

## GUARDIAN AD LITEM ISSUES

### Background & Analysis:

A guardian ad litem (GAL) “is appointed by the court to represent the best interests of a child in a [legal] proceeding.” §39.820, Florida Statutes. The Florida Rules of Juvenile Procedure grant specific authority to appoint a GAL in dependency cases (Fla. R. Juv. P. 8.215), delinquency cases (Fla. R. Juv. P. 8.170), and in CINS/FINS cases (Fla. R. Juv. P. 8.617). Likewise, a court may appoint a GAL in a domestic relations case pursuant to §61.401, Florida Statutes. Additionally, the court may appoint an attorney ad litem pursuant to Fla. R. Juv. P. 8.217 to represent any child alleged to be dependent.

Appointment of a GAL by the court is required in certain cases. “A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect” case. §39.822 (1), Florida Statutes. The court is also required to appoint a GAL in domestic relations cases “which involve an allegation of child abuse, abandonment, or neglect as defined in s. 39.01, which allegation is verified and determined by the court to be well founded....” §61.401, Florida Statutes.

Regardless of the type of proceeding or proceedings for which a GAL is appointed, the purpose is always to represent the best interests of the child. If the court believes that the best interests of the child will be served by dually appointing a GAL, then the practice clearly comports with the law and its intent.

For a GAL to effectively represent the best interests of the child, the GAL must be impartial. In M.R. v. A.B.C., 683 So. 2d 629, 631 (Fla. 3d DCA 1996), where the guardian in a paternity case was simultaneously confronted with his own paternity action, the court found that, “the child is entitled to the services of an impartial guardian ad litem.” Even the appearance of a conflict of interest should be avoided. Should a conflict arise between the child and the GAL, the court or the GAL himself should consider and move for the appointment of an attorney ad litem. The appointment of an attorney ad litem, as provided for by Fla. R. Juv. P. 8.217.

It is interesting to note that in M.R. v. A.B.C., the court said, “The guardian ad litem who was chosen had previously served as the guardian ad litem for the children during the divorce proceeding between M.R. and I.R. Consequently, it was a logical step to employ the same guardian ad litem for the paternity action.” Id. (emphasis supplied)

Frequently, the impetus to dually appoint a guardian starts with the GAL programs themselves. For example, in a dependency case, once appointed, the GAL may seek appointment in a related criminal proceeding or domestic relations proceeding. This is both logical and efficient since the goal of the best interest of the child will be the same in all cases. At a time when the GAL programs across the state have limited resources and a shortage of volunteers, dual appointments are both practical and efficient.

An added benefit of a GAL serving in multiple proceedings is that it can help enhance communications among the parties, which should lead to improved decision making and greater efficiency. One of the greatest benefits is that the actions in each proceeding will tend to be more child-friendly/sensitive and treatment oriented, rather than punitive.

Utilizing a GAL and her report in both dependency and domestic relations cases is possible, but with regard to the report, one should be mindful of matters of confidentiality under Chapter 39. To deal with this, a GAL could create individual reports that address the necessary details of each case instead of using an identical report for each case. Training of GALs on these issues would help to ensure that the confidential report in a dependency case would not be used in a domestic relations case in a manner that raised concerns of breach of confidentiality.

Additionally, with respect to the GAL’s report, situations may arise that raise the specter of ex parte communications. Typically, a GAL report in a dependency case is filed with the court, such as for a Judicial Review hearing. In a domestic relations case, however, the GAL’s report is usually only accepted by the court by stipulation of the parties. To deal with this issue, at the time of appointment the court should make clear the manner in which the report of the GAL will be used or received in each case.

Courts are never bound by a GAL report, but may use them for guidance and give weight to them as is deemed appropriate.