

THE ROLE OF THE GUARDIAN AD LITEM

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At first glance, acting as a Guardian Ad Litem, "GAL"², seems deceptively easy, but no attorney should accept an appointment unless he/she is prepared to give to the very best of his/her skill and ability in the interest of the minor child. In 2003 the ABA adopted Standards of Practice for Lawyers Representing Children in Custody Cases.³ Anyone accepting appointment as a GAL should be familiar with these standards as well as the particular rules and statutes of his/her jurisdiction. Representing children involves affirmative duties and a fiduciary responsibility to protect or advance the child's best interests. Unlike when representing adults as an advocate, when a GAL is appointed, the "client's wishes"⁴ are not necessarily the primary goal.⁵ When a GAL is required in a case it is, more often than not, because the parties are unable to reach a consensus as to their own child's best interest.⁶ The GAL is then charged with the responsibility of participating in an already volatile situation, with competing interests, while not losing sight of the goal: exposing and advancing the child's best interest.⁷

Traditionally, a GAL is a person, not necessarily an attorney⁸, who stands in the place of the child in a litigated family matter. The GAL has authority only in the context of

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the litigated matter.⁹ The GAL is not, strictly speaking, the child's advocate¹⁰, bound to present to the court the child's wishes or legal position.¹¹ Rather, a GAL makes recommendations in the case, following an investigation, based on his/her view of what is in the best interest of the child. It is error for a court to delegate to a GAL the right to make parenting time decisions.¹² While a GAL should consider the child's wishes and inform the court of those wishes, often times the child is not of sufficient age or maturity to have his/her wishes followed, or, his or her wishes are motivated by factors other than his/her best interest. As stated in one treatise:

The distinguishing feature of [an] attorney appointed as guardian ad litem . . . is that he or she makes decisions in the case based on that attorney's view of what is in the best interests of the client. The attorney need not be bound procedurally or substantively by the child's expressed desires. In this regard, the attorney acts almost as much as social worker as attorney. However, the guardian ad litem should consider the child's wishes and should inform the court of those wishes even when they conflict with the guardian ad litem's position.¹³

As one can see, the GAL stands in a unique and sometimes lonely position.

Statutory Roles & Duties

The representation of children in divorce-related proceedings is not mandated by any federal rule of law, as is the constitutionally mandated representation of children in abuse and neglect proceedings via the federal Child Abuse Prevention and Treatment Act of 1974 (CAPTA). However, state statutes allow for the appointment of a child's

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representative in divorce/custody proceedings. The court may appoint¹⁴ a GAL in a dissolution of marriage, paternity^{15 16 17} and post judgment modification proceedings where parental responsibility, custody, or visitation, are at issue.

Fifteen (15) states have statutes that specifically provide for a GAL in a divorce-related custody or visitation matter: Alabama, Florida¹⁸, Georgia, Hawaii, Indiana, Kentucky, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, North Dakota¹⁹, Rhode Island, Texas, and Wisconsin. Yet only 2 states, New Hampshire and Wisconsin, require a GAL appointment. The decision to appoint is discretionary with the judge in the remaining 13. Five states require the appointment of a GAL when there are allegations of child abuse: Louisiana, Minnesota, Missouri, South Dakota, and Tennessee. Only two other states require the appointment of a guardian ad litem where circumstances so warrant. In Oregon, a GAL must be appointed if requested by the child. In Vermont, a GAL must be appointed if the child is a witness.

Three states offer the court the choice of appointing either a GAL or counsel or both: Alaska, Illinois, and Ohio²⁰. Alabama: Ala. Code 26-2A-52 (1992): At any point in the custody/visitation proceeding, a court may appoint a guardian ad litem to represent the interests of a minor if the court determines that representation of the minor otherwise would be inadequate. It is apparent that the role the GAL is expected to play affects all aspects of the custody case. Therefore, it is imperative that the GAL (as well as the parties

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and the judge) have a clear and complete understanding of his/her role from the beginning. Again, guardians appointed in family cases may have up to three roles in a particular case: attorney for the child, investigator and witness.²¹ The roles each present a different challenge to the practitioner.

