
WHITE PAPER:

Creating a Successful Court-Based Program to Safeguard Access to Justice for Mentally Impaired Litigants at Risk for Eviction

December 2016



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Safeguard Access to Justice for Mentally Impaired
Litigants at Risk for Eviction**

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Our Mission: To ensure access to justice in civil and criminal matters for New Yorkers of all incomes, backgrounds and special needs, by using every resource, including self-help services, pro bono programs, and technological tools, and by securing stable and adequate non-profit and government funding for civil and criminal legal services programs.

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Introduction

Mary had always been a model tenant. Despite being diagnosed with bi-polar disorder, she was able to successfully obtain psychiatric help, remain compliant with medications, and secure a reasonably priced apartment. Mary paid her rent on time and lived independently for many years. However, one day she lost her job and with it, her insurance coverage. Without insurance, Mary was unable to continue seeing her psychiatrist and re-filling her bi-polar medication prescriptions. Without medication, she eventually became manic and began to deteriorate. She was no longer able to manage her personal and financial affairs. It wasn't long before Mary found herself in Housing Court, facing the possibility of eviction yet unable to advocate for herself or get back on her feet.

Sadly, Mary's story is typical of thousands of litigants facing eviction proceedings each year. Many of these litigants fall through the cracks and end up living on the streets.

In New York City, the Housing Court Guardian Ad Litem Program provides landlord-tenant judges with a pool of trained advocates, known as Guardians Ad Litem (GALs), for judges to appoint from when a mentally impaired litigant is "incapable of prosecuting or defending his rights." GALs are appointed pursuant to New York State's Civil Practice Law and Rules (CPLR) Article 12 to safeguard these litigants' rights and advocate on their behalf to prevent eviction. As distinguished from an attorney, GALs have dual responsibility to the court and the impaired litigant. On the litigant's behalf, the GAL mobilizes necessary resources to address the root cause of the case and sees the case through resolution. The GAL also makes a recommendation to the court for settlement based on the facts and circumstances presented and the litigant's best interest. In Mary's case, the GAL was able to connect her with entitlements and insurance. This enabled Mary to resume taking her medication, stabilize, obtain a grant to cover arrears, recertify for lost benefits, and pay rent going forward.

The GAL Program has become a staple in the New York City Housing Part, frequently and hereinafter referred to as Housing Court. On average, judges make over 1600 GAL appointments each year drawing from a pool of trained GALs who participate in the Program. Significantly, 91% of New York City Housing Court judges surveyed state that without the housing GAL Program in place they believe it would be "difficult" or "very difficult" to find GALs to accept cases (see a copy of the Housing Court Judge GAL survey and results annexed as Appendix "A"). Moreover, of the judges surveyed, 91% note that more impaired litigants would be evicted without housing GALs (see Appendix "A").

Mentally impaired litigants are often unable to recognize or keep up with demands placed on them to successfully resolve their housing case. This is especially true in New York City landlord-tenant proceedings which are summary in nature and require quick action to prevent eviction. A litigant served with a nonpayment Petition must file an Answer within five days and a litigant served with a holdover Petition will have a

court date between five and twelve days after receiving the Petition. A mentally impaired person who is unable to understand the significance of these legal papers upon receipt may fail to answer or appear within the narrow time frame. Failure to timely answer or appear will then result in a default monetary or possessory judgment which, in turn, can lead to eviction.

Even when the impaired litigant does manage to timely respond to the Petition, there are numerous other challenges. A mentally impaired litigant may find it difficult to appear on time or meaningfully participate in the negotiating process. They may have difficulty articulating the facts of their case or presenting relevant evidence in an understandable comprehensive manner. Stress experienced as a result of the pending eviction often exacerbates existing medical and psychiatric conditions and may lead to further deterioration and inability to engage in the problem-solving process. Some impaired litigants are unable to recognize their limitations or may perceive any limitations as irrelevant or stigmatizing and choose not to inform the court. Instead, the impaired litigant may seek to get the process over with and agree to a settlement peppered with unrealistic terms. In Housing Court, not understanding the terms and implications of a court agreement and rushing into settlement can lead to eviction.

The impact of an eviction cannot be overstated. People with mental impairments, including seniors, often live on fixed incomes in either specialized housing or in an affordable apartment they have lived in for many years. In New York City, options for alternative affordable housing are limited or unrealistic. In addition, many landlords blacklist tenants who have prior judgments against them in Housing Court. Therefore, eviction frequently results in the loss of a longstanding home, community, friends, trusted doctors, support systems and a place that people can actually afford to live. Even if the impaired litigant is able to eventually find housing, the experience of being evicted is so traumatic that most find it difficult to adjust and start over unscathed.

With this knowledge, this white paper asserts that it is a matter of judicial fairness for the court to ensure that impaired litigants are not further disadvantaged, rendered homeless, or ill-placed as a result of their disability. Judicial systems nation-wide must take a lead in partnering with local adult protective services agencies, governmental or community-based agencies, and/or bar associations to create their own housing GAL Program to protect the rights of this vulnerable population.

This paper is divided into three parts. Part I explores two different alternatives that some in the judicial system have employed in their struggle to respond to the growing number of impaired litigants at risk for eviction, both of which have proven to be inadequate. Part II highlights a unique court-based program in New York City that provides Housing Court judges with a list of trained GALs to advocate for impaired litigants at risk for eviction. Finally, Part III provides concrete suggestions for how to replicate the New York City Housing Court GAL Program. The goal is to highlight the far-reaching impact of having a housing GAL Program in place and provide a roadmap

for replicating the Program, so that other courts nation-wide can develop a similar mechanism to protect mentally impaired litigants from becoming homeless.

Part I. Protecting the Rights of Mentally Impaired Litigants: What Happens When There Is Not a Landlord-Tenant GAL Program in Place

Absent a landlord-tenant GAL Program, judges are left looking for alternative solutions. In 2012, with the assistance of the Office of the Deputy Chief Administrative Judge for Courts outside of New York City, Michael Coccoma, the New York State Courts Access to Justice Program surveyed New York State judges outside New York City (see a copy of the Non-Surrogate Judges: Guardian Ad Litem Appointments survey and results annexed as Appendix “B”). The goal of this survey was to obtain information about judges’ experiences appointing GALs outside of New York City, where there is no separate and distinct housing GAL Program or funding source available to compensate GALs. The survey revealed that when presiding over a case involving an impaired litigant, judges primarily choose from one of the following two courses of action: they either (A) utilize the available statute to appoint a GAL or (B) seek to link the litigant with an attorney who will represent the litigant for free. Both courses of action, by themselves, are problematic.

A. Pursue a Statutory Solution

The court may seek to appoint a fiduciary that could serve as an advocate for the impaired litigant and perform the duties needed to resolve the case in the litigant’s best interests. Unfortunately, many jurisdictions lack statutory authority to make such appointments. In New York State, the Unified Court System’s Guardian and Fiduciary Services Office oversees what is referred to as the PART 36 list, a list of fiduciaries approved and trained to serve the court in various capacities. One of the fiduciaries listed is a Guardian Ad Litem (GAL). When a judge wants to make a GAL appointment in any proceeding aside from New York City Housing Court, they must look to the PART 36 list for names of GALs. GALs appearing on the PART 36 list can be appointed pursuant to the Surrogate’s Court Procedure Act (SCPA) Article 4 or New York State’s Civil Practice Law and Rules (CPLR) Article 12. SCPA Article 4 GAL appointments are limited to Surrogate’s Court while CPLR Article 12 allows for the appointment of a GAL in non-Surrogate proceedings including Civil, Family, and Matrimonial matters. Since the focal point of this white paper is impaired litigants appearing in landlord-tenant matters, I will focus on CPLR Article 12 GAL appointments.

CPLR Article 12 permits judges in any “court in which an action is triable...”¹ to appoint a GAL upon the court’s determination that a litigant is “incapable of adequately prosecuting or defending his rights.”² It is not necessary that the

¹ McKinney’s Consolidated Laws of NY, Book 7B, Civil Practice Law and Rules, Article 12, Rule 1202 (a).

² McKinney’s Consolidated Laws of NY, Book 7B, Civil Practice Law and Rules, Article 12, Rule 1201.

impaired litigant agree with the appointment, although the judge will consider their position when making a determination. The appointment can take place at any stage of the proceeding either *sua sponte* or upon the motion of “an infant party if he is more than fourteen years of age; or a relative, friend, a guardian or committee of the property or conservator; or any other party to the action...”³ A GAL appointment is, by definition, for the duration of the case and their powers are limited by law. GALs have a dual responsibility to the court and the impaired litigant they are appointed to assist. Generally, a GAL’s function is to gather and report information to the judge, advocate in the ward’s best interest,⁴ and secure needed services to successfully resolve the case.

