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GUARDIANS AD LITEM - LAWS IN OTHER STATES

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You asked that we describe laws in Arizona, California, Florida, and Maryland regarding guardians ad litem (GALs) in the context of family law, specifically regarding responsibilities and accountability of GALs, their training, and immunity from liability. This report discusses both attorneys who represent the child in family proceedings and attorneys and non-attorneys who represent the child's best interests in the proceedings. The terms used to refer to a GAL vary by state.

All of these states have separate provisions regarding GALs and related positions in dependency cases in juvenile law (e.g., proceedings brought about by allegations of child neglect).

SUMMARY

All four states have statutes or court rules specifying when a GAL can be appointed in family court. In Arizona, a GAL must have received training or have experience in the type of proceeding in which the appointment is made. In California, GALs must be mental health professionals in that state. To be initially appointed, the GAL must be a mental health professional who also has 40 hours of education and training in 21 areas and has participated in least four custody evaluations within the preceding three years. After a GAL completes the initial education and training requirements, he or she must complete (1) eight hours of further training in the 21 topics and (2) domestic violence update training. In Florida, a GAL must be an attorney who is a member in good

standing of the Florida Bar or certified by the state's GAL program or a not-for-profit legal aid organization. GALs certified by legal aid organizations must receive training under a statewide training program. In Maryland, the GAL must be an attorney who has completed at least six hours of training in specified topics, unless the court waives this requirement.

In Arizona, an attorney must participate in the litigation as would an attorney for a party. An advisor can testify or submit a report setting forth his or her recommendations regarding the best interests of the child and the basis for these recommendations. In California, a GAL's responsibilities include reviewing documents related to custody, interviewing children and their parents, and consulting with experts to obtain feedback; case review; or access to specific expertise. In Florida and Maryland, GALs can play a similar role and can also participate in various proceedings related to the case and call witnesses.

We have not found any specific provisions in the four states regarding accountability. However, in all four states the court appoints the GAL and it appears that the court is responsible for overseeing his or her conduct.

In Florida, any person participating in a judicial proceeding as a GAL is immune from civil or criminal liability. The other three states do not address liability for GALs in family court. However, a federal district court has held that GALs in California's juvenile courts are entitled to absolute quasi-judicial immunity (*Ward v. San Diego County Dep't of Social Services*, 691 F.Supp. 238 (S.D.Cal. 1988)). The court based its decision on another federal court decision that held that GALs appointed by a family court to represent children had absolute quasi-judicial immunity in their actions of questioning the children, testifying to the court, and providing their reports and recommendations to the court (*Myers v. Morris*, 810 F.2d 1437, 1466-7 (8th Cir.1987), cert. denied 484 U.S. 828, (1987)).

ARIZONA

When a GAL or Attorney May Be Appointed

Arizona's statutes do not refer to GALs in the context of family law, with the exception of one notice requirement. Under an Arizona court rule ([A.R.S. Rules Fam. Law Proc., Rule 10](#)), however, the court may appoint an attorney to represent a child in a family law case or a court-appointed advisor if it finds any of the following:

1. there is an allegation of child abuse or neglect;
2. the parents are persistently in significant conflict;
3. there is a history of substance abuse by either parent or family violence;
4. there are serious concerns about either parent's mental health or behavior;
5. the child is an infant or toddler, or has special needs; or
6. any other reason the court deems appropriate.

The court may appoint an attorney to either serve as the child's advocate or to represent his or her best interests (i.e., a GAL). The court may also appoint a court-appointed advisor, which may be a qualified individual or a non-profit or governmental organization of qualified individuals.

Training

To be qualified, an attorney or advisor must have received training or have experience in the type of proceeding to which the appointment is made, according to any standards established by Arizona law or rule and, in the case of an attorney, as determined by the court. In both cases, the rule does not specify the type of training that is required. The court may not appoint an attorney or advisor from a state or county-funded juvenile dependency roster unless it finds that a child may be the victim of child abuse or neglect.

Responsibilities

The appointment order must clearly describe the terms of the appointment (including its rationale and duration), rights of access, and terms of compensation.