As a practical matter, it is important to recognize that initially both parties are enamored with the GAL and appear ready, willing and able to assist the GAL in his/her responsibilities. This is the stage when both parents are courting the GAL and hoping to have the GAL align himself/herself with that parent's position. However, once the report and recommendations is issued, one (and sometimes both) of the parties will fall out of love with the GAL, and what he/she had done or has failed to do, will come under attack. Because a GAL is appointed by the court rather than retained for or by the child, the judge should be given the responsibility for defining the role. As a practical matter, if you have a question regarding the role of the GAL in your case, request a status conference and ask the judge to rule on the GAL's powers, responsibilities or scope of participation, or have the parties stipulate to the role and responsibilities.

Confidentiality & Privilege

Where an attorney is appointed as the child's legal counsel, communications between the child and the attorney are privileged, however, when acting as a GAL the privilege may not apply.²² A GAL's role in a custody case is primarily to serve as an

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advocate for the best interest of the child and act as a neutral fact finder for the trial judge and sometimes the attorney client privilege must give way in furtherance of the best interest.²³

The type of evidence²⁴, or how it is obtained,²⁵ may determine whether the information should be kept confidential. In North Carolina, for example, a medical or mental health provider, a school, or any other agency or professional from whom a guardian ad litem seeks information should provide the information promptly, unless the GAL does not have a court order authorizing him or her to demand confidential information or federal law or regulations prohibit disclosure of the information.²⁶

Attorneys are always subject to the Rules of Professional Conduct²⁷, except when the special duties of a GAL conflict with such rules. For example, an attorney would follow the general conflict rule to determine if there would be a possible conflict of interest if the attorney serves as GAL. But unlike the Rules for Professional Conduct as they apply to confidentiality, there may be times when attorneys serving as a GAL must, in furtherance of their role as GAL, disclose information provided by the child to the court.

Malpractice & Immunity

Most states grant immunity to those serving as a GAL.²⁸ The grant of immunity requires courts to assume that GAL's are doing their jobs.²⁹ Absolute quasi-judicial immunity is afforded to GAL in most states,³⁰ predicated on the idea that the need for an

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independent GAL is particularly compelling in custody disputes, the court concluded that the guardian's judgment must remain impartial and unclouded by the fear of liability to a disgruntled parent.³¹ Immunity is necessary to avoid harassment from disgruntled parents who may take issue with the guardian's actions. Thus, a GAL is absolutely immune from negligence liability for acts undertaken within the scope of the exercise of statutory responsibilities. One court adopted the "functional" inquiry test appropriate to quasi-judicial immunity and granted absolute immunity to guardians ad litem, as one of "various individuals whose adjudicatory functions or other involvement with the judicial process [are] deemed to warrant protection from harassment, intimidation or other interference with impartial decision making."³² Note however, dissatisfied parents may target the GAL because the presumption is rebuttable.

As a practical matter, the best way to shield yourself is to become trained in this specialized area of the law, investigate the case thoroughly, do sufficient pretrial preparation, actively participate in any hearings or trials, ensure the timely progress of the case, get to know the child and follow up on the child's situation periodically. The court may find, for example, that "the proper standard where there are very young children, and the guardian ad litem role predominates, is that liability should attach only if there is a showing that the law guardian failed to act in good faith in exercising discretion or failed to exercise any discretion at all."³³ A guardian ad litem, might, therefore, be held accountable in

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negligence while acting within the quasi-judicial function. A GAL must know the facts surrounding the case and the child's physical, mental, and emotional status.

Ethical Issues

Generally, when a GAL is appointed, he/she acts as the GAL for all the children in the case. While representing siblings does not *per se* create a conflict of interest, a conflict may arise if the siblings want different outcomes in the case.³⁴ The classic example is when siblings have a different preferences regarding who they want to live with.³⁵ Sometimes the preference is motivated by, and, justified because of: 1. different temperaments or interests that are closer to different parents; 2. different developmental stages; 3. the siblings pose a danger to each other, or, 4. special needs of the child that one parent is better able to meet or address. In this case, there is no problem with the GAL serving the best interest of all the children and simply making different recommendations with respect to each child. However, in a case where there is child abuse of one child, but not another child, and one of the children denies the existence of the abuse occurred, or, where there is domestic violence witnessed by all the children but one of the children denies it, there may be a conflict. In such a case, the children may be taking their respective positions because of loyalty to a parent or because of a desire to maintain the family unit. In these cases, the GAL would be forced to take one position or the other, to the detriment of the other sibling. In that case, the GAL should withdraw from

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representing all of the siblings and request the appointment of independent GAL's for each child or alliance of children.