Significantly, exploring a GAL appointment pursuant to CPLR 12 is appropriate where a litigant is deemed impaired but not yet determined to be incapacitated. To this point, a GAL is distinguishable from an Article 81 Guardian. In New York, Article 81 of the Mental Hygiene Law (MHL) provides for the appointment of a Guardian following the determination of a Supreme Court judge (in New York City) or County Court judge (outside of New York City) that an “alleged incapacitated person” (AIP) is incapacitated or the AIP needs an Article 81 Guardian and consents to the appointment.⁵ A finding of incapacity must be based on clear and convincing evidence that “the person is unable to provide for personal needs and/or property management; and the person cannot adequately understand and appreciate the nature and consequences of such inability.”⁶ Appointments are narrowly tailored to the needs of the person determined to be incapacitated. Notwithstanding, an Article 81 Guardian has powers that exceed that of a GAL as they are appointed Guardian of the person, property or both for a duration specified by the court, not just for the duration of the legal case.

At first glance pursuing a statutory solution similar to that offered by CPLR Article 12 may appear to be an attractive solution for a judge seeking to safeguard the rights of an impaired litigant. Yet, for the reasons provided below solely pursuing a statutory solution may be impractical or insufficient.

First, as previously mentioned, many jurisdictions lack statutory authority to make such appointments. Second, where statutory authority does exist, finding a means to compensate GALs for their work may be a problem. CPLR Article 12, Section 1204 states that a court may allow for GAL payment to come from another party to the proceeding or from a recovery received by the litigant appointed a GAL. However, in reality, most litigants facing a landlord-tenant proceeding do not have assets or an ability to pay from their own funds. There are also no settlement

³ McKinney’s Consolidated Laws of NY, Book 7B, Civil Practice Law and Rules, Article 12, Rule 1202 (a).

⁴ Following the appointment of a GAL, the impaired litigant is sometimes referred to as a ward. In this white paper, when possible, I prefer to use the term impaired litigant.

⁵ McKinney’s Consolidated Laws of NY, Book 34A, Article 81, Mental Hygiene Law § 81.02 (a), § 81.04 (a).

⁶ McKinney’s Consolidated Laws of NY, Book 34A, Article 81, Mental Hygiene Law § 81.02 (b).

proceeds or damages to draw from. The court is unlikely to order the landlord to render compensation. As one New York State judge responding to the survey states “[t]he ability to pay a GAL is always a concern... With little assets...[c]ontested matters can cause a problem” (see Appendix “B”).

Many GALs listed on the PART 36 list will occasionally agree to accept a *pro bono* case. However, this is not common practice. Judges responding to the New York State survey note making an effort to remember the names of those who accept *pro bono* appointments, offering them future compensated cases as they arise. They do this as a way of incentivizing GALs to accept *pro bono* appointments and rewarding them for their service to the court. Despite this effort, finding a GAL to accept an uncompensated case remains a challenge. One New York State judge surveyed shares “[t]he absence of compensation for many actions and proceedings renders the benefits and wisdom of the PART 36 illusory at best” (see Appendix “B”).

Third, GALs available for appointment pursuant to an existing statutory authority may lack specific training on the role of a GAL in landlord-tenant proceedings. For instance, in New York State, the GALs that appear on the PART 36 list are available to accept appointments in Surrogate and non-Surrogate Court alike. Yet, the GAL training provided by the Guardian and Fiduciary Services Office is mostly geared toward appointments in Surrogate Court. While this problem is not unsurmountable, it may place the Part 36 GAL appearing in landlord-tenant court at a disadvantage. Housing GAL cases are often complicated and require an enormous amount of time and informed advocacy. Consequently, finding a Part 36 GAL knowledgeable in landlord-tenant matters and willing to take a case for free is particularly difficult.

For the reasons set forth above, pursuing a statutory solution in and of itself is not enough.

B. Find an Attorney

The court can also seek to link the litigant with legal representation. For example, New York State judges surveyed note enlisting the help of the local bar, 18-b attorneys, locally known attorneys, and legal service providers to render *pro bono* work (see Appendix “B”). Yet, there are several reasons why this is also an unsatisfactory option.

First, many *pro-bono* providers restrict services based on income and catchment area. As a result, impaired litigants living over the income limit or in rural areas are unable to avail themselves of legal representation they may otherwise qualify for. Second, some *pro bono* providers or attorneys may not have the social service knowledge or resources to comprehensively assist an impaired litigant with securing needed services. While an attorney can successfully settle a case, if they are not involved in the process of helping an impaired litigant secure needed services or entitlements the litigant may not be able to comply with the negotiated stipulation

and will end up back in court again. Simply providing an impaired litigant with a referral for follow-up is therefore insufficient. Third, a *pro bono* provider may be unable to accept a case that is likely to go to trial. Forth, finding an attorney would not be a viable option in situations where it is clear that the litigant is unable to meaningfully retain the attorney.

Notably, there are also times when an impaired litigant may benefit from having both an attorney and a GAL. For example, when an impaired litigant is uncooperative or difficult and this behavior undermines the attorney's ability to provide effective representation or when an impaired litigant is facing a complicated legal matter that is beyond the expertise of the GAL. In both these instances, an attorney can focus on providing legal representation while the GAL continues to fulfill their dual role to the impaired litigant and the court. This collaboration could work to serve the impaired litigant's best interests.

In sum, simply pursuing an appropriate statutory authority or legal representation are imperfect remedies. Statutory authority provides the necessary foundation for the appointment of GALs to protect this population in ways that an attorney or *pro bono* provider may be unable to. However, standing alone without an available funding source for GAL compensation or specialized training for GALs specifically appearing in landlord-tenant matters, it is ineffective. Similarly, linking an impaired litigant with legal representation may not always be a viable or sufficient option. It follows that the absence of a dedicated housing GAL Program creates a gap in services for impaired litigants facing eviction. As a result, many courts are unable to meet their constitutional mandate to ensure equal justice for all.

Part II. New York City Civil Court, Housing Part, Guardian Ad Litem Program: A Model Court-Based Program

In New York City, all landlord-tenant proceedings are heard in the Civil Court, Housing Part. The Housing Part (also known as Housing Court) is divided into resolution and trial parts and is staffed by 50 Housing Court judges city-wide. When a Housing Court judge needs to appoint a GAL for an impaired litigant, they are able to turn to the GAL Program for names of people who have been specifically trained and vetted to serve as GALs in Housing Court. The GAL Program was established as a means of solidifying the court's role in safeguarding the rights of impaired litigants at risk for eviction. Remarkably, the GAL Program began as an informal need-based initiative. Today, it serves as a model collaborative court-based program worthy of replication throughout the country.

A. History

As early as the 1980s, New York City Housing Court judges began to notice a growing number of impaired litigants appearing in court who were unable to

appreciate the seriousness of the proceeding or follow-through with necessary steps to help themselves. Many of these litigants were at the mercy of a plethora of circumstances and people that could randomly influence their case in one way or another. For example, on the one hand, you might find an impaired litigant who fortunately had an involved family member or kind neighbor to accompany them to court and affirm their deteriorating health to the judge, or an understanding landlord who preferred to work with a social service agency to obtain arrears rather than expect a forgetful and confused tenant to pursue a grant themselves. On the other hand, you might find a shy, clinically depressed, and barely verbal litigant who agreed to an unfavorable stipulation, or an unreliable transportation system that failed to pick up an impaired tenant on time causing them to default on their court date. The lack of a viable procedure to safeguard the rights of these impaired litigants as a whole, left too much to chance.

To respond to this glaring problem, New York City Housing Court judges proactively developed a grassroots referral system whereby volunteers were paired with impaired litigants and became their GAL via court appointment. The first GALs were either attorneys who happened to be present in court when the need arose or sympathetic volunteers from the legal service providers. Since Housing Court judges are not subject to the PART 36 Rules, they were able to follow this informal system for several years. Over time, the New York City Human Resources Administration (HRA) and the New York City Bar Association either volunteered their assistance or were solicited as informal helping agents. HRA, for example, maintained an unofficial list of volunteers willing to accept GAL appointments. While HRA did not train or oversee any of the volunteers on the list, it eventually began to compensate GALs who accepted appointments involving its clients. The court worked hand in hand with such volunteers to instinctively attempt to assist as many impaired litigants as possible.

Recognizing the court's responsibility to this population, in 2000, Justice Fern A. Fisher, the then Administrative Judge of the City of New York and current Deputy Chief Administrative Judge for New York City Courts and Director of the NYS Courts Access to Justice Program, formally took over HRA's list and established the New York City Housing Court GAL Program which is now administered under her leadership. The GAL Program is unique. Outside of New York City, a dedicated court-based program for the appointment of GALs exclusively for landlord-tenant matters does not exist.

B. How the Program Works

The GAL Program is staffed by a Special Counsel with a dual degree in law (JD) and social work (MSW) who coordinates the program city-wide and a special assistant who performs administrative functions that relate to the program. As the Coordinator, the GAL Program's Special Counsel oversees the daily operations of the Program, and remains a resource to judges, GALs, and members of the public in need of guidance concerning GAL-related matters. The Special Counsel also plays

an active role advocating for GALs, frequently acting as an intermediary in securing information for GALs and facilitating communication between GALs and outside organizations; a function that is often instrumental to the resolution of the impaired litigant's Housing Court case.

