

Sup. Rule 48.03

(A) General responsibilities. The responsibilities of a guardian ad litem shall include, but are not limited to, the following:

- (1) Provide the court recommendations of the best interest of the child. Recommendations of the best interest of the child may be inconsistent with the wishes of the child or other parties.
- (2) Maintain independence, objectivity, and fairness, as well as the appearance of fairness, in dealings with parties and professionals, both in and out of the courtroom, and have no ex parte communications with the court regarding the merits of the case.
- (3) Act with respect and courtesy in the performance of the responsibilities of the guardian ad litem.
- (4) Attend any hearing relevant to the responsibilities of the guardian ad litem.
- (5) Upon becoming aware that the recommendations of the guardian ad litem differ from the wishes of the child, immediately notify the court in writing with notice to the parties or affected agencies. The court shall take action as it deems necessary.
- (6) If necessary, request timely court reviews and judicial intervention in writing with notice to the parties or affected agencies.
- (7) If the guardian ad litem is an attorney, file pleadings, motions, and other documents as appropriate and call, examine, and cross-examine witnesses pursuant to the applicable rules of procedure.
- (8) Be available to testify at any relevant hearing. Attorneys who are to serve as both guardian ad litem and attorney in any dual appointments shall comply with Rule 3.7 of the Rules of Professional Conduct.
- (9) If the guardian ad litem is not an attorney, avoid engaging in conduct that constitutes the unauthorized practice of law and be vigilant in performing the duties of the guardian ad litem.
- (10) If the guardian ad litem is not an attorney, request the court to appoint an attorney for the guardian ad litem to file pleadings, motions, and other documents as appropriate and call, examine, and cross-examine witnesses pursuant to the applicable rules of procedure. The court shall take action as it deems necessary.

Sup. Rule 48.03(A)(9)

(9) If the guardian ad litem is not an attorney, avoid engaging in conduct that constitutes the unauthorized practice of law and be vigilant in performing the duties of the guardian ad litem.

But what is "unauthorized practice of law?"

Ohio Rev. Code § 2701.01 defines the unauthorized practice of law as the rendering of legal services for another by any person not admitted to practice in Ohio.

What does "unauthorized practice of law" look like?

In re J.S. 2013-Ohio-5756

The CASA appointed to the case was permitted to ask questions as part of the permanent custody hearing.

The Second District Court of Appeals stated that considering these rules, we share Father's concern that the questioning by the guardian ad litem in this case was inappropriate and constituted the unauthorized practice of law, as the Ohio Supreme Court has determined that any direct questioning of a witness would indisputably constitute the practice of law.

**In re
Beem
166 Ohio St.3d 230**

2014 – Person engaged in unauthorized practice of law by preparing and filing affidavit

2017 – Complaint for Unauthorized Practice of Law filed by the local bar association

2021 – Resolved by the Supreme Court by fining the person \$5,000.00

**In re
Beem
166 Ohio St.3d 230**

Why should you care – this case has nothing to do with child welfare cases?

When it comes to unauthorized practice of law, the subject matter does not matter, nor does the motivation for engaging in the unauthorized practice of law

Length of time these issues could pop up – the complaint was filed three years after the behavior started, and took an additional four years for final resolution

**Take
Away**

**When in doubt
ask for an
attorney**

Introduction to the Court Report

- ✓ Most essential aspect of your work
- ✓ The vehicle you use to present information you have gathered
- ✓ Visible documentation of your involvement in the case
- ✓ Judges rely on these reports to make informed decisions
- ✓ All CASA/GAL programs require submittal of court reports

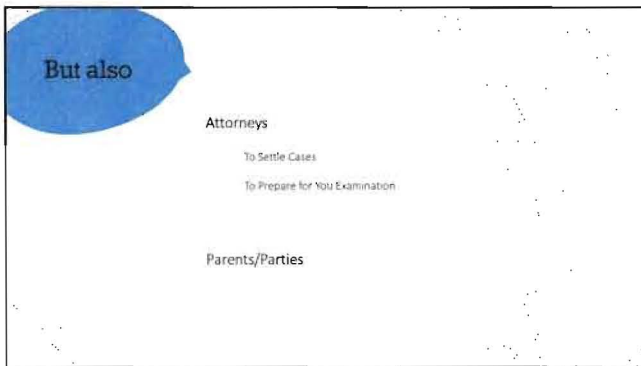
From:
The National
CASA Pre-
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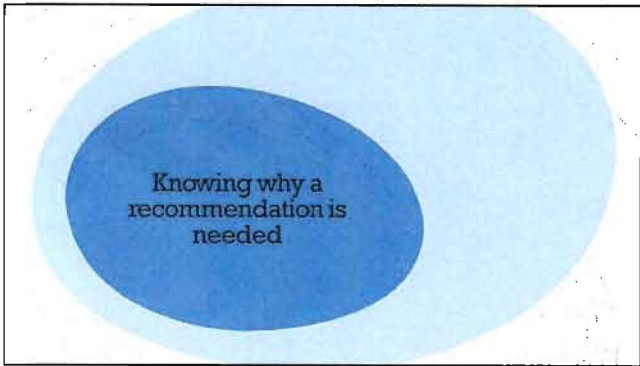
Advocating through Reporting