The court must issue an order of access, subject to any conditions it imposes, authorizing the attorney or advisor to have immediate access to the child and any otherwise privileged or confidential information relating to him or her. The custodian of any relevant record must provide access to attorney or advocate. A record that is otherwise privileged or confidential may be released to a person appointed under this rule only in accordance with the law's provisions on confidentiality and privilege.

An attorney must participate in the litigation as would an attorney for a party. An advisor can testify or submit a report setting forth his or her recommendations regarding the best interests of the child and the basis for these recommendations. An advisor may not take any action that may be taken only by an attorney, including making, opening, and closing statements; examining witnesses; and engaging in discovery other than as a witness. An attorney appointed as the advisor may take only those actions that a non-attorney may take.

CALIFORNIA

When a GAL May Be Appointed

California does not have generic GAL provisions in its family law. But, [Cal. Fam. Code Sec. 3111](#), allows the court, in any contested proceeding involving child custody or visitation rights, to appoint a child custody evaluator when the court determines this is in the child's best interests. The evaluation must be conducted in accordance with the standards adopted by the Judicial Council.

Training and Experience Requirements

Rule 5.225 of the California Rules of Court specifies the licensing, education and training, and experience requirements for court-appointed child custody evaluators. Usually, the evaluator must be a licensed psychiatrist, psychologist, marriage and family therapist, or clinical social worker. However, the court can approve an unlicensed person if (1) it finds that there are no licensed evaluators who are willing and available, within a reasonable period of time, to perform child custody evaluations; (2) the parties stipulate to the person; and (3) the court approves the person. Section 2032 of its civil procedure code requires all evaluators to have at least five years of postgraduate experience diagnosing emotional and mental disorders.

Under rule 5.225, before appointment, an evaluator must complete 40 hours of education and training, which must cover 21 topics, including:

1. children's psychological and developmental needs, especially those related to decisions about child custody and visitation;
2. family dynamics;

3. the effects of separation, divorce, domestic violence, child sexual abuse, child physical or emotional abuse or neglect, substance abuse, and interparental conflict on the psychological and developmental needs of children and adults;
4. safety issues that may arise during the evaluation process and their potential effects on participants in the evaluation;
5. when and how to interview or assess adults and children, gather information from collateral sources, collect and assess relevant data, and recognize the limits of data sources' reliability and validity;
6. how to write reports and recommendations, where appropriate; and
7. how to prepare for and give court testimony.

In addition, persons appointed as evaluators must have participated in at least four court-appointed evaluations within the preceding three years. Each of the evaluations must have resulted in a written or oral report. An evaluator participates in the completion of an evaluation if he or she (1) independently conducted and completed it or (2) materially assisted another evaluator who meets specified criteria.

After an evaluator completes the initial education and training requirements, he or she must complete (1) eight hours of update training in the 21 topics and (2) domestic violence update training. The period of time for completing these continuing education requirements depends on whether he or she is newly-trained or experienced.

Responsibilities

The evaluations can include, among other things:

1. reviewing pertinent documents related to custody, including local police records;
2. observing parent-child interaction;
3. interviewing parents together, individually, or both;
4. conducting age-appropriate interviews;
5. observing the child with each parent and siblings;

6. collecting relevant corroborating information as permitted by law;
7. consulting with experts to obtain feedback, case review, or access to specific expertise; and
8. providing the child with an age-appropriate explanation of the evaluation process.

At the beginning of the evaluation, the evaluator must inform each adult party of the purpose, nature, and method of the evaluation. Evaluators must use interview, assessment, and testing procedures that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. Where there has been a history of domestic violence between the parties or a protective order is in effect, at the request of the injured party, the parties must meet with the court-appointed investigator separately and at separate times.

If directed by the court, the evaluator must file a written, confidential report on his or her evaluation. The report must:

1. summarize the data-gathering procedures, information sources, and time spent;
2. present all relevant information, including information that does not support the conclusions reached;
3. describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;
4. only make a custody or visitation recommendation for a party who has been evaluated; and
5. if the evaluator is making any recommendation regarding a parenting plan, provide clear, detailed recommendations that are consistent with the child's health, safety, welfare, and best interest.