The following provides a description of how the GAL Program operates:

i. Recruitment

The GAL Program maintains a pool of GALs for Housing Court judges to appoint on behalf of people with mental impairments facing landlord-tenant proceedings. Notably, both attorneys and non-attorneys can serve as GALs in New York City Housing Court. Attorney GALs either have landlord-tenant or social advocacy experience while non-attorney GALs typically have a social work related background. Recruitment of new GALs takes place primarily via the Access to Justice Program's website and other social media and internet sites aimed at attracting volunteers. Word of mouth also plays a significant role as judges, attorneys, and local organizations encourage people who appear well-suited to become a GAL to apply. In its effort to expand the GAL pool, the Program has also partnered with New York City law firms Patterson & Belknap Webb & Tyler LLP and White & Case LLP to train their respective associates to become GALs.

ii. Initial Training

Before a person can be part of the GAL Program, they must first submit an application, successfully interview with the Special Counsel, undergo a background and reference check and complete a specialized training. Prospective GALs are trained by a panel of experts in the fields of legal and social work advocacy and landlord-tenant law. The training is seven hours long, incorporates free CLE, and includes the following segments: "Introduction to Housing Court/What is a GAL?", "Housing Court Nonpayment and Holdover Proceedings", "Adult Protective Services and GAL Work", "Practical Negotiation Tips for GALs", "Short Guide to Emergency Assistance in New York", "Overview of Mental Illness and Engagement Strategies", and "GAL Practical Issues." This selection process and training results in a highly qualified select group of people being added to the GAL list.

iii. How Judges Obtain GAL Names for Appointment

The GAL Program maintains a centralized database of GALs who are available to accept appointments in any of the five counties in New York City. Once a GAL is accepted into the Program, their name is placed on the Housing Court GAL list. Housing Court judges can obtain names of GALs on this list by either using a specialized computer application or seeking names from their supervising judge. Either way, names are provided at random or based on specific experience in accordance with the spirit of PART 36 of the Rules of the Chief

Judge of New York.⁷ Judges have discretion on who they may choose from the names provided. The Program's assistant continuously updates the GAL database to reflect changes in GAL availability and contact information.

iv. Appointing a GAL

A Housing Court judge can appoint a GAL pursuant to CPLR Article 12. Typically, appointments take place when:

1. A judge notices that a litigant's impairment renders them unable to prosecute or defend their rights. For example, a judge may recognize, upon speaking to or observing a litigant, that the litigant appears to be confused, delusional, or severely depressed. A judge may also note that a litigant fails to appear in court or follow-up with social service agencies due to mental health concerns. These are just a couple of examples when a judge may decide to appoint a GAL *sua sponte*, with the consent of the parties or following a hearing.
2. A judge is made aware of the need for the appointment of a GAL by way of motion. For instance, in New York City quite often the impaired litigant is also a client of the Human Resources Administration's (HRA's) Adult Protective Services (APS). New York State Social Services Law Section 473 (1) states:

“...such [APS] officials shall provide protective services to or for individuals without regard of income who, because of mental or physical impairments, are unable to manage their own resources, carry out the activities of daily living, or protect themselves from physical abuse, sexual abuse, emotional abuse, active, passive or self-neglect, financial exploitation or other hazardous situations without assistance from others and have no one available who is willing and able to assist them responsibly.”

If a client of APS is facing eviction in Housing Court, APS will petition, through HRA's Office of Legal Affairs (OLA), for the appointment of a GAL. Alternatively, a landlord can also make a motion if they have notice that a litigant is mentally impaired and cannot advocate for themself.

⁷ See Codes, Rules and Regulations of the City of New York title 22A, ch 1, Rules of the Chief Judge § 36.0, which states: “Public trust in the judicial process demands that appointments by judges be fair, impartial and beyond reproach. Accordingly, these rules are intended to ensure that appointees are selected on the basis of merit, without favoritism, nepotism, politics or other factors related to the qualifications of the appointee or the requirements of the case. ...the appointment of trained and competent persons, and the avoidance of factors unrelated to merit of the appointments or the value of the work performed are fundamental objectives that should guide all appointments made, and orders issued, pursuant to this Part.”

v. APS Involvement and GAL Compensation

HRA uses Title XX federal funds to compensate GALs a flat fee of \$750 upon completion of a case, provided the impaired litigant is also a client of APS. Given the amount of time and effort these cases require, this \$750 flat fee often amounts to *pro bono* service. Yet, this funding remains crucial to the GAL Program's success. Without it, as noted previously, the GAL Program would be unable to attract and retain qualified GALs to perform the work needed.

HRA's legal mandate to serve its client base serves as an incentive for collaborating with the court and allocating necessary funding to compensate GALs. With a GAL on board, APS is able to gain a partner in addressing the needs and protecting the rights of its clients in a comprehensive and efficient manner. The GAL's ability to make court appearances, negotiate with the landlord, gather information and documents, submit Orders to Show Cause, all benefit APS in its effort to take all necessary steps to avoid their client's eviction.

The appointment of a GAL is also consistent with APS' goal to pursue the least restrictive alternative when formulating a service plan for a client. A GAL may be able to secure services that would enable the impaired litigant (an APS client) to remain in the apartment safely, thus avoiding inappropriate placement in a nursing home or other facility.

For GALs, APS involvement means that they will receive compensation and derive the benefit of having increased access to APS' collaborative ties with other HRA departments that facilitate the provision of financial and other concrete social services.

vi. Pro-bono Service

Although the GAL Program's partnership with HRA enables GALs to secure compensation for some cases, a great number of GAL appointments still call for *pro bono* service. *Pro bono* appointments typically involve litigants who, at the time of the Housing Court proceeding, are staying in a nursing home, rehabilitation center, or hospital and are at risk for losing their apartment. These litigants are ineligible for APS services because they are deemed to be in a protected environment outside of the community. Those deemed to have a viable support system are also ineligible for APS services, therefore requiring an appointment without compensation as well.

To address the need for *pro bono* service, the GAL Program requires that all GALs accept at least three *pro bono* appointments a year. Many GALs consistently exceed this requirement year after year. Judges are extremely grateful for this much needed and valuable service to the court. In fact, it is common for judges to offer appointments that carry compensation through APS to such GALs when their names are subsequently provided for consideration. GALs, in turn, understand the long-lasting impact of their work and opportunity to make a difference. One GAL shares "... I don't anticipate that serving as a

Housing Court GAL will meet the full need for even a modest income, but if I fulfill my responsibilities as a GAL, I can do good."

The GAL Program continuously strives to keep to up with the growing demand for *pro bono* appointments. For example, the Program has partnered with NYC law firms such as Patterson & Belknap Webb & Tyler LLP and White & Case LLP for their trained associates to specifically accept *pro bono* appointments.

vii. Rewarding GALs Through Non-Monetary Means

The GAL Program recognizes the significance of the GALs' work and their commitment to *pro bono* service. As such, it makes every effort to reward GALs, through non-monetary means, to acknowledge their value to the court and the impaired litigants served by the Program. For example, every year judges nominate GALs to receive an award for their commitment to *pro bono* service at the annual Pro Bono Award Ceremony, a volunteer recognition event co-sponsored by the New York State Courts Access to Justice Program, the New York State Bar Association, and the New York County Lawyers' Association.

vii. Additional Training

In recognition of the fact that the initial training may only provide GALs with a foundation of knowledge, the GAL Program also provides numerous free supplemental CLE workshops throughout the year to bolster the GALs' skill-set. These workshops commonly address an emerging trend or concern to GALs and enable them to become better advocates. Moreover, by providing free CLE as part of these workshops the GAL Program is able to attract attorneys seeking volunteer opportunities.

C. Role of the GAL in Housing Court

A GAL is a fiduciary who is appointed to safeguard the rights of a mentally impaired litigant who cannot prosecute or defend their rights in Housing Court due to their impairment. Once appointed, a GAL fulfills the function of an advocate and works with the impaired litigant, when possible, the landlord or the landlord's attorney and any outside agencies involved to resolve the legal matter and prevent the litigant's eviction. GALs are also expected to investigate and address the root cause of the Housing Court case to avoid recidivism. Examples of GAL duties include but are not limited to:

- helping an impaired litigant to re-certify for a lost benefit or entitlement
- helping an impaired litigant to apply for a grant to pay the arrears owed
- arranging for a heavy-duty cleaning and preparing the litigant for what this may involve
- generally connecting the impaired litigant with needed social services so that they may be able to safely remain in their apartment
- asking a judge to amend the Answer to include more defenses
- conferencing cases with the landlord's attorney, court attorney, and judge

- negotiating, preparing, and reviewing stipulations of settlement
- asserting facts that can trigger possible defenses or counterclaims
- preparing Orders to Show Cause
- preparing requests for judicial inspection reports and subpoenas
- making oral applications
- sitting through trial, conducting direct examination and cross-examination of witnesses, and delivering opening and closing remarks

It is important to note that while a GAL may be able to advocate for an impaired litigant in a variety of ways, their role is limited by law.⁸ For example, a GAL lacks the legal power to grant access to an impaired litigant's apartment for a heavy-duty cleaning without the litigant's permission. They are also unable to sign on behalf of the litigant to obtain a benefit. This is true even if both actions would enable the litigant to successfully resolve the case and remain in their apartment. Similarly, a GAL cannot surrender an apartment. Finally, once the court case has been resolved, the GAL's role ends too.