Knowing your audience









"Best Interest"

<p>Temporary Custody, Extensions and PPLA</p> <p>* No particular definition</p>	<p>Legal Custody</p> <p>* Controlled by ORC 2151.23(F)(1) and ORC 3109.04(F)</p>	<p>Permanent Custody</p> <p>* Controlled by ORC 2151.414(D)(1)</p>
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In determining the best interest of a child at a hearing held pursuant to division (M) of this section or for the purposes of division (A)(6) or (7) of section 2151.353 or division (1) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

- (4) The interaction and relationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (5) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
- (6) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.411 of the Revised Code, the child was temporarily in the temporary custody of an equivalent agency in another state;
- (7) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency.

ORC 2151.414 - BE for PC

On appeal, the losing party asked for permanent custody to be reversed. The wishes of the children were not provided to the Court.

County Children Services did not prove that the court should grant its motion for permanent custody of the minor children because the trial court failed to investigate the wishes of the children pursuant to R.C. 2151.414 where the children did not testify, nor did the guardian ad litem testify, regarding their wishes or lack of maturity. In light of the ample evidence from providers, foster parents and teachers that one child was typically developing, a second child had made large strides cognitively, physically, academically, and behaviorally, and in light of the third child's age, understanding of the proceedings, and great strides socially and behaviorally, the instant court could not say that there was clear and convincing evidence that the children were incapable of expressing those wishes.

In re
H.M.
2014-Ohio-755

In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:

- (A) The wishes of the child's parents regarding the child's care;
- (B) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;
- (C) The child's interaction and relationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;
- (D) The child's adjustment to the child's home, school, and community;
- (E) The mental and physical health of all persons involved in the situation;
- (F) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and compensating rights;
- (G) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

ORC
3109.04(F) –
BE for LC

In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:

- (G) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;
- (H) Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child, whether either parent or a caregiver in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abuse or neglect that is the basis of an adjudication, whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of [§ 2632.01](#) or [§ 2632.02](#) or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding, whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim or the commission of the offense, and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;
- (I) Whether the residential parent or one of the parents subject to a shared parenting decree has intentionally and willfully denied the other parent's right to parenting time in accordance with an order of the court.

ORC
3109.04(F) –
BE for LC

A few things about PPLA

These are not best interest factors for consideration, but the legal requirements

CASA do typically provide the answers to these

If granted, the CASA/GAL roles continue indefinitely

Who should be providing the permanency placement counseling?

Short answer – not you

**ORC
2151.353
PPLA**

A few things about extension

These are not best interest factors for consideration, but the legal requirements

CASA do typically provide the answers to these

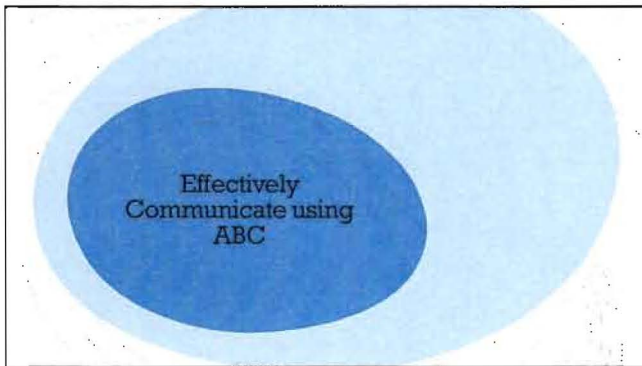
Can only grant twice for six month periods each. The entire case can only last two years

If you are coming up on the second annual review, or receive a third motion for extension – DO NOT RECOMMEND EXTENSION

**ORC
2151.415(D)(1)
Extension of
TC**

Take Away

Make sure you are addressing what is actually before the Court



A = accuracy

Accuracy

- Get the facts
- Support any assertions you make with verified, credible sources
- Even small errors (dates, spelling) can undermine your credibility

Which is more accurate?

