

### Constitutional Rights Violations by the Family Courts and Guardian ad Litem

The history of Guardian ad Litem programs in the United States is founded in a 1974 George McGovern bill designed to provide states with federal funding. This funding was to have been used by the states to provide free or low cost legal representation to minor children in divorce and custody cases, and only extreme cases where both parents have been deemed by a Court to be incapable of parenting and raising their children.

The reason why Guardian ad Litem programs are so very different from state-to-state, is that the federal government enacted these programs and provided the states with funding, without providing corresponding rules or guidelines regarding how these programs should be implemented by the states. As such, the operation of Guardian ad Litem programs is radically different from state to state.

It is perhaps no surprise that the states where the family court system are in a current state of complete break down and dysfunction, with the longest hearing wait times, 80%+ of parents Pro Se, and the largest number of complaints being heard by legislators about family court operations and rulings, are the ones where there are no standards, no monitoring, and no oversight of any kind into how Guardian ad Litem are engaged by the state on a case or operate. (i.e. Connecticut, Ohio, New Jersey, New York.)

In states where Guardian ad litem are closely managed and monitored, they do not have immunity, fees are capped or controlled, Guardian ad Litem are volunteers paid per diem and engaged like jurors, and do not report the Judiciary, there are no problems. There are no long delays for hearings times, and the average cost and length of divorce and custody cases are much lower. (i.e. California, Florida, Maryland.)

There is clearly and direct correlation between how Guardian ad Litem are run, the family court's overall operational performance, and ultimate outcomes for families, children, citizens and taxpayers, between the states.

Returning to the constitutional issue, one of the most troubling aspects of the engagement of a Guardian ad Litem into case is that when this happens, the Court immediately and inappropriately operates under the legal assumption and standard that both parents are incapable, and in fact invalid.

This is in conjunction with the legal standard that the Guardian ad Litem is not only immune, but also deemed *infallible* and far better able to determine and establish what is best for the minor children – than either of the parents, (or both of them.)

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This in spite of the fact that the Guardian ad Litem is a disengaged and disinterested party that typically spends, on average, just a few hours with the children during the course of their engagement, often ignoring family members, and receiving only the most cursory and generic information from teachers, doctors, church leaders and other important people in a child's life. All of this while billing tens of thousands of dollars.

The engagement of a Guardian ad Litem is immediately legally, contractually and constitutionally problematic in that there is no informed consent offered to either parent prior to the Guardian ad Litem being engaged. Further, neither the family court, nor the Guardian ad Litem, offer or obtain valid informed consent from either parent prior to a Guardian ad Litem being formally engaged onto a case, when it becomes too late to question this.

When any other state agency is engaged in a family situation, both parents are offered and given informed consent before any services are provided, in part, so their questions can be listened to and answered. When a Guardian ad Litem is engaged by the family court, there is no contract presented for critical review, no pamphlet explaining what the legal or other implications of the Guardian ad Litem's engagement are, and no opportunity for either parent to ask any questions.

The Guardian ad Litem's services are instead contracted on behalf of the parents by the Court and imposed on both parents without this critical step, a step designed to preserve a parent's and citizen's basic human, civil and parental rights.

Because of this, there is no instruction or guidance offered to either parent in regards to who or what the Guardian ad Litem is and what role they will play in the case. There is no advance notice regarding the dramatic and drastic change in the legal standing of the parents in regard to their rights from a legal perspective when the Guardian ad Litem is engaged.

There is no advance notice provided about the possible risks and hazards associated with a Guardian ad Litem's engagement onto a case, or any opportunity for an examination of their background, history of performance, or qualifications, and perhaps most notably – their costs.

There is no advance notice, or notice of any kind provided to the parents explain the Guardian ad Litem's operational boundaries, what they can and cannot do, what they are obligated to do, the specifics of what they are being asked to do by the Court, what standards of performance are expected by the Court, who to complain to if there is a problem, how to seek correction action if there is concern or dispute, or when or how services will be terminated.

The entire goal and process is steeped in an obvious desire by the Court to impose a Guardian ad Litem onto case as quickly as possible with this critical step, as once this is done, it becomes too late to question any of this and both parents are often permanently locked into accepting the Guardian ad Litem's services and costs, no matter what they may ultimately result in or be.