Communications between the GAL and the impaired litigant are not confidential. A GAL must be mindful of this fact and clarify for the impaired litigant the difference between their role, as a GAL, and that of an attorney, including the lack of "client-privilege" and their concurrent obligation to report to the judge. The GAL's dual responsibility requires the GAL to share with the judge any information about the case that would be helpful for them to know in considering the GAL's advocacy, requests, and settlement recommendations. At times, the GAL may be judge's only source of information about the impaired litigant's whereabouts, wishes, and ability to remain in the apartment. For example, when an impaired litigant is unable or fails to appear in court. The GAL's dual function also permits them to share any challenges they may be experiencing in resolving the issues presented. Judges are thus able to make informed decisions that fully take into consideration all aspects of the case.

To aid in clarifying concerns related to the role of a GAL in Housing Court, the Deputy Chief Administrative Judge for New York City Courts issues directives and advisory notices to GALs and Housing Court judges, respectively. Directives set forth requirements GALs must follow during the course of their appointment. These requirements aim to ensure GAL accountability to the court and compliance with the law. Advisory notices, in turn, aim to provide judges with guidance on best practices they should follow in overseeing cases where a GAL has been appointed.

Every GAL case is different. To successfully resolve a case, the work involved will always have to be tailored to the myriad of needs presented. Therefore, an effective GAL must think broadly. They must also be creative, engaging, empathic, informed, resourceful, patient and kind. The New York City Housing Court judges surveyed

⁸ 1234 Broadway LLC v Feng Chai Lin (25 Misc.3d 476 2009).

shared the following examples of GAL interventions that, in their opinion, made a difference in the life of an impaired litigant:

- “I had a litigant who was bipolar. She had stopped taking her meds and was suicidal; the kindness and assistance of the GAL made her realize her case was not hopeless, she resumed taking her meds; the guardian obtained a grant for the ward that paid her arrears in full and ended the litigation.”
- “In a HO action, pro [s]e litigant could not express the issues/defenses in a non-aggressive way due to lack of education, frustration and mental disability. GAL, in a quieter setting with less time constraints, was able to get the issues out & clarify defenses, evidence, etc, all of which helped settle the action without an eviction.”
- “I have seen GAL’s coordinate with agencies to deliver services to prevent evictions, including payment of rent and deep cleaning of apartments with hoarding conditions and successfully interpose substantive defenses at trial, which prevented the ward’s eviction.”
- “I can recall an extraordinary case where the GAL was able to end the financial exploitation of the elderly, disabled ward by a third-party and reunite the ward with her family.”
- “The outstanding GAL in this proceeding worked with various agencies to obtain over \$40,000 in outstanding arrears and thus saved tenant from eviction.”
- “[C]onvinced the ward to accept a heavy duty cleaning allowing the tenant to remain in the apartment[.]”
- “It has been my experience on many occasions that a GAL has been able to make someone feel empowered to assert their rights and preserve a long term rent regulated tenancy. When if they were standing alone, due to either their significant disability or lack of an advocate who can access resources on their behalf (such as obtaining legal representation or government benefits), they would have lost “housing of last resort[.]”
- “A GAL was able to coordinate assistance available to the ward in 3 different agencies and to apply for DRIE (something the ward would not have been able to do).”
- “In an access holdover which had been on the calendar for a year before the GAL was appointed, the GAL was able to assist in getting the apartment cleared to facilitate the repair work that was needed and in the process averted an eviction.”

(see Appendix “A”)

D. Benefits of Having a Court-Based GAL Program for Landlord-Tenant Cases

The importance of having a court-based housing GAL Program cannot be underscored. In most landlord-tenant cases involving a mentally impaired litigant the

risk of eviction is high. An impaired litigant not showing up in court, not following through with the terms of a previously negotiated stipulation, not providing necessary documentation or access to an apartment are just a few common examples of situations where, without GAL assistance, the impaired litigant would likely lose their apartment. Yet, with a housing GAL Program in place judges have access to a dedicated group of skilled advocates, who are specifically trained to safeguard the rights of these vulnerable litigants. Once appointed, GALs are typically able to negotiate a favorable settlement and preserve the impaired litigant's long-standing and/or affordable housing.

Having a viable GAL Program also helps the court resolve cases involving impaired litigants in a more efficient and responsible fashion. To this point, 87% of the New York City judges surveyed note that the Housing Court GAL Program improves court efficiency and 89% assert that the GAL Program connects litigants to outside government agencies and community resources and helps cut through bureaucratic red tape (see Appendix "A"). A Housing Court judge's description of a GAL he appointed and subsequently nominated for a *pro bono* award further illustrates this assertion. He shares: "[i]n addition to being highly effective, he is also very efficient, i.e., he doesn't waste the time of either the court or of the parties by chasing after unrealistic outcomes... For example... [he] rescued the rent-stabilized tenancy of a 77 year-old stroke victim by (1) persuading a landlord after a year and a half of litigation to convert a chronic nonpayment holdover into a simple nonpayment proceeding, (2) arranging for the City of New York, which had refused at the outset of the lawsuit to provide any assistance, to pay \$15,000 out of some \$19,000 in rent arrears, and (3) ensuring the tenant's payment of future rent by having her enroll in a program that routed her Social Security payments directly to the landlord."

Through their advocacy efforts, GALs move cases along. A GAL provides the impaired litigant with a "voice" in negotiations and the litigation process, keeps the court abreast of information that may otherwise be difficult to obtain, addresses underlying social service needs to prevent recidivism, and ensures more favorable and comprehensive outcomes. With each court appearance the case advances towards resolution as discussion takes place on how to meaningfully tackle and resolve presenting challenges while still protecting the impaired litigant's rights and preserving judicial neutrality. A Housing Court judge sitting in Bronx County notes "[w]ithout a GAL many are unable to successfully resolve the underlying issues, most commonly nonpayment of rent and nuisance issues like cluttering. The GAL focuses on those issues which is a tremendous help to the litigant and the court" (see Appendix "A").

A GAL appointment can also be advantageous to a landlord. With a GAL in place, a landlord can resolve a case in a fraction of the time that it would otherwise take to settle. Moreover, by addressing any underlying social service issues GALs lessen the likelihood that the case will have to be restored to the calendar or commenced again. Inherent costs and stress associated with ongoing litigation are thereby reduced.

The creation of the GAL Program has led to valuable court innovations. In 2008, the New York County's Integrated Part, otherwise known as Part I, was created as a means of responding to concerns expressed by GALs, Housing Court judges, and Supreme Court judges regarding the many pressures experienced by all involved when an impaired litigant facing possible eviction in Housing Court was also the subject of a Supreme Court, Article 81 Guardianship case. Through the creation of Part I, located in New York County Supreme Court, both cases are combined. An Acting Supreme Court Justice presiding over the combined case is able to resolve the legal matters presented taking into account the litigant's court history, unique circumstances, and needs. Having such a Part allows for consistent handling of the case. It also eliminates the need for an often physically or mentally fragile litigant to go before two different courts, thereby lessening the stress the litigant may be facing. By taking a holistic approach, the judge is able to fashion solutions that aim to address the "root cause" of the existing legal problems and prevent recidivism.

Having a court-based GAL Program in place has also enabled the court to offer training to prepare family members to responsibly accept GAL appointments. Specifically, there are instances when an impaired litigant has a family member willing and able to fulfill the function of a GAL in Housing Court. This can be ideal since family members may be more knowledgeable about the impaired litigant and have a personal investment in seeing that their loved one is protected. Yet, like most lay people, family members may be unfamiliar with the function of a GAL or the court's expectations upon appointment. Currently, New York City Housing Court judges who appoint family members can refer them to take an abbreviated version of the general GAL training. This training allows for family members to accept the appointment knowing what their appointment will require of them, how Housing Court operates, and how to best protect their loved one's rights while negotiating with the landlord. Having a family member who has been previously trained to fulfill the function of a GAL works to the advantage of the impaired litigant. The GAL Program similarly offers the GAL training to legal service provider attorneys, therapists, and social workers seeking to comply with an exception to the established GAL appointment procedure that allows them to be considered for judicial appointment, provided they take the training. These options broaden the number of people available for appointment, thereby promoting judicial efficiency as well.

Programs such as the New York City Housing Court GAL Program ensure that the court is able to play an active role in protecting impaired litigants from becoming needlessly homeless and remain respectful of their dignity as human beings. Since its formal inception in 2000, New York City Housing Court judges have been able to utilize the GAL Program to appoint GALs for over 15,000 impaired litigants facing the possibility of eviction. In 2015, approximately 33% of the judicial requests for GALs were made due to concerns that the litigant was mentally impaired, 16% were due to physical impairment concerns, while 51% were due to both. In addition, over 62% of the people appointed a GAL were age 60 and above.

As one GAL shares “[o]ne of the best parts of serving as a GAL is realizing the value of our work. Not all cases are equally rewarding... but when actions you have taken make the difference between homelessness and longevity in familiar surroundings, your efforts have paid off.” Clearly, replicating a similar court-based program should no longer be a question of why, instead the question should be how.