The evaluator may also include a recommendation that the court appoint counsel for the child.

At least 10 days before any hearing regarding child custody, the evaluator's report must be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys and any other counsel appointed for the child. The court may consider the report at the hearing.

FLORIDA

When a GAL May Be Appointed

[Fla. Rev. Stat. Sec. 61.401](#) et seq. allows the court to appoint a GAL in an action for dissolution of marriage or for the creation, approval, or modification of a parenting plan if the court finds it is in the child's best interest. The GAL acts as "next friend" of the child, investigator or evaluator, not as attorney or advocate.

The court may also appoint separate people to act as legal counsel or advocate. The court must appoint a GAL in cases involving verified allegations of child abuse, abandonment, or neglect if the court finds them to be well-founded. In either case, the GAL is a party to any judicial proceeding from the date of the appointment until the date of discharge.

Training

A GAL must be (1) certified by the state's Guardian Ad Litem Program or a not-for-profit legal aid organization or (2) an attorney who is a member in good standing of the Florida Bar. Only a GAL with one of these credentials may be appointed to a case in which the court determines that there are well-founded allegations of child abuse, abandonment, or neglect. The law does not require the GAL program or a not-for-profit legal aid organization to train or certify GALs. According to the Guardian Ad Litem program's director, Debbie Irwin, recent appropriations acts have barred it from certifying GALs for family matters until it has provided GALs in all dependency cases where they are needed, a condition it has not been able to meet.

It is a first-degree misdemeanor for any person to willfully, knowingly, or intentionally fail, by false statement, misrepresentation, impersonation, or other fraudulent means to disclose in an application for appointment as a GAL any material fact used in making a determination as to the applicant's qualifications for the position.

Before a legal aid organization certifies a GAL, it must:

1. conduct a security background investigation, which it may use in its sole discretion in determining whether to certify a person; and
2. provide training using the uniform objective statewide training program for GALs developed by the Florida Bar.

The legal aid organization or the applicant must pay for the security background investigation and the training program. These provisions do not apply to GALs who are certified by the Guardian Ad Litem program or who are attorneys.

According to the Guardian Ad Litem program website, www.GuardianAdLitem.org, participants in the program must initially have 30 hours of training and six hours of continuing education each year. In addition, the program requires each GAL to visit and observe dependency court proceedings before appearing in court for an assigned case. Prior to accepting a case with an allegation of sexual abuse, a GAL must complete an additional training approved by the program on the state's "Keeping Children Safe Act."

The program manual, available on the website, describes the training requirements in greater detail. The training program should address such things as:

1. dynamics of families including mental health, substance abuse, domestic violence, and poverty;
2. types of child abuse and neglect;
3. roles and responsibilities of a Volunteer Child Advocate and program staff;
4. communication skills, interviewing techniques, and information gathering;
5. child development;
6. program standards and guidelines;
7. relevant state and federal laws; and
8. writing court reports.

Responsibilities and Accountability

A GAL in family cases must act as “next friend” of the child, investigator, or evaluator, not as attorney or advocate but must instead be acting in the child’s best interest. A GAL’s powers, privileges, and responsibilities include:

1. investigating the allegations of the pleadings affecting the child, and, subject to conditions set by the court, interviewing the child, witnesses, or other person having information concerning the child’s welfare;
2. petitioning the court for an order allowing the GAL to inspect and copy any records and documents, including those of health care providers that relate to the child, parents, or other household members;
3. requesting the court to order expert examinations by health care providers of the child, his or her parents, or other interested parties in the action;
4. assisting the court obtain impartial expert examinations;
5. addressing the court and making written or oral recommendations to it;
6. filing pleadings, motions, or petitions for relief as the GAL considers appropriate or necessary in furtherance of his or her function; and
7. attending and participating in depositions, hearings, and other proceedings in the action and compelling the attendance of witnesses.

If the GAL is not an attorney, the second, third, sixth, and seventh powers must be exercised through counsel.