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The Judiciary may claim that all of this information is readily available for the asking, or on a web site, or that the obligation to explain all of this resides with the parent's counsel. However, this is often explained and presented when it's too late and when the Guardian ad Litem has already been engaged – it is not explained at the very start of a divorce or custody proceeding.

This written information is also sorely lacking in explaining all of the dimensions and depth of control the Guardian ad Litem is assigned as they are interjected between the relationship a parent has over their own child, or the very close association and professional relationships between Guardian ad Litem, the attorneys engaged on a case, and the Court itself, in states where Guardian ad Litem are predominately also family law attorneys.

We also have the problem and issue where many family law attorneys are themselves part-time Guardian ad Litem, and many sitting family court judges also used to be Guardian ad Litem. As such, there is powerful incentive to engage a Guardian ad Litem onto a case as quickly and easily as possible. In part, because the attorneys this is the only means by which a Court would ever grant a change in custody, in part because the judges routinely outsource their judicial authority to Guardian ad Litem, as this was the norm and what was granted to them when they were Guardians ad Litem.

This lack of informed consent and deprivation of basic human, civil, parental and contractual rights sets off a chain reaction that persists throughout the remaining divorce and custody proceedings. In stark contrast, in criminal court, people and citizens enjoy the protection of Miranda rights – basic civil and due process rights are not afforded to parents in the family court, or they are immediately and completely stripped of them as soon as a Guardian ad Litem is assigned.

It is important to remember, that these actions are routinely being imposed on parents and average, normal people and individuals experiencing and being subjected to nothing more than a dispute, and approaching the Court when they have no other option or alternative, and for some kind of resolution and closure.

Parents who find themselves in the family court are not there because they want to be there. They are not criminals and very seldom, if ever, are guilty of any crime. Yet the family court system treats them as worse than criminals. This blatant violation of the basic civil rights and rights to due process and individual liberties and freedoms, becomes very hard to rationalize or comprehend, except in the context of being convenient to the Court.

### CIVIL RIGHTS VIOLATIONS

Parents are not informed in advance that though the parents are paying for their services, and a Guardian ad Litem may be an attorney, that the Guardian ad Litem has no obligation to keep anything a parent may tell them privileged or confidential. As such, parents are not informed that anything they may relate to a Guardian ad Litem can be used against them in Court as a

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means to impact their custody of their children. Because of this, parents are not made aware that whatever they may tell a Guardian ad Litem, can be used as testimony against them. This immediately creates a violation of Fifth Amendment rights, as the parent is unaware that they may be testifying against themselves.

Parents are not made aware that this extends into any written information they may provide to a Guardian ad Litem, and often requested by the Guardian ad Litem. This is especially concerning and troubling when the Guardian ad Litem seeks access to a parent's or child's personal medical and/or mental health records. Highly sensitive documents whose information can also be used against a parent by a Guardian ad Litem, without an opportunity for objection once they have been provided to the Guardian ad Litem.

Guardian ad Litem often present parents with HIPAA authorization forms to obtain this information from medical services providers – with parents not realizing or being told that Guardian ad Litem are not mandated to keep such information confidential or privileged in any way. Parents sign these forms believing that they have the same protections in place as when they sign these forms at their doctor's office – but this is not true.

Parents are not made aware that a Guardian ad Litem are not under any obligation to keep what otherwise be federally protected information provided to them, or which they may obtain from releases the parents are asked (or forced and ordered to) sign confidential in any way, and that the Guardian ad Litem may keep and retain such records and information as long as they wish. There are no controls or limitations around a Guardian ad Litem sharing information from obtained from a parent's therapist with their child's pediatrician, or vice versa, for example.

Paradoxically, Guardian ad Litem are under no obligation to consider, accept, rely on, or to even report to the Court the findings of other professionals who may be engaged with the parents or children in a case, regardless of their tenure on a case or whatever professional conclusion and determinations they may have already made.

This creates a situation where a Guardian ad Litem has a personal incentive to bill time in order to "investigate", when such investigations have already been conducted and concluded by professionals with formal backgrounds and training around the investigations being conducted.

As an example, Guardian ad Litem will often ignore, instead of report to Court and rely on, findings of unsubstantiated abuse determined and established by child protective service agencies, or child therapists, or doctors and pediatricians. Instead, the Guardian ad Litem will often find cause to deny one (and almost always just one) parent access to their children solely based on their own personal beliefs or bias against a parent.