Practice Tips

In family cases the parents, especially in cases where the court has had to appoint a GAL, are so antagonistic towards each other that they spend all their time highlighting the other side's faults. The GAL's main concern should be the child's best interest, therefore, the GAL needs to refocus the energy so that he/she can identify the child's needs. Following are some questions that the GAL can ask during the investigation that highlight positive parenting qualities:³⁶

1. What are the most important things you have taught your child? How was it taught?
2. What is the most important things the other parent has taught your child? How was it taught?
3. What are your plans for the child's education?
4. Which of your child's extracurricular activities are you involved in?
5. Do you and the other parent agree on your child's contact with relatives on both sides of the family after the divorce?
6. What do you think the other parent has to offer the child?

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7. Does your child have any special needs? If so, which ones?
8. Have you noticed any changes in the child since the initiation of these proceedings? If so, which ones?
9. What is your work schedule? Do you work overtime?
10. What is the best custodial arrangement for your children?
11. Have your children expressed a preference to you? What is that preference?
12. What are your plans for the child's religious education and development and how will you implement that plan?
13. What are your greatest strengths and weaknesses as a parent?
14. What are the other parent's greatest strengths and weaknesses as a parent?
15. Do you have any plans to relocate? Do you have any objections to the children being removed from the immediate geographical area?

These questions are intended to go behind the antagonism between the parties and focus on the child's best interest. However, these questions are only the beginning point and the GAL should prepare a list of questions, based on the particular facts of the case, aimed at

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disclosing all necessary information.

Challenging the GAL

As an advocate you may be called upon to cross examine a GAL.³⁷ If the GAL is appointed by agreement of the parties, rather than by selection by the Court, the burden of proof to disqualify the GAL is heavier.³⁸ Remember that an adverse report and recommendations is not a death sentence.³⁹ In Florida the filing to the GAL report does not render it admissible, especially if the report contains hearsay.⁴⁰ Therefore, make sure that you make the proper evidentiary objections prior to the report being admitted into evidence.

It is proper to cross examine the GAL on all aspects of his or her duties and how they were carried out. Once the GAL files a report that is contrary to your client's position, set the GAL for deposition duces tecum and have the GAL provide his/her entire file and notes. You may cross examine the GAL and question whether the GAL:

- had the proper training
- was independent
- conducted an adequate investigation
- meet with the child, (more than once in various settings)
- considered both parents' positions
- had knowledge of the child's cultural and ethnic background

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- showed a bias in favor of one parent (more contact with one parent or his/her counsel than the other
- reviewed the records and reports in the case,
- obtained necessary or appropriate disclosure,
- maintained contact with the child and/or caretakers,
- adequately participated in court proceedings,
- informed the court of important developments
- presented the child's wishes to the court, even when in conflict or contrary to the GAL's recommendation,
- exercised reasonable skill and care in other professional area

GAL Fees and Costs

States vary in the manner in which they provide compensation⁴¹; the order of appointment should make an initial determination as to the compensation, if any, and the responsibility for that compensation. Some states pay an hourly rate, which may differ for time spent in or out of court or whether the case results in termination of parental rights and may include a cap on the maximum rate. Other states pay a flat fee per case or per a "block" of cases. In several states or counties, the GALs are salaried

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employees of either an independent government agency or nonprofit entity that provides guardian ad litem services.⁴² In addition, as in Kansas, some GALs are paid for travel and investigation time, where some are paid only for the time they spend in court. The actual amounts paid by states differ considerably. Reasonable compensation⁴³ reflects the level of seniority and experience of the attorneys and guardians ad litem is critical to ensuring that minors receive comprehensive representation and advocacy.

