

CHAPTER FIVE – DUTIES OF THE ATTORNEY GUARDIAN AD LITEM

As an Attorney GAL, you are charged with representing the best interests of the child. 29 Del. C., § 9007A(c) sets out the AGAL's statutory duties. In addition, 13 Del. C. § 722(a) sets forth the factors which the Court considers in making a best interests determination. A copy of the best interests statute is located at Tab 7. Any recommendations to the Court should specifically include factual evidence detailing:

1. The wishes of the parents;
2. The wishes of the child;
3. The interactions and relationships between the child and his parents, grandparents, siblings, significant others, foster parents;
4. The child's adjustment to his or her home, school and community;
5. The mental and physical health of all individuals involved;
6. Past and present compliance by both parents with their rights and responsibilities to their child under 13 Del. C. § 701. Parental responsibilities is also defined at 13 Del. C. § 1101(10);
7. Evidence of domestic violence as provided for in 13 Del. C., Ch. 7A; and
8. The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

Who do I interview? What records do I review?

In order to gather the necessary evidence to answer the above questions, an AGAL should begin by interviewing the child. Several publications on interviewing children are available. The *Handbook on Questioning Children* by Anne Graffam Walker is most helpful and is available at the OCA office. Some tips for talking with children are included at Tab

18. For ethical issues regarding an AGAL's relationship with the child, please see Chapter 6. Also, if criminal charges are pending where the child is the victim, the AGAL should refrain from interviewing the child regarding those circumstances and instead should request that a forensic interview be completed by the Children's Advocacy Center (CAC). See the CAC website at <http://www.cacofde.org> for more information.

The AGAL should also interview the biological parents, the foster parents, school teachers, daycare providers, relatives, counselors, and pediatricians. The AGAL should collaborate with the DFS social worker and other professionals involved with the child. Each one of these contacts may lead to further contacts such as friends, pastors, prior foster parents, an educational surrogate parent or distant relatives. In addition, the home where the child resides, the home where the child previously resided, the school and the daycare should be visited. Observations of visits between the child and his or her biological parents should be made.

The AGAL should review the DFS file and continue to do so on a regular basis. OCA will initially obtain the DSCYF file for you. **However, you should then obtain regular updates from DFS as well as any other service providers.** You also should obtain the child's pediatric records and birth records, if relevant. (One reason they may be relevant is to determine if the child was born cocaine or opiate positive). You should also obtain the child's school records and make regular contact with school personnel. All of these records may be obtained by simply sending a letter to the provider with a copy of the Court Order of Appointment. Sample letter requests are located at Tab 34. Drug, alcohol, and mental health providers will likely also require a consent signed by the parents or a

specific court order regarding those records which meet the requirements of 42 USC § 290DD-2 and 42 CFR §§2.61-2.64. A consent form for drug, alcohol and mental health providers is located at Tab 35. A sample motion for release of these records is located at Tab 36.

While you are not responsible for coordinating services for the parents, to the extent that the prompt involvement in services will benefit your child client, you should have input. For example, if there are allegations of domestic violence, it benefits your client for the parents to promptly engage in anger management and/or domestic violence counseling.

A relationship should be established with the child client. No matter how young a child is, if time is spent with the child, the child will likely be able to communicate his or her wishes to the AGAL. *The Child's Attorney* by Ann Haralambie is an excellent resource for determining what steps to take in making a best interests determination, although § 722 does set out a general framework of inquiry.

At Tab 17 is a checklist which sets out what possible inquiries, interviews, and records you should be obtaining during your representation. Sample letters for record requests can be found at Tab 34. It is your obligation, on behalf of the child, to take a proactive approach in these matters, and to ensure that the Court is getting the information it needs to make a decision which is truly in the best interest of the child.

Once the AGAL has gathered the necessary evidence, the AGAL is in a position to make recommendations to the Court, and should do so at every Court proceeding. How this is done given the inherent conflicts between attorney and AGAL roles, is discussed in the next chapter.

In addition, the AGAL should be advocating for

whatever his or her child client needs, whether it be counseling, visitation with siblings, after school activities, new shoes, etc. The AGAL must also be advised of any changes in placement, and must take an active role to ensure that changes in school, living arrangements, daycare or visitation is in the child's best interests. 13 Del. C. § 2521 requires DFS to provide reasonable notice to the AGAL prior to any changes in placement, educational settings, or medical circumstances. The AGAL should be included in decisions regarding same, and should take whatever action is necessary to protect the best interests of that child. Remember, you are this child's voice. Without you, unilateral decisions will be made about this child that may or may not be best for him or her.

What if the child's expressed wishes differ from what the AGAL believes is in the child's best interests?

Under the statute, 9007A(c)(14) requires the AGAL to not only make the child's wishes known to the Court, but also to alert the Court if the child's expressed wishes differ from the AGAL's position on best interests.

Depending on the age of the child, the Court may appoint an attorney to represent the child's expressed wishes. This decision is largely governed by the Supreme Court decision of *In re Samantha Frazer*, Del. Supr., 721 A.2d 920 (1998).

If your ultimate recommendations to the Court will be different than the expressed wishes of the child, you have an obligation to alert the Court of the conflict. The Court will then make a determination as to what your proper role will be, and whether additional representation is necessary. If this situation occurs, please contact OCA to discuss it prior to requesting the Court to appoint an additional attorney for the child.