Part III. How to Replicate the GAL Program

Creating a court-based GAL Program not only improves court efficiency and promotes meaningful access to justice, but it can also potentially change the course of an impaired person’s life. Presently, a great number of people with mental impairments, including seniors, are able to live in the community with needed medical, psychiatric, and/or functional support in place. Yet, when faced with a landlord-tenant proceeding this population is at an increased risk for eviction. Having a dedicated court-based housing program that can specifically respond to the needs of these litigants has become a necessity.

To successfully replicate the New York City, Housing Part GAL Program, a court should take the following steps:

A. Identify or Obtain Statutory Authority for the Appointment of a GAL

Statutory authority will form the basis for a motion to appoint a GAL, including *sua sponte* motions. Where statutory authority for the appointment of a GAL does not exist, legislation should be sought.

B. Identify Appropriate Fiduciary

The function of a GAL may be fulfilled by a differently named fiduciary outside of New York State. Therefore, it is important to identify the name of the appropriate fiduciary according to the relevant statutory authority.

C. Secure Funding

The New York City Housing Court GAL Program runs successfully in part because it has strong supportive funding. As revealed by the New York State judges surveyed, GAL compensation is critical. A court can use its own fiduciary budget to fund a court-based GAL program that includes compensation. Alternatively, the court can absorb the cost of personnel while partnering with a governmental agency or a social service or charitable organization with a mission or legal mandate to serve older adults or impaired litigants. Such an agency or organization could provide for GAL compensation as part of its service delivery costs. Another option is to seek funding from philanthropists. Philanthropists are often interested in investing in programs that have been proven to be successful on a large scale. A combination of any of these options may also prove to be a feasible plan.

D. Choose or Create an Administering Entity

Identifying an office to administer the program is crucial to establishing its legitimacy. Having a department or office within the court is ideal since the program then derives the benefit of being sanctioned by the court. Perhaps an office that oversees the appointment of court fiduciaries already exists. If so, that office may be willing to create a program, in compliance with the established fiduciary appointment process, specifically tailored to meet the needs of impaired litigants at risk for eviction. If not, the office may support the creation of a GAL program that is overseen by another office within the court.

E. Obtain Partners to Support the Program

Partner with an established community and/or government stakeholder, similar to New York City's HRA. Such a stakeholder may be willing to provide social service assistance, in addition to funding, in order to fulfill its own stated mission more easily and effectively. Other possible partners include local law firms willing to allow for their associates to participate in the program and accept *pro bono* appointments as a means of expanding the firm's commitment to *pro bono* service. Finally, Graduate Schools of Social Work may also be interested in partnering with the program in order to offer a new opportunity for their students to meet their field placement requirement working with GALs on social work and legal advocacy matters.

F. Hire Personnel

Hire qualified personnel to carry out the daily operations of the program. The position of Special Counsel/Program Coordinator is best filled by an attorney with knowledge of landlord-tenant law coupled with a Masters in Social Work. While knowledge of landlord-tenant law is clearly important, social workers are trained to work with people in crisis and effectively advocate on their behalf. This dual skill-set would also help to enhance the Program Coordinator's effectiveness in responding to GALs seeking problem-solving assistance, whether legal or social work in nature. A program assistant is also needed to perform daily administrative functions.

G. Establish a Database for Maintaining GAL Names

Create a centralized database that includes the names of all GALs available for appointment for the court to draw from when needed. For example, the New York City Housing Court GAL Program collaborated with the New York Unified Court's Division of Technology (DOT) to create a GAL FileMaker database Application. The GAL FileMaker Application allows Housing Court judges and court attorneys to immediately request and obtain GAL names from the convenience of their computers, while preserving the neutrality and integrity of the GAL appointment process as names are provided randomly or according to specified need. Another benefit to using the FileMaker Application is that it collects data as requests are submitted. The GAL Program is thus able to run reports which provide data concerning GALs, the population they serve, as well as evolving trends. Other software might be available for these purposes.

H. Develop a Strong Training Program

A specialized training program should include segments on landlord-tenant law, the GAL's role, negotiation strategies, mental illness in general, outside resources and partners, and the practical aspect of serving as a GAL in landlord-tenant matters, including obtaining payment and navigating the court. Training could be provided free of charge by court personnel and other stakeholders. Possible presenters include judges, court attorneys, the local bar, legal service providers, governmental agencies, and social work practitioners. Training materials consisting of the presenters' handouts or relevant articles can be incorporated into a manual distributed at the training. It is extremely beneficial to also coordinate for the provision of free CLE as this might serve as an incentive for attorneys contemplating participation in the program.

I. Recruit Volunteers

To recruit prospective GALs, first establish a website. With a program website in place, people are able to easily learn more about the program, the population it serves, the work entailed, and how they can participate. Also, maximize use of social media and internet sites aimed at attracting volunteers and reach out to court personnel. Court personnel interact with local practitioners and advocates and are therefore in an excellent position to encourage qualified people to apply. Other sources of recruitment may include unions whose membership includes retired teachers, professional social work associations, and solo practitioners seeking to expand their legal practice.

J. Screen Volunteers

Establish a screening process to determine who will be invited to participate in the GAL training and ultimately be placed on the GAL list. The New York City Housing Court GAL Program requires prospective GALs to submit a GAL application with their resume and references and participate in an interview. Interviews are important because while many people may be interested in becoming a GAL, not everyone is well suited for this role. An effective GAL possesses a relevant background, interpersonal skills, and genuine interest in helping the population served by the program. Moreover, given the vulnerability of the population served, it is strongly recommended that prospective GALs undergo a criminal background check. The New York City Housing Part GAL Program is able to avail itself of the New York State Office of Court Administration's assistance to conduct necessary background checks free of charge.

K. Provide Incentives for Continued Volunteer Service

It is important to incorporate incentives that promote continued volunteer service. Some examples include: providing continuous free supplemental training relevant to GAL work with accompanying CLE, fostering linkages with community agencies that assist GALs in their advocacy efforts, and providing recognition in the context of an award ceremony or via social media. Expanding the GALs'

skill-set benefits both the GALs and the people served by the program. CLE can be costly so the opportunity to receive free CLE is always welcome. Establishing mechanisms that facilitate the work of a GAL enable them to feel supported and alleviate burnout. Finally, being recognized for hard work boosts morale and provides an incentive to continue volunteering.

L. Institute a Due Process Procedure to Address Complaints About GALs

Every effective program must have a means of addressing complaints. Given the vulnerability of the population served by the GAL Program, it is particularly important to provide a way for addressing concerns regarding the work of GALs. Modelled after Section 36.3 (e) of the PART 36 Rules of the Chief Judge the New York City Housing Court GAL Program's due process procedure allows for judges, litigants for whom the court has appointed a GAL, government or community agency workers, or anyone who may have contact with a GAL to voice a complaint against them. Once a written complaint is received, the Program Coordinator writes a letter to the GAL setting forth the allegations made against them and affording the GAL an opportunity to respond. The Deputy Chief Administrative Judge for New York City Courts/Director, NYS Courts Access to Justice Program will then make a decision based on the GAL's written response, or lack thereof, and information gained as a result of the Program Coordinator's further investigation into the matter. GALs can be removed from the GAL list for cause.

For more information about the New York City Housing Court GAL Program visit: <https://www.nycourts.gov/courts/nyc/housing/GAL.shtml>

The judicial system is charged with ensuring that all litigants receive just results when seeking to resolve a conflict in court. Judges rely upon the law to render decisions based on the facts and evidence presented. Yet, when a litigant before them is impaired it may be difficult to ascertain the facts and secure all evidence needed to make a just decision. In these instances, simply allowing the judicial process to take its course with the hope that justice will ultimately prevail can lead to injustice. The potentially far-reaching impact of GAL advocacy work coupled with the GAL's ability to significantly aid the court in providing equal justice for all, warrants serious consideration of how the GAL Program can be replicated in courts nationwide.

Conclusion

Creating a court-based GAL Program protects mentally impaired litigants, including older adults, from becoming homeless or inappropriately placed in a facility. It provides a needed alternative for the court to pursue when an impaired litigant cannot protect their rights and is either unable to work effectively with an attorney or unable to obtain legal representation that can comprehensively assist with social service needs. It also provides landlords with assistance in moving cases towards resolution in an efficient manner. In sum, by creating a court-based GAL Program the court can play an active and meaningful role in safeguarding the rights of mentally impaired litigants facing

eviction, giving them a fair chance to remain living in their home independently and with dignity.

Appendices

Appendix A - Housing Court Judge GAL Survey

Housing Court Judge GAL Survey

Respondents: 157 displayed, 157 total

Status: Open

Launched Date: 12/04/2015

Closed Date: N/A

1. What County do you sit in?

	Response Total	Response Percent	Points	Avg
Bronx	16	34%	n/a	n/a
Kings	14	30%	n/a	n/a
New York	11	23%	n/a	n/a
Queens	5	11%	n/a	n/a
Richmond	1	2%	n/a	n/a
Total Respondents		47	100%	
(skipped this question)		110		

2. Outside NYC, there is no program that provides GALs for Housing Court cases. How difficult would it be to find GALs to accept cases if the Housing Court GAL Program did not exist?