If you are not appointed as a pro bono GAL make sure that the order appointing you apportions the responsibility for those fees and costs.⁴⁴ Often you will find that once your report and recommendations is filed one or both of the parties will refuse to pay your fees. If the issue of your fees becomes contested, you must prove that your fees are reasonable and that they were all earned in protecting the best interest of the minor child.⁴⁵

Conclusion

Training, both initial and continuing, is critical to serving effectively as a GAL. As important as training is a comprehensive order that clearly and expressly details the role and responsibilities of the person serving as the GAL. During the investigative stage the GAL should meet with the child more than once, in different settings. At least one of those times must be in the home of each parent with the

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parent present. Once the GAL investigates the case, if the GAL recommendation is going to be contrary to the express wishes of the child, the GAL should look to its state court rules, statutes and case law to determine how he/she may resolve the conflict. As a GAL you can attempt to mediate the resolution of conflicts; in doing so be careful that you are not viewed as aligned with one party. Once the report is filed, if the parties do not settle the case and it proceeds to trial, the GAL will face the challenge of being called as a witness and/or defended the report and recommendations. In some jurisdictions, if the GAL is called as a witness, counsel must be appointed; if you serve in one of those jurisdictions, seek that protection. Serving as a GAL, and making a difference is one of the most rewarding jobs. Contact your local legal aid society and reach out to a child, a child that is scared and alone, caught in the maze of the legal process needs and is entitled to a voice in the system.

ENDNOTES

1.

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with the help Marnie Chetek, a law student at the University of Miami, School of Law.

2.

This article addresses the role of the GAL in contested family matters and not in protection cases.

3.

American Bar Association, *Standards of Practice for Lawyers Representing Children in Custody Cases*, 37 Fam.L.Q. 129 (2003).

4.

In Connecticut the attorney appointed for the child may advocate a position different from that of the GAL so long as the trial court determines it is in the best interest of the child to permit such dual, conflicting advocacy. The Rules of professional conduct do not bind an attorney to follow the opinion of the GAL. *Schultz v. Schultz*, 699 A.2d 134 (Conn 1997).

5.

Whenever a GAL is involved in a case the order providing for the appointment should clearly establish the role to be played; if it does not the GAL should seek clarification and/or definition of the role. The court must specify whether the person appointed is to act as a GAL or as an advocate for the minor child; a person cannot act as both. *Betz v. Betz*, 575 N.W.2d 406 (Neb. 1998).

6.

When a GAL is appointed the Court generally subordinates the interests of the parents and elevates those of the child. Generally, in intact families, it is the best interest of the family unit that controls. For example, in an intact family if the primary bread winner was transferred, the "child's desire" to relocate is subordinate. If the relocation is in the context of a divorce, all of a sudden the child is empowered and his/her wishes are taken into consideration and give weight.

7.

Most parents, when immersed in the heat of the battle and longing for an ally to tip the scale in his or her favor, do not realize the danger inherent in having a GAL appointed. When a GAL is appointed the natural risk is that the person acting as the GAL will inject his or her values in determining the best interest of the child. In essence the parents

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surrender their right to parent. As stated by Katharine T. Bartlett, in *Preference, Presumption, Predisposition, and Common Sense: From Traditional Custody Doctrines to the American Law Institute Family Dissolution Project*, ABA Fam. L.Q. Vol. 36, No.1, Spring 2002, "Another criticism of the best-interest standard is that it invites qualitative judgements of parents even though they are not unfit."

8.

See, State Requirements and Qualifications Necessary for Attorney Appointment as Child's Attorney or Gal in Domestic Relations, contained within your materials accompanying this conference.

9.

This distinguishes the GAL, for example, from the guardian of the person, who has responsibility for the ward, which for most purposes is equivalent to that of a parent.

10.

Roski v. Roski, 730 So.2d 413 (Fla. DCA 1999)(a GAL should not act as an advocate.)

11.

42 Am. Jur. 2d Infants § 161 at 152 (1969).

12.

In re the marriage of McNamara, 962 P.2d 330 (Colo. Ct. App. 1998).

13.

A. Haralambie, *The Child's Attorney* at 6 (ABA 1993); accord, e.g., *In re Marriage of Barnhouse*, 765 P.2d 610 (Colo. Ct. App. 1988), cert. denied, 490 U.S. 1021 (1989) (attorney appointed to represent interests of child with respect to custody, support, and visitation in a dissolution of marriage proceeding has the obligation to present all evidence concerning the child's welfare and cannot simply parrot the child's wishes); *In re Boyle's Case*, 136 N.H. 21, 611 A.2d 618 (1992) (guardian ad litem does not act as legal counsel for child, but as party to proceedings).