This often results in an extremely troubling situation where a parent's right to see their children (as well as the child's internationally recognized right to see their parent), is denied without any

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independent justification, basis, reason or cause – aside from the Guardian ad Litem’s own personal perception and conjecture.

This is further troubling when placed in the contact that the Guardian ad Litem make these kinds of life-altering determinations based solely on their own personal opinion, independently, and with and with no critical oversight, or managerial checks and balances, having only spent a few hours with the child and the families, and often completely ignoring and not listening to what the parent targeted and adversely impacted may have to offer or say.

This is sharp contrast to services provided by child protection agencies, who spend dozens, if not hundreds of hours performing their case work working directly with a child and all of their family members, in a professional manner, often using a team approach so no one individual has complete control, and requiring managerial signoffs prior to any determination being made. The quality of work product being far greater, at a fraction of the cost to what the Guardian ad Litem may have billed for their completely duplicative “investigative” effort.

Guardian ad Litem and family courts have no statutory grounds to make medical determinations or typically any cause to order medical procedures. Yet Guardian ad Litem routinely “recommend” that both parents and the minor children are immediately engaged in individual or joint therapy.

This regardless of the cost or ability to pay for these services, or any consideration given to the time away from work the parents will be burdened with to comply with such recommendation. This even though no indication of any kind or validation from any source, most notably the parent’s or child’s physicians, that such medical services would be beneficial or required. The Courts, automatically order these services, again assuming that both parents are incapable and invalid.

This has been recently even further extended to include and force the parents to engage in: anger management therapy, when “anger” is not deemed to be a medical or mental disorder by the medical profession, or anything which needs to be and can be “cured.” Co-parenting therapy, when forcing the parents to work together when their relationship has irrevocably broken down and they have often already spent years in court, has the predictable results and almost always serves solely to inflame, rather to resolve issues between the parents and impacting the minor children. Conflict management, with the same flawed intent.

All of the above “therapies” mandated and forced onto the parents having no scientifically proven benefit behind them, no studies proving their effectiveness, no report establishing a benefit of any kind in a divorce or custody case. And yet all of these substantially adding to the cost and length of a divorce and custody case, as most of these services are not covered by health insurance – and directly and adversely impacting the parents and children given the time away from work and school all of these mandates “therapies” require.

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Therapies which mirror the engagement of a Guardian ad Litem onto a divorce or custody case in that these therapies are initiated with no defined aim or goal, no plan, no measurement of success or failure, no definable end point, and allowed to continue forever or the parents be found to be defying the Guardian ad Litem's recommendations and be found in contempt of Court.

There is perhaps no more horrifying experience than an individual being forced to undergo and invasive medical procedure they do not require, at a cost they cannot possibly afford, and yet this is the exact scenario Guardian ad Litem's and the family courts force onto parents – as well as children. In effect, manufacturing trauma for the parents as a means to justify the engagement of mental health services in a self-serving pattern of parental abuse. The parents are deemed "guilty" and in dire need of services, even though they are not guilty of any "crime."

In many ongoing and so called "high conflict" cases, it is not uncommon for a parent to have complied with the Guardian ad Litem's recommendation and the court's orders to engage in therapy, even to their own extreme financial and other detriment but in order to please the Court, been told by a therapist that they no longer need therapy, and yet face a mandate to comply and face the exact same generic recommendation of a "need to engage therapy" the next time they find themselves in Court.

This process is further exacerbated when Guardian ad Litem's demand, and family courts order, parents to hand over their medical and very personal psychiatric records to the Guardian ad Litem. Records which the Guardian ad Litem will then share the details of with opposing counsel and describe in open court.

This reflects a monumental violation of medical privilege and patient confidentiality. In addition, this action defats the entire basis of success therapy which is grounded on the strict need to maintain patient-doctor confidentiality. Once this is violated by the family court and Guardian ad Litem, any corresponding benefit of the therapy sessions is also defeated and the expenditure wasted. It is inexcusable that the family court either ignores or does not appreciate the extremely harmful nature of what forcing parents to sign releases and hand over medical records has on them. Or the trauma caused when parents are found in contempt for not doing so – and this is used a basis for keeping their children from them.