- The apartment was in really bad shape.
- Dirty dishes and rotting food filled the sink. Mouse droppings surrounded a mound of cigarette butts on the kitchen table.

Bonus tip – Take and maintain pictures and have them ready to show the parties

B= brevity

- Get to the point and get there fast
- Saying more with fewer words
- Eliminate unnecessary words and phrases, BUT include enough information to be complete
- Brevity is important, but not at the expense of

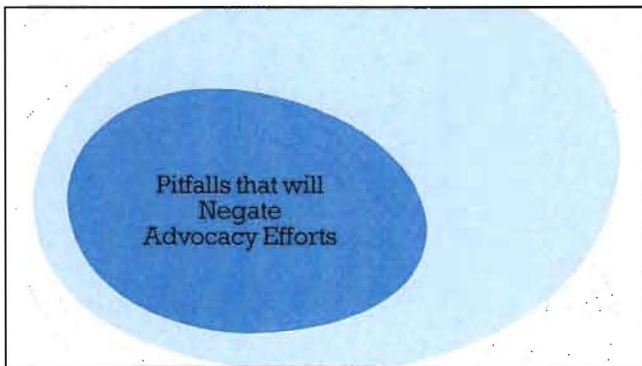
C= clarity

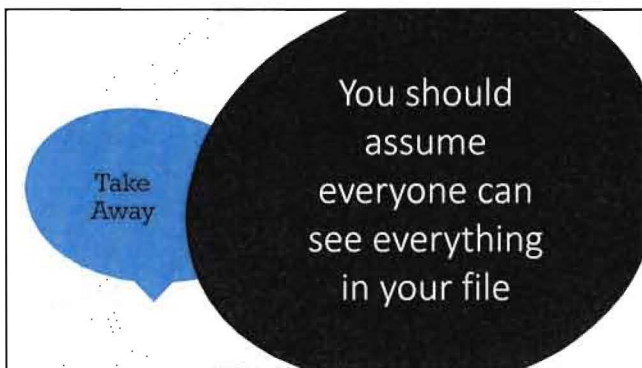
- Do not write in generalities
- Avoid jargon and flowery language

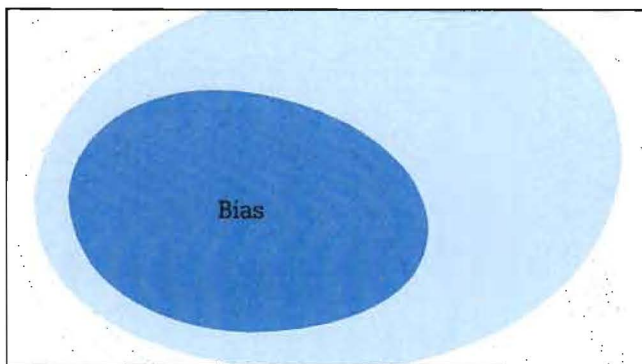
**Ken Langone
Home Depot
CEO**

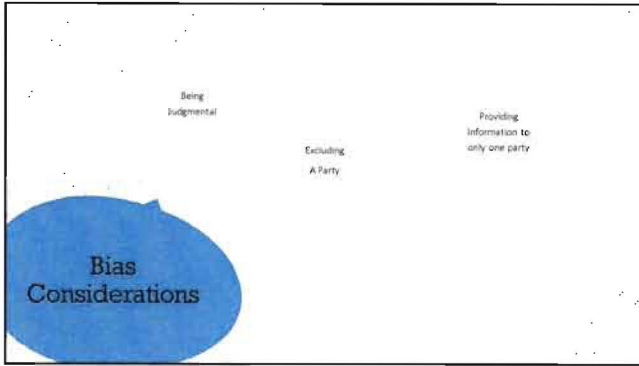
Fact and Opinion

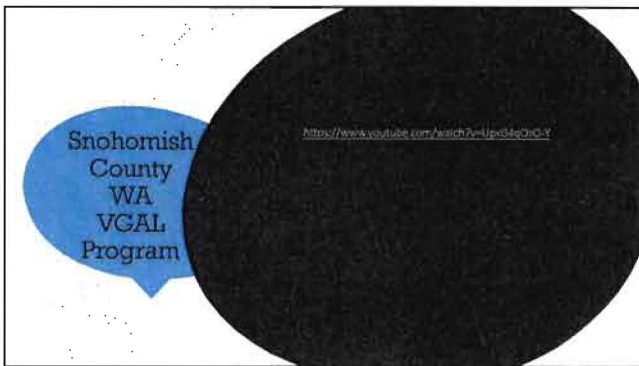
**Democracy = your case
Media = *CASA*
Opinion – recommendation
Front page = investigation**