14.

See, Appointment Laws in Adoption, Guardianship and Unmarried Parent Cases contained within your materials accompanying this conference.

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15.

For example, in a paternity action a GAL shall be appointed and report to the Court at a hearing on the best interest of the child. *Dept. of Health & Rehab. Serv. v. Privette*, 617 So. 2d 305, 309 (Fla. 1993) (if the legal father has established a caring, loving relationship of some years' duration with his legal child, it will seldom be in the child's best interests to be separated from the legal father and judicially mandated to regard a stranger as his or her father).

16.

In a paternity/child support action, a GAL is an officer of the court, and the court stated, and the guardian ad litem's duty is to act within the course of judicial proceedings in furtherance of the child's best interests. *Tindell v. Rogosheske*, 428 N.W.2d 386 (Minn. 1988) (where the GAL was found absolutely immune from negligence liability for acts undertaken within the scope of the exercise of statutory responsibilities.)

17.

In *Gilbertson v. Boggs*, 734 So.2d 123 (Fla. 4th DCA 1999) neither the mother nor the putative father could serve as next friend or GAL to the minor child since their positions were inherently in conflict with the child's possible best interest. As a practical matter, although *Gilbertson* is a paternity case, the same applies to any family law action. In a family case, unlike in personal injury cases, any parent or interested party should never act as a "next friend" or GAL.

18.

In Florida, when appointments are made, the role of a GAL, pursuant to F.S. § 61.401, is to act as a next friend of the child and as an investigator or evaluator, but not as an advocate or attorney. Florida Statutes § 61.403 states:

61.403 Guardians ad litem; powers and authority.

A guardian ad litem when appointed shall act as next friend of the child, investigator or evaluator, not as attorney or advocate but shall act in the child's best interest. A guardian ad litem shall have the powers, privileges, and responsibilities to the extent necessary to advance the best interest of the child, including, but not limited to, the

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following:

(1) The guardian ad litem may investigate the allegations of the pleadings affecting the child, and, after proper notice to interested parties to the litigation and subject to conditions set by the court, may interview the child, witnesses, or any other person having information concerning the welfare of the child.

(2) The guardian ad litem, through counsel, may petition the court for an order directed to a specified person, agency, or organization, including, but not limited to, hospitals, medical doctors, dentists, psychologists, and psychiatrists, which order directs that the guardian ad litem be allowed to inspect and copy any records and documents which relate to the minor child or to the child's parents or other custodial persons or household members with whom the child resides. Such order shall be obtained only after notice to all parties and hearing thereon.

(3) The guardian ad litem, through counsel, may request the court to order expert examinations of the child, the child's parents, or other interested parties in the action, by medical doctors, dentists, and other providers of health care including psychiatrists, psychologists, or other mental health professionals.

(4) The guardian ad litem may assist the court in obtaining impartial expert examinations.

(5) The guardian ad litem may address the court and make written or oral recommendations to the court. The guardian ad litem shall file a written report which may include recommendations and a statement of the wishes of the child. The report must be filed and served on all parties at least 20 days prior to the hearing at which it will be presented unless the court waives such time limit. The guardian ad litem must be provided with copies of all pleadings, notices, and other documents filed in the action and is entitled to reasonable notice before any action affecting the child is taken by either of the parties, their counsel, or the court.

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(6) A guardian ad litem, acting through counsel, may file such pleadings, motions, or petitions for relief as the guardian ad litem deems appropriate or necessary in furtherance of the guardian's function. The guardian ad litem, through counsel, is entitled to be present and to participate in all depositions, hearings, and other proceedings in the action, and, through counsel, may compel the attendance of witnesses.

(7) The duties and rights of non attorney guardians do not include the right to practice law.

(8) The guardian ad litem shall submit his or her recommendations to the court regarding any stipulation or agreement, whether incidental, temporary, or permanent, which affects the interest or welfare of the minor child, within 10 days after the date such stipulation or agreement is served upon the guardian ad litem.