	Response Total	Response Percent	Points	Avg
Very difficult	32	68%	n/a	n/a
Difficult	11	23%	n/a	n/a
Slightly difficult	4	9%	n/a	n/a
Not difficult	0	0%	n/a	n/a
Total Respondents		47	100%	
(skipped this question)		110		

3. Do you think having the Housing Court GAL Program helps with any of the following? (check all that apply)

	Response Total	Response Percent	Points	Avg
Improves efficiency in the courtroom by having an advocate for the ward	41	87%	n/a	n/a
Connects litigants to outside government agencies and community resources and helps cut through bureaucratic red tape	42	89%	n/a	n/a
Prevents evictions of impaired people	44	94%	n/a	n/a
Provides judges with a pool of GALs trained in Landlord-Tenant law	34	72%	n/a	n/a
None of the above	0	0%	n/a	n/a
Other, please specify	5	11%	n/a	n/a
Total Respondents		47		
(skipped this question)		110		

4. What do you think happens to impaired litigants when no GAL is appointed to advocate on their behalf? (check all that apply)					
		Response Total	Response Percent	Points	Avg
More are evicted	<div></div>	43	91%	n/a	n/a
They are unable to raise appropriate defenses	<div></div>	40	85%	n/a	n/a
The “root cause” of the litigation is not resolved leading to recidivism	<div></div>	29	62%	n/a	n/a
None of the above	<div></div>	1	2%	n/a	n/a
Other, please specify <div>view</div>	<div></div>	1	2%	n/a	n/a
Total Respondents		47			
(skipped this question)			110		
5. Please provide an example of something that you have seen a GAL do that has made a difference in the life of his or her ward.					
Total Respondents				36	
(skipped this question)				121	

Housing Court Judge GAL Survey

Respondents: 157

Status: Open

Launched Date: 12/04/2015

Closed Date: N/A

**3. Do you think having the Housing Court GAL Program helps with any of the following?
(check all that apply)**

1. [No Answer Entered]

2. [No Answer Entered]

3. [No Answer Entered]

4. [No Answer Entered]

5. [No Answer Entered]

6. [No Answer Entered]

7. The efficacy of the program varies greatly from county to county. In the Bronx, GAL's who are part of the program and are willing to take cases are few and far between. To a great degree, this issue arises as a result of APS service rejections. These rejections mean that GAL's must act as unpaid volunteers. Absent a stipend from the City of New York, few GAL's in the pool are willing to accept appointments. As a direct result, the program is not as effective as it is in other counties.

8. The GAL often works with APS to accept the ward as a client.

9. [No Answer Entered]

10. [No Answer Entered]

11. [No Answer Entered]

12. [No Answer Entered]

13. [No Answer Entered]

14. [No Answer Entered]

15. [No Answer Entered]

16. [No Answer Entered]

17. [No Answer Entered]

18. [No Answer Entered]

19. [No Answer Entered]

20. [No Answer Entered]

21. [No Answer Entered]

22. [No Answer Entered]

23. *[No Answer Entered]*

24. I think the GAL program has the potential to accomplish all of its goals. The greatest obstacle I find in the court room is in the disparity of skills presented by the GALs and consequently, their relative effectiveness.

25. *[No Answer Entered]*

26. *[No Answer Entered]*

27. *[No Answer Entered]*

28. *[No Answer Entered]*

29. All of the above are checked with the caveat that, of course, they're not all present in every case, and in some cases none are present.

30. *[No Answer Entered]*

31. *[No Answer Entered]*

32. *[No Answer Entered]*

33. *[No Answer Entered]*

34. *[No Answer Entered]*

35. *[No Answer Entered]*

36. *[No Answer Entered]*

37. *[No Answer Entered]*

38. *[No Answer Entered]*

39. *[No Answer Entered]*

40. *[No Answer Entered]*

41. *[No Answer Entered]*

42. *[No Answer Entered]*

43. *[No Answer Entered]*

44. Enhances access to justice to impaired litigants.

45. *[No Answer Entered]*

46. *[No Answer Entered]*

47. *[No Answer Entered]*

Housing Court Judge GAL Survey

Respondents: 157

Status: Open

Launched Date: 12/04/2015

Closed Date: N/A

4. What do you think happens to impaired litigants when no GAL is appointed to advocate on their behalf? (check all that apply)

1. [No Answer Entered]

2. [No Answer Entered]

3. [No Answer Entered]

4. [No Answer Entered]

5. [No Answer Entered]

6. [No Answer Entered]

7. [No Answer Entered]

8. [No Answer Entered]

9. [No Answer Entered]

10. [No Answer Entered]

11. [No Answer Entered]

12. [No Answer Entered]

13. [No Answer Entered]

14. [No Answer Entered]

15. [No Answer Entered]

16. [No Answer Entered]

17. [No Answer Entered]

18. [No Answer Entered]

19. [No Answer Entered]

20. [No Answer Entered]

21. [No Answer Entered]

22. [No Answer Entered]

23. [No Answer Entered]

24. [No Answer Entered]

25. *[No Answer Entered]*

26. Without a GAL many are unable to successfully resolve the underlying issues, most commonly nonpayment of rent and nuisance issues like cluttering. The GAL focuses on those issues which is a tremendous help to the litigant and the court.

27. *[No Answer Entered]*

28. *[No Answer Entered]*

29. *[No Answer Entered]*

30. *[No Answer Entered]*

31. *[No Answer Entered]*

32. *[No Answer Entered]*

33. *[No Answer Entered]*

34. *[No Answer Entered]*

35. *[No Answer Entered]*

36. *[No Answer Entered]*

37. *[No Answer Entered]*

38. *[No Answer Entered]*

39. *[No Answer Entered]*

40. *[No Answer Entered]*

41. *[No Answer Entered]*

42. *[No Answer Entered]*

43. *[No Answer Entered]*

44. *[No Answer Entered]*

45. *[No Answer Entered]*

46. *[No Answer Entered]*

47. *[No Answer Entered]*

Housing Court Judge GAL Survey

Respondents: 157

Status: Open

Launched Date: 12/04/2015

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5. Please provide an example of something that you have seen a GAL do that has made a difference in the life of his or her ward.

1. In a HO action, pro de litigant could not express the issues/defenses in a non-aggressive way due to lack of education, frustration and mental disability.
GAL, in a quieter setting with less time constraints, was able to get the issues out & clarify defenses, evidence, etc, all of which helped settle the action without an eviction.
2. Advocate on behalf of the tenant with HRA and APS.
Get family members to assist the tenant.
Locate the tenant so they can get assistance from APS
3. A ward was the subject of a holdover proceeding and the ward's attorney had not set a plan regarding whether the ward would return to the subject apartment or stay in a health care facility. With the assistance of the GAL, the attorney confirmed where the ward could live while still receiving necessary medical care.
4. Some GAL's have gone above and beyond, for example, buying groceries for their ward, accompanying them to agency appointments, assisting in applying for Article 78 proceedings helping remove seniors from abusive relationships and searching for affordable alternative housing. Unfortunately those GAL's are few and far between.
5. I have seen GAL's coordinate with agencies to deliver services to prevent evictions, including payment of rent and deep cleaning of apartments with hoarding conditions and successfully interpose substantive defenses at trial, which prevented the ward's eviction.
6. Arranged for cleanings with Adult Protective Services.
7. A succession case in a HUD subsidized building. The GAL at trial was able to establish succession rights and the tenant was able to succeed to his mother's Section 8 subsidy.
8. I can recall an extraordinary case where the GAL was able to end the financial exploitation of the elderly, disabled ward by a third-party and reunite the ward with her family.
9. I had a litigant who was bipolar. She had stopped taking her meds and was suicidal; the kindness and assistance of the GAL made her realize her case was not hopeless, she resumed taking her meds; the guardian obtained a grant for the ward that paid her arrears in full and ended the litigation.
10. The outstanding GAL in this proceeding worked with various agencies to obtain over \$40,000 in outstanding arrears and thus saved tenant from eviction.
11. convinced the ward to accept a heavy duty cleaning allowing the tenant to remain in the apartment
12. On more than one occasion a GAL has been able to obtain rent arrears and home services for their ward to prevent recidivism, thus protecting the tenancy and home of the ward.
13. I have seen a GAL assert defenses on behalf of a ward that prevented the ward's eviction
14. Obtain funds from HRA to prevent eviction.
15. assisted the ward in getting a 1 shot deal which, in turn, satisfied the arrears and the proceeding was discontinued.
16. IT HAS BEEN MY EXPERIENCE ON MANY OCCASIONS, THAT A GAL HAS BEEN ABLE TO MAKE SOMEONE FEEL EMPOWERED TO ASSERT THEIR RIGHTS AND PRESERVE A LONG TERM RENT REGULATED TENANCY. WHEN IF THEY WERE STANDING ALONE, DUE TO EITHER THEIR SIGNIFICANT DISABILITY OR LACK OF AN ADVOCATE WHO CAN ACCESS RESOURCES ON THEIR BEHALF (SUCH

AS OBTAINING LEGAL REPRESENTATION OR GOVERNMENT BENEFITS), THEY WOULD HAVE LOST " HOUSING OF LAST RESORT"

17. Moved for an Art.81 guardian to protect the interests of the ward beyond what a GAL can do.

A positive example is a former GAL that provided services in Staten island. he was able to utilize resources from his previous career and frequently obtain quick relocations for his wards and rehouse them and thus, avert evictions.

