you can file a complaint with the CASA program.
- You should file a complaint about a Family Court Services worker with the court. You can make a complaint to the County Ombudsman or to the manager of Family Court Services, or the Family Law Department.
- To make a complaint about a registered counselor or social worker (MSW), or to find out if your counselor is certified or registered with the State of Washington, contact the Department of Health, Health Professions Quality Assurance Division at (360) 236-4700 or hsqa.csc@doh.wa.gov. They can also provide written info, including a complaint form.
- For a complaint about a psychologist (Masters or Ph.D in psychology), send a detailed letter about the provider to Department of Health, Examining Board of Psychology, P.O. Box 47869, Olympia, WA 98504.
- To make a complaint about a psychiatrist (M.D. Psychiatry), contact the Medical Quality Assurance Commission at (360) 236-2762 or Medical.Complaints@doh.wa.gov.
- To make a complaint about an attorney GAL, call the Washington State Bar Association, Legal Department, at (206) 727-8207. Read the info on their website at wsba.org (search for “grievance”) before calling.

What if I need legal help?

If you are **very low-income**, contact CLEAR (outside King County only). Call 1-888-201-1014 between 9:15 a.m. and 12:15 p.m. weekdays. If you are in King County, call 211 for info and referral to legal services 8 a.m. – 6 p.m. Mondays through Fridays.

-
- ❖ CLEAR is Washington’s toll-free, centralized intake, advice, and referral service for low-income people seeking free legal assistance with civil legal problems.
-

Go to www.washingtonlawhelp.org for [How to Work with GALs and Parenting Evaluators](#) and a list of legal resources in your county.

Where can I get more info?

List of **CASA programs**: <http://www.washingtonstatecasa.org>

List of **GAL Program Managers**:

http://www.courts.wa.gov/committee/?fa=committee.display&item_id=363&committee_id=105

Get **blank Declaration forms** (FL All Family 135) to print out at <http://www.courts.wa.gov/forms/>.

Northwest Justice Project gratefully acknowledges the work of Legal Voice, whose original publication we largely adapted here.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.
This information is current as of September 2017.

© 2017 Northwest Justice Project — 1-888-201-1014.

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)