The GAL must file a written report that 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 before to the hearing where it will be presented unless the court waives such time limit. The GAL (1) must be provided with copies of all pleadings, notices, and other documents filed in the action and (2) is entitled to reasonable notice before either of the

parties, their counsel, or the court take any action affecting the child. The GAL must submit his or her recommendations to the court regarding any stipulation or agreement that affects the child's interest or welfare within 10 days after it is served upon the GAL.

The GAL must keep confidential all information and documents received from health care providers and may not disclose them except, in the GAL's discretion, in a report to the court that is served upon both parties and their counsel or as directed by the court.

Absolute Immunity

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

MARYLAND

When a GAL or Counsel May Be Appointed

A state rule identifies when it is appropriate for a court to appoint a child's counsel. The attorney can be appointed as the child's best interest attorney (the equivalent of a GAL), advocate attorney, or privilege attorney ([Md. Rule 9-205.1](#) (2013)). An advocate attorney provides independent legal counsel for a child, while a privilege attorney participates in a case involving child custody or child access to decide whether to assert or waive, on behalf of a child, any privilege that the child, if an adult, would be entitled to assert or waive.

In determining whether to appoint child's counsel, the rule advises the court to consider the nature of the potential evidence to be presented, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment.

According to the rule, appointment may be most appropriate in cases involving:

1. a request of one or both parties;
2. a high level of conflict;
3. inappropriate adult influence or manipulation;

4. past or current child abuse or neglect;
5. past or current mental health problems of the child or party;
6. special physical, educational, or mental health needs of the child that require investigation or advocacy;
7. actual or threatened family violence;
8. alcohol or other substance abuse;
9. potential termination or suspension of parenting time or awarding custody or visitation to a non-parent;
10. relocation that substantially reduces the child's time with a parent, sibling, or both; or
11. any other factor that the court considers relevant.

Training

Maryland has issued [guidelines](#) for a child's counsel in cases involving custody or access. Under the guidelines, the child's counsel must have at least three years of family law experience or other relevant experience. In evaluating relevant experience, the court may consider experience in social work, education, child development, mental health, healthcare, or related fields.

Unless waived by the court, the attorney should have completed at least six hours of training that includes the following topics:

1. applicable representation guidelines and standards;
2. children's development, needs, and abilities at different stages;
3. effectively communicating with children;
4. preparing and presenting a child's viewpoint, including child testimony and alternatives to direct testimony;
5. recognizing, evaluating, and understanding evidence of child abuse and neglect;
6. family dynamics and dysfunction, domestic violence, and substance abuse;

7. recognizing the limitations of attorney expertise and need for other professional expertise, including from those who can provide information on evaluations and consultations, and to testify on mental health, substance abuse, education, special needs, or other issues; and
8. available resources for children and families in custody and access disputes.

The guidelines recommend that each court require attorneys seeking appointments as child counsel to maintain their knowledge of current law and complete a specific amount of additional training over a defined interval. There are no statewide continuing education rules.

Responsibilities

Under the rule, an order appointing child's counsel must:

1. specify the role the attorney will play;
2. grant the attorney reasonable access to the child and to all otherwise privileged or confidential information about him or her, without the needing a further court order or the execution of a release;
3. permit the attorney to participate in discovery as though the child were a party;
4. provide that service and notice provisions apply as though the child were a party;
5. state any other duties or responsibilities the court requires;
6. state when the appointment terminates; and
7. unless the attorney is serving pro bono, provide for his or her compensation.

The guidelines also describe the responsibilities of the various types of attorneys. In the case of a best interests attorney, it states that the attorney may, among other things:

1. meet with and interview the child and advise him or her of the scope of the representation;
2. investigate the relative abilities of the parties in their roles as parents or custodians;
3. conduct individual interviews with parents, other parties, and collateral witnesses;
4. observe the child's interactions with each parent and other parties, individually;
5. review educational, medical, dental, psychological, or other records;
6. interview school personnel, childcare and healthcare providers, and mental health professionals involved with the child or family;
7. file responses to pleadings and motions;
8. participate in discovery and settlement negotiations; and
9. participate in the trial, including by calling witnesses and presenting evidence and argument, as appropriate.

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