

CHAPTER FIVE – DUTIES OF THE ATTORNEY GUARDIAN AD LITEM

As an attorney GAL, you are charged with representing the best interests of the child in any child welfare proceeding. 29 Del. C., § 9007A(c) sets out the GAL'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 19. 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, a GAL 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. For ethical issues regarding a GAL's relationship with the child, please see Chapter 5. Also, if criminal charges are pending where the child is the victim, the GAL should refrain from interviewing the child regarding those circumstances and instead should request 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 GAL should also interview the biological parents, the foster parents, school teachers, daycare providers, relatives, counselors, and pediatricians. The GAL should interview 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 GAL should review the DFS file and continue to do so on a regular basis. The OCA will initially obtain the DFS 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. A sample letter is located at Tab 16. Drug and alcohol 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. Copies of several releases from local drug, alcohol and mental health providers are located at Tab 10. A sample motion for release of these records is located at Tab 11.

While you are not responsible for coordinating services for the parents, to the extent that the prompt involvement in services will benefit your child, 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. 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 GAL. *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 13 is a checklist which sets out what inquiries, interviews, and records you should be obtaining during your representation. Sample letters for record requests can be found at Tab 16. 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 GAL has gathered the necessary evidence, the GAL 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 GAL roles, is discussed in the next chapter.

In addition, the GAL should be advocating for whatever this child needs, whether it be counseling, visitation with siblings, after school activities, new shoes, etc. The GAL must also be keenly aware 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. Family Court Rules 211(b) requires DFS to provide reasonable notice of any changes in placement as does 29 Del. C. § 9007A(c)(9). The GAL 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 GAL believes is in the child's best interests?

Under the statute, 9007A(c)(14) requires the GAL 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 GAL'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.

PLEASE REMEMBER TO KEEP TRACK OF THE TIME YOU SPEND ON EACH CASE AND PERIODICALLY FORWARD IT TO OCA SO THAT WE CAN ACCURATELY DOCUMENT THE PRO BONO EFFORTS OF OUR ATTORNEYS. ALSO, PLEASE REMEMBER TO NOTIFY US UPON CONCLUSION OF YOUR CASE SO THAT WE MAY UPDATE OUR RECORDS.