19.

Higlers v. Higlers, 653 N.W.2d 79 (N.D. 2002)(a decision to appoint a GAL for the child is within the trial court's discretion).

20.

Ferrell v. Ferrell, 202 Ohio 3019 (Ohio Ct. App. June 11, 2002)(a GAL's role is to investigate the child's situation and make a recommendation tot he court that he or she believes in the child's best interest)

21.

Rule 8:6 of the *Rules of the Supreme Court of Virginia*.

22.

See, *Ross v. Gadwah*, 554 A.2d 1284 (N.H. 1988)(attorney/client privilege does not apply when the attorney is appointed as *guardian ad litem*). But, see, *Bentley v. Bentley*, 86 A.D.2d 926 (NY 1982)(communication between minor children and *guardian ad litem* in divorce custody case entitled to attorney/client privilege) and, *Deasy-Leas v. Leas*, 693 N.E.2d 90 (ind. Ct. App. 1998)(although there is no established relationship of privilege or confidentiality between the child and the GAL,

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general confidentiality provisions of custody statutes and discovery rules allow a trial court to protect certain documents and communications between them.

23.

Meekins v. Corbett, (D.C. Super. Ct. 2000)

24.

In Florida, although the statute does not address communications between the child and the GAL, the legislature has given guidance with respect to certain documents and information:

61.404 Guardians ad litem; confidentiality;

The guardian ad litem shall maintain as confidential all information and documents received from any source described in s. 61.403(2) and may not disclose such information or documents except, in the guardian ad litem's discretion, in a report to the court, served upon both parties to the action and their counsel or as directed by the court.

See, *Metcalfe v. Metcalfe*, 655 So.2d 1251 (Fla. 3rd DCA 1995)(GAL is entitled to retain information obtained as privileged; cases involving required disclosure pertaining to home study reports do not apply to a GAL's). However, the GAL may waive confidentiality if doing so is in the minor child's best interest. *HRS v. In the Interest of A.N.*, 604 So.2d 11 (Fla 3rd DCA 1992).

25.

In *Otero v. Otero*, 736 So.2d 771 (Fla. 3d DCA. 1999) the court found that the taping of a child's conversation with the non-custodial parent at a neighbor's home occurred accidentally, not intentionally. Thus, the father properly turned over the tape to the GAL and the GAL properly turned it over to the treating therapist. The GAL did not violate state law by not keeping the inadvertently recorded conversation confidential. In *In re marriage of Karonis*, 693 N.E. 2d 1282 (Ill. Ct. App. 1998) the GAL for the children was allowed to listen to tape recordings of the father's telephone conversations with the children which the wife had secretly made.

26.

Mason, J. (1996). Reporting child abuse and neglect in North Carolina. Chapel Hill, NC: Institute for Government, University of North Carolina at Chapel Hill.

27.

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In Wyoming the court acknowledged that the hybrid role of the GAL may excuse him/her of strict adherence to the rules of professional conduct. *Clark v. Alexander*, 953 P.2d 145 (Wyo. 1998).

28.

For example, in Florida, F.S. § 61.405 gives GAL's a special grant of immunity, however, that grant is not absolute. The statute states:

61.405 Guardians ad litem; immunity.

Any person participating in a judicial proceeding as a guardian ad litem shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

29.

In *Penn v. McMonagle*, 60 Ohio App. 3d 149, 573 N.W.2d 1234, motion overruled, 58 Ohio St. 3d 704, 569 N.E.2d 512 (1990), a father filed a negligence action against the guardian ad litem who represented his children during divorce proceedings. Again, the court held that a guardian ad litem was entitled to absolute immunity from legal actions arising out of the performance of his or her duties as guardian. The court specifically rejected the argument that a guardian ad litem should be afforded only qualified "good faith immunity," as opposed to absolute quasi-judicial immunity.

30.

In *Widoff v. Weins*, 45 P.3d 1232 (Ariz. Ct. App. 2002)(GAL appointed in a custody proceeding is protected by judicial or absolute immunity for acts performed in his or her official capacity); *Winchester v. Little*, 996 S.W.2d 818 (Ten. Ct. App. 1998)(GAL was not a "state actor" and was entitled to absolute immunity under federal law from liability under §1983; GAL was entitled to absolute quasi-judicial immunity as to father's state law claims. Additionally, GAL owed no duty to father thus precluding recovery based on a negligence claim).