18. A recent negative experience I had was in Brooklyn where the GAL lacked a comfortable familiarity with the workings of HRA and was both slow and needed extensive assistance from the Court and extensions from the Petitioner to complete the process of obtaining arrears. Although she ultimately performed her basic function I am reasonably sure that the actual work was performed by APS.

19. I have seen GALs articulate arguments in a cogent manner that their ward would have never been able to do. The trial was a better adjudication of both sides' issues because, if there wasn't a GAL, the Court would have had to parse through all the documents and statements and try to determine the issue. There is no guarantee that this would have happened.

20. I have seen GALs obtain rent arrears for their wards and avoid eviction. Other GALs have successfully advocated for the commencement of Article 81 proceedings on behalf of their wards. Another GAL worked with her ward's family to relocate her ward to another state.

21. A GAL voluntarily took the extra step of advocating at NYCHA to try to have a termination reversed, thus saving a tenancy.

22. Connecting the litigant to resources and listening.

23. A GAL was able to coordinate assistance available to the ward in 3 different agencies and to apply for DRIE (something the ward would not have been able to do).

24. raise objections during trial (in the absence of the ward) to get the case dismissed

25. Cleaning up a Collyers apartment. Obtaining a large amount of arrears to end a nonpayment proceeding.

26. One GAL did extensive research and found a private company (with rates affordable to the tenant) to do a heavy duty cleaning of a tenant's apartment in a holdover case, where Adult Protective Services was not able to provide an outside contractor to do the heavy duty cleaning after multiple requests over a six-month period, saving the tenancy.

27. The GAL worked with APS to do a heavy duty cleaning and a bed bug extermination. The tenant would not have granted access without the assistance of the GAL. The case was resolved without an eviction.

28. GAL's ensure that APS puts in for financial management and heavy duty cleaning as well as provide for health aides and assistance in receiving emergency assistance grants.

29. arrange for APS heavy duty cleaning to avoid eviction on holdover cases, obtain an APS grant or one shot deal to avoid eviction on non-payment cases, assist in getting Article 81 for those in need of additional assistance, again, to avoid eviction. For pro bono GAL's, have been able to determine if respondent is in nursing home or has otherwise vacated, if there are adult children helping impaired person or preventing person from getting help and putting him/her at risk for eviction, eg, or if there are other factors of which court needs to be aware.

30. The GAL was able assist the respondent to secure funds necessary to satisfy arrears due and provide ongoing rent payment through HRA and to get necessary repairs completed by petitioner so that respondent was able live more comfortably in his apartment.

31. In an access holdover which had been on the calendar for a year before the GAL was appointed, the GAL was able to assist in getting the apartment cleared to facilitate the repair work that was needed and in the process averted an eviction.

32. All the GALs in my cases, Ms. DeKay, Mr. Dunn and Mr. Giles, are very conscientious and provide a voice to the wards and connect them to necessary services, albeit it takes a long time to resolve the cases. When APS accepts the cases, very rarely, then the GAL is more enthusiastic, motivated and prompted to write motions which, in one of my cases, lead to the complete dismissal of the case against the ward.

33. Advocate for repairs and be present on the days that repairs were scheduled.
34. Take a look at: 1745 Caton Ave. v Phillippe, Index No. 59620/2011, 48 Misc. 3d 1230 (A), 2015 NY Slip Op 513243(U).
35. I have seen a GAL obtain SCRIE benefits and also complete Section 8 recertifications so that an application for rental assistance can be processed by HRA.
36. Accompany ward to DSS appts and actively reach out to assisted living facilities to find new home for ward

Appendix B - Non-Surrogate Judges: Guardian Ad Litem Appointments

Non-Surrogate's Judges: Guardian Ad Litem Appointments

Respondents: 166 displayed, 166 total

Status: Open

Launched Date: 10/01/2012

Closed Date: 08/31/2016

1. Please indicate the Court you preside over:

	Response Total	Response Percent	Points	Avg
Supreme-Civil	57	81%	n/a	n/a
District	0	0%	n/a	n/a
County	12	17%	n/a	n/a
City	1	1%	n/a	n/a

Total Respondents 70 100%

(skipped this question) 96

2. How long have you been a judge?

	Response Total	Response Percent	Points	Avg
0-5 years	11	16%	n/a	n/a
6-10 years	16	23%	n/a	n/a
11-15 years	14	20%	n/a	n/a
more than 16 years	29	41%	n/a	n/a

Total Respondents 70 100%

(skipped this question) 96

3. non-surrogate GAL appointments in last 5 years

	Response Total	Response Percent	Points	Avg
Zero. Skip to question 7.	28	40%	n/a	n/a
1-10 times	37	53%	n/a	n/a
10-25 times	4	6%	n/a	n/a
more than 25 times	1	1%	n/a	n/a

Total Respondents 70 100%

(skipped this question) 96

4. How did you obtain the GAL appointed? Indicate all that apply.

	Response Total	Response Percent	Points	Avg
I obtained the GAL from the PART 36 List.	35	50%	n/a	n/a
I appointed a family member or friend of the litigant.	12	17%	n/a	n/a
Other. Please specify the source and procedure used to obtain such a GAL.	7	10%	n/a	n/a

[view](#)

Total Respondents 70

(skipped this question) 96

5. In instances where the GAL WAS AWARDED compensation, indicate the funding source for the compensation rendered. You may indicate more than one funding source.

	Response Total	Response Percent	Points	Avg
The adversarial party was directed to pay.	20	29%	n/a	n/a

Other funding source(s),

please specify: view	25	36%	n/a	n/a
Total Respondents	70			
(skipped this question)	96			
6. Please provide examples of up to three (3) different types of legal matters where you have appointed a GAL pursuant to CPLR, Article 12. For example, "...Landlord/Tenant matter."				
Total Respondents	39			
(skipped this question)	127			
7. Have you ever had the need to appoint a GAL but were unable to find one?				
	Response Total	Response Percent	Points	Avg
No.	67	97%	n/a	n/a
Yes. Please provide examples of the challenges presented and any creative solutions pursued to try to address the problem(s). view	2	3%	n/a	n/a
Total Respondents	69	100%		
(skipped this question)	97			
8. Please feel free to add any other comments or concerns regarding the appointments of GALs in cases where a party is unable to adequately prosecute or defend their rights.				
Total Respondents	10			
(skipped this question)	156			

Non-Surrogate's Judges: Guardian Ad Litem Appointments

Respondents: 166

Status: Open

Launched Date: 10/01/2012

Closed Date: 08/31/2016

4. How did you obtain the GAL appointed? Indicate all that apply.

1. [No Answer Entered]
2. [No Answer Entered]
3. [No Answer Entered]
4. [No Answer Entered]
5. [No Answer Entered]
6. [No Answer Entered]
7. [No Answer Entered]
8. I appointed off the counsel for children or 18-B pannel
9. [No Answer Entered]
10. [No Answer Entered]
11. [No Answer Entered]
12. [No Answer Entered]
13. [No Answer Entered]
14. [No Answer Entered]
15. [No Answer Entered]
16. [No Answer Entered]
17. [No Answer Entered]
18. [No Answer Entered]
19. [No Answer Entered]
20. [No Answer Entered]
21. [No Answer Entered]
22. GAL for elderly nursing home resident whose son appeared to be filing papers on her behalf in a contested landlord-tenant proceeding. The Mental Hygiene Legal Service agreed to the appointment due to the circumstances of the possible dementia of the resident.
23. [No Answer Entered]

24. court selection from experienced local bar.

25. [No Answer Entered]

26. [No Answer Entered]

27. [No Answer Entered]

28. I appointed GALs when a person was incapable of understanding the proceedings before me or actively participate in the action after motion practice and appointed a family member or lawyer if no family member was available.

29. [No Answer Entered]

30. [No Answer Entered]

31. [No Answer Entered]

32. [No Answer Entered]

33. [No Answer Entered]

34. [No Answer Entered]

35. [No Answer Entered]

36. [No Answer Entered]

37. [No Answer Entered]

38. [No Answer Entered]

39. [No Answer Entered]

40. [No Answer Entered]

41. I don't recall

42. [No Answer Entered]

43. [No Answer Entered]

44. [No Answer Entered]

45. [No Answer Entered]

46. [No Answer Entered]

47. [No Answer Entered]

48. [No Answer Entered]

49. [No Answer Entered]

50. [No Answer Entered]

51. [No Answer Entered]

52. *[No Answer Entered]*

53. *[No Answer Entered]*

54. *[No Answer Entered]*

55. *[No Answer Entered]*

56. *[No Answer Entered]*

57. *[No Answer Entered]*

58. *[No Answer Entered]*

59. *[No Answer Entered]*

60. My court attorney called around to attorneys who regularly practice in my court to see if he or she would be willing to act as a guardian ad litem.

61. *[No Answer Entered]*

62. *[No Answer Entered]*

63. *[No Answer Entered]*

64. *[No Answer Entered]*

65. *[No Answer Entered]*

66. *[No Answer Entered]*

67. *[No Answer Entered]*

68. Experienced local attorneys who possessed unique or specific experiences necessary to the case- veterans,mentaly impaired litigants, etc.