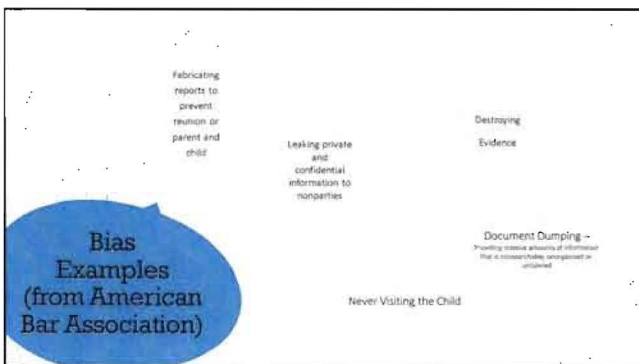


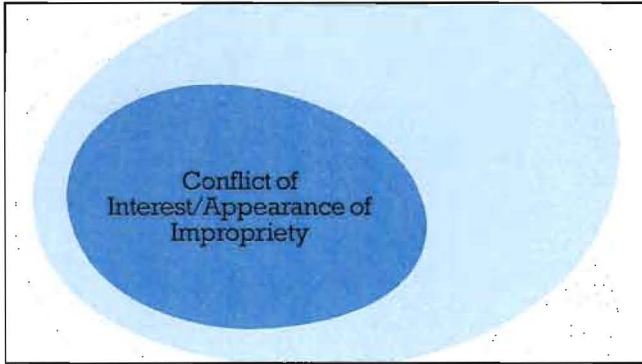


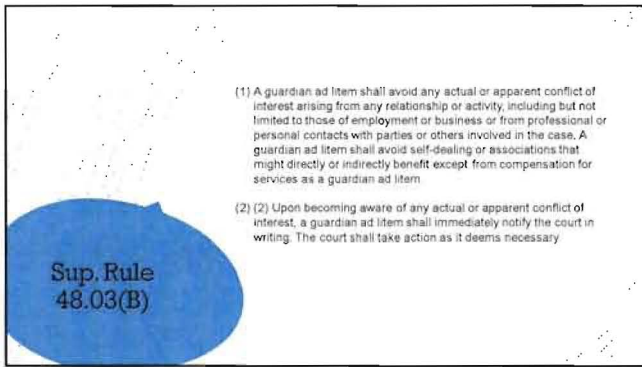


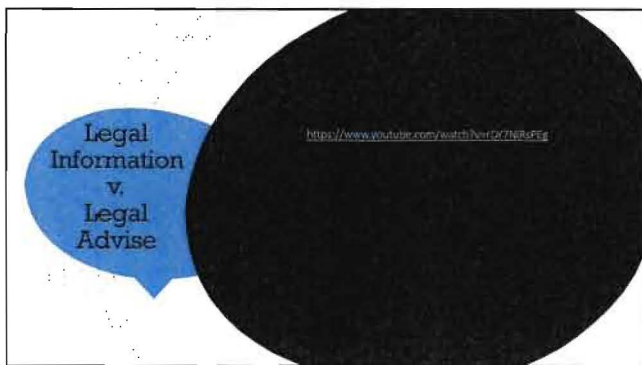












Advise, Information and Recommendations

Advise	Information	Resources
<ul style="list-style-type: none"> • Just Don't 	<ul style="list-style-type: none"> • Court Hearings: Basic information – probably not a problem • Case Specific information or Insights – could be problematic 	<ul style="list-style-type: none"> • Not prohibited – but • Has the appearance of impropriety or bias • However, development of resources database that you provide to all parties in a case may be a positive, appropriate way to advocate for the child

Violation of Confidentiality

Sup. Rule 48.03(F)

A guardian ad litem shall make no disclosures about a case or investigation, except to the parties and their legal counsel, in reports to the court, or as necessary to perform the duties of a guardian ad litem, including as a mandated reporter. The guardian ad litem shall maintain the confidential nature of personal identifiers, as defined in Sup. R. 44, and address where there are allegations of domestic violence or risk to the safety of a party or child. Upon application, the court may order disclosure of or access to the information necessary to challenge the truth of the information received from a confidential source. The court may impose conditions necessary to protect witnesses from potential harm.