31.

Short v. Short, 730 F. Supp. 1037 (D. Colo. 1990,) (where the guardian ad litem was charged with negligence in connection with the performance of her duties as guardian. It was not alleged that the guardian had acted outside her role as guardian ad litem, or that she had conducted herself maliciously or in bad faith. Rather, the complaint was predicated

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on malpractice. The court stated that the guardian ad litem functions as an "agent of the court." Unlike court-appointed counsel, a guardian ad litem must render an impartial decision and thus serves as an adjunct of the court.

32.

In State ex rel. Bird v. Weinstock, 864 S.W.2d 376, 382 (Mo. Ct. App. 1993).

33.

Marquez v. Presbyterian Hospital, 159 Misc. 2d 617, 608 N.Y.S.2d 1012 (Sup. Ct. 1994).

34.

In re Clifton B., 96 Cal. Rptr.2d 778 (Ct. App. 2000)(An appointed attorney's joint representation of minors created a conflict of interest that amounted to an ineffective assistance of counsel on the issue of sibling visitation.

35.

A GAL appointed to represent siblings should be alert to potential conflicts and, when appropriate, request that the court appoint a separate GAL for each child.

36.

A. Haralambie, *The Child's Attorney*(ABA 1993).

Green v. Green, 593 N.W. 2d 398 (N.D. 199)(reliance on evidentiary facts in the GAL's report without giving the parties an opportunity to call and cross-examine the GAL and person contacted by him was a reversible error.

O'Neill v. Palmer, 812 So.2d 448 (Fla. Dist. Ct. App. 2002)(where the parties have agreed to the appointment, they have impliedly suggested to the court an agreement of mutual confidence in the integrity of the appointee and the competence expected in the exercise of duties).

In *Patel v. Patel*, 555 S.E.2d 386 (S.C. 2001), Custody award of three children to father was reversed because the GAL favored the father over the mother, contacting father's attorney 19 times and not contacting

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her's attorney at all. The Supreme Court remanded the case for anew custody hearing, on the basis that the ence did not weigh in favor fo either parent, and he untrustworthy opinion of the GAL denied mother due ess. Other cases addressing improper conduct by GAL include: *Habie v. Habie*, 614 So.2d 1116 (Fla. 4th 192); *Bautista v. Kapp*, 703 So.2d 1173 (Fla. 4th DCA 1998); *M.R. v. A.B.C.*, 683 So.2d 629 (Fla. 3rd DCA 6).

Scaringe v. Herrick, 711 So.2d 204 (Fla. 4th DCA 1998).

41.

In order for a state to pay the law GAL's fees, a party must preserve the issue by expressly moving for such during the course of the litigation. *C.E. V. P.E.*, 676 N.Y.S.2d (M.Y. Sup. Ct. 1998)

42.

A practice employed by the Office of the Legal Advocate in Maricopa County, Arizona, the Office of Public Advocacy in Alaska, the Legal Aid Society Juvenile Rights Division or the Lawyers for Children in New York.

43.

Even when ordered to pay, the party paying the fees is entitled to a hearing on the reasonableness of those fees. *C.E. V. P.E.*, 676 N.Y.S.2d (M.Y. Sup. Ct. 1998)

44.

There is no requirement that a GAL obtain prior authorization before incurring necessary expenses in the course of fulfilling the duties imposed upon appointment a GAL who acts in good faith in his or her duty will ordinarily be hindered by the fear that he or she will be charged with expenses and nonpayment for services rendered. *Wacker v. Wacker*, 573 N.W.2D 113 (Neb. 1998).

45.

See, *Cooper v. Kahn*, 600 So.2d 35 (Fla. 3rd DCA 1992)(requiring expert testimony to prove fees and denying an award of fees for time expended collecting fees). If you were appointed as a pro bono GAL, the Court nonetheless has the authority to award fees. See, *Metcalfe v. Metcalfe*, 655 So.2d 1251 (Fla. 3d DCA 1995).

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