69. *[No Answer Entered]*

70. *[No Answer Entered]*

Non-Surrogate's Judges: Guardian Ad Litem Appointments

Respondents: 166

Status: Open

Launched Date: 10/01/2012

Closed Date: 08/31/2016

5. In instances where the GAL WAS AWARDED compensation, indicate the funding source for the compensation rendered. You may indicate more than one funding source.

1. case still pending - since it seeks damages, payment is expected from damage award or from parties
2. [No Answer Entered]
3. [No Answer Entered]
4. [No Answer Entered]
5. [No Answer Entered]
6. It was only AFTER the proceeding had finished, the GAL had put in a good deal of time on representation, including quality research (I appointed her to represent a person who was in an unresponsive coma - and had been for ten years - in a matrimonial action), that I found out that there WERE NO available funds to pay her. Since that time, I have only appointed guardian ad litem in foreclosure matters, where the plaintiff is a bank and can pay the fees. This doesn't come up on regular basis, but it is a problem.
7. [No Answer Entered]
8. [No Answer Entered]
9. [No Answer Entered]
10. [No Answer Entered]
11. [No Answer Entered]
12. From settlement of infant's compromise proceeds.
13. [No Answer Entered]
14. [No Answer Entered]
15. [No Answer Entered]
16. Litigant's own funds
17. [No Answer Entered]
18. [No Answer Entered]
19. depends on the case, the funds available,the issues
20. [No Answer Entered]
21. [No Answer Entered]

22. no compensation was awarded.
23. *[No Answer Entered]*
24. in negligence cases from the settlement or judgment or the assets of the incapacitated individual estate. counsel often perform work pro bono
25. *[No Answer Entered]*
26. At this point, the GAL has not been paid because the case is still in litigation. Our plan is to use the County 18-b funding (for other service than counsel) because the litigant has been assigned an attorney through 18-b. If the county fails to pay, the attorney has agreed to treat this as a pro bono case.
27. *[No Answer Entered]*
28. One of the parties.
29. *[No Answer Entered]*
30. Part of Settlement
31. On foreclosure actions, the GAL was paid from the proceeds of the referee's sale.
On the infant settlement action, the GAL was paid from the proceeds of the settlement.
32. Not yet determined. Most likely the plaintiff in the divorce action.
33. *[No Answer Entered]*
34. *[No Answer Entered]*
35. *[No Answer Entered]*
36. *[No Answer Entered]*
37. paid by the person or entity who requested appointment
38. *[No Answer Entered]*
39. Funds held by the beneficiary of the appointment
40. *[No Answer Entered]*
41. I don't recall
42. *[No Answer Entered]*
43. *[No Answer Entered]*
44. N/A
45. *[No Answer Entered]*
46. *[No Answer Entered]*
47. *[No Answer Entered]*
48. marital funds, or no payment

49. I cannot remember except that on one occasion the compensation came from settlement proceeds from a personal injury infant settlement.
50. the person requiring the gal had to pay if possible. often, the gal went unpaid.
51. *[No Answer Entered]*
52. *[No Answer Entered]*
53. *[No Answer Entered]*
54. portion of settlement funds
55. *[No Answer Entered]*
56. funds available to the person needing guardian
57. *[No Answer Entered]*
58. *[No Answer Entered]*
59. *[No Answer Entered]*
60. None of the GAL's I have appointed in Family Court were compensated. I have not appointed a guardian ad litem in any of the cases I have been assigned as Acting Supreme Court Justice.
61. *[No Answer Entered]*
62. *[No Answer Entered]*
63. Overall award, if any
64. *[No Answer Entered]*
65. *[No Answer Entered]*
66. *[No Answer Entered]*
67. *[No Answer Entered]*
68. And specific fund sources.
69. NA
70. *[No Answer Entered]*

Non-Surrogate's Judges: Guardian Ad Litem Appointments

Respondents: 166

Status: Open

Launched Date: 10/01/2012

Closed Date: 08/31/2016

6. Please provide examples of up to three (3) different types of legal matters where you have appointed a GAL pursuant to CPLR, Article 12. For example, "...Landlord/Tenant matter."

1. medical malpractice
2. Foreclosures with missing possible dead landowner.
3. Divorce
Quiet Title
Surrogate matters
4. IT WAS SO LONG AGO, THAT I CAN NOT REMEMBER.
5. Matrimonial actions, personal injury actions
6. custody and visitation
termination of parental rights
neglect
7. matrimonial
8. Infat's compromise proceeding where natural guardian/parent would not cooperate with attorney retained to represent child.
9. personal injury
10. matrimonial
11. Art. 81 MHL (GAL for mentally impaired child)
Personal injury lawsuit
12. Divorce, personal injury
13. landlord tenant matter
14. negligence; property dispute among owners or third parties
15. The litigation referred to above is a custody case where the mother has a diagnosed mental illness which clearly interferes with her ability to understand the proceedings.
16. Family Court order of protection
Matrimonial action
17. 1. Infant Compromise Order
2. Negligence - torts
18. 1. Foreclosures
2. Infant Settlement Action
19. divorce action
20. Negligence case and Matrimonial case
21. forclosure matters

22. Automobile accident, when parent was driver being charged with negligence.
23. Foreclosure; medical malpractice action involving infant; petition for emergency medical treatment by local health care facility
24. FCA Art 10-A Permenacy Hearings
25. Competency hearing, real estate transaction, lead paint litigation
26. Motor Vehicle case
27. Guardianship, Infant settlement
28. matrimonial (divorce)
29. personal injury - parents both had conflicts with the injured children
30. divorce where the party was mentally disabled; foreclosure/eviction/ property litigation with mentally disabled litigant;
31. One appointment in five years in personal injury/medical malpractice case
32. Estate Proceeding
Matrimonial Action
33. Tort litigation
34. personal injury case where although there was an attorney person did not seem competent and there was a conflict with counsel - person spoke mainly Italian and I appointed an attorney fluent in Italian -
personal injury settlement for infant applying Florida law - limited insurance policy - wanted to make sure all avenues for recovery were covered -
35. Custody/ Neglect and Abuse cases/ family offense proceeding
36. mortgage foreclosure
negligence/wrongful death actions
37. foreclosure
matrimonial
mental hygiene Article 81
38. 1) a veteran appearing to suffer with mental health issues in the force action. Appointed a Vietnam veteran attorney.
2) an experienced veteran attorney to assist an apparent mentally disabled property owner in condemnation proceeding with compensation to be paid from the condemnation award.
39. NA

Non-Surrogate's Judges: Guardian Ad Litem Appointments

Respondents: 166

Status: Open

Launched Date: 10/01/2012

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7. Have you ever had the need to appoint a GAL but were unable to find one?

1. In Supreme, was able to secure agreement of parties to pay for GAL. Absent that agreement, action/proceedings were ones in which there were no separate funds or resources subject to authority.
In both Supreme and Family Court, there have been numerous instances in which GAL would been very useful but there are no mechanisms other than parties's agreements for payment. Simply muddle through.
2. funding is always an issue in a divorce case! and often there are no family members or friends to serve for free. The last (current) one I have, I appointed an experienced mat attorney who is on the Part 33 list, and I have made a point of giving this GAL mortgage referee appointments. I've done this for all of the cases where there couldn't be payment - not only on GALs but on 0 estate/asset Art81 guradianships as well.

Non-Surrogate's Judges: Guardian Ad Litem Appointments

Respondents: 166

Status: Open

Launched Date: 10/01/2012

Closed Date: 08/31/2016

8. Please feel free to add any other comments or concerns regarding the appointments of GALs in cases where a party is unable to adequately prosecute or defend their rights.

The law needs to be clarified with respect to the GAL's ability to substitute judgement

There needs to be a funding stream to pay for GAL assignments when the parties have no assets

1. Re question 1 above: I sit in Family Court and am regularly asked by attorneys to appoint GAL for incompetent adults. (I checked Supreme Civil because the survey wouldn't let me exit without checking a box, but there is no box for Family Court Judges. If you are not surveying Family Court judges, you are missing a large part of what should be in your sample).
2. The state should have a fund available to pay GALs in much the same way as the 18-b funding exists for indigent litigants.
3. N/A
4. Uncertainty that GAL will get paid.
5. The new pro bono requirements for newly-admitted attorneys will provide a pool for possible appointment.
The absence of compensation for many actions and proceedings renders the benefits and wisdom of the Part 36 illusory at best.
6. the need for the appointment of a GAL arises in many varied legal proceedings. Many times the appointment is needed on fairly short notice (eg Emergency medical treatment) I have found it good practice to make contact with the contemplated guardian in the first instance, explain the need for the appointment and what it might entail to make sure the persn will accept the appointment at the outset.
7. I am not aware that there is a funding source for GAL's unless the County is supposed to pay and I am not sure whether the County is entitled to be heard.
8. The lawyers in this county have been very giving with pro bono work in appropriate situations.
9. The survey form does not accommodate those of us who sit in both County and Supreme. My recollection is that I have not appointed a GAL in this context. I have appointed GALs in Family Court.
10. Many of the people on the GAL list are of unknown quantities to me. Many on the list do not even appear in my dedicated matrimonial plot. Unless an attorney is personally known to me I will not up quite a name from a list.

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