

Answering your questions about guardians ad litem in family court

Introduction

Deciding how your family will be restructured to best meet the needs of your children during and after divorce is perhaps the most important decision you, as a parent, will make. Legal custody, physical placement, and child support issues must be decided to ensure that your children's needs continue to be met. "Legal custody" means making major decisions affecting your children, such as medical care, education, and religion. "Physical placement" means the amount of time your children will live with each parent. "Child support" means providing for your children's financial needs. If parents have disagreements, they must participate in mediation to help them resolve issues.

Parents sometimes are unable to agree on these issues, even with the help of a mediator. When this happens, the judge will appoint a guardian ad litem (GAL) to assist the judge in making custody, placement, and support decisions.

This brochure answers commonly asked questions about the guardian ad litem's role in the divorce process.

What is a guardian ad litem (GAL)?

A GAL is an attorney, licensed to practice law in Wisconsin. The GAL's role is to represent the best interests of the children as determined by the GAL through an investigation.

The GAL will investigate the facts, participate in negotiations, and take a position in court on legal custody and placement. The GAL also may become involved in the financial issues of a case when those issues affect the children. The GAL does not have any of the rights or duties of a parent or general guardian. Although the GAL may be incorrectly referred to as the children's attorney, the GAL's role is to advocate for the best interests of the children. This may not be the same as advocating for what the child wants.

What determines whether a GAL becomes involved in a case?

When parents cannot agree on custody or placement, the court must appoint a GAL. Usually, the parties first must try mediation to reach an agreement. If mediation fails or is inappropriate for some legal reason, the court will appoint a GAL to assist the court in deciding custody or placement. The court also will appoint a GAL if the court has special concern for the welfare of a minor child. Although the GAL generally is appointed in the beginning of a case, the court can appoint a GAL any time in the proceeding when the best interests of the children are at issue. The exception is in a modification proceeding if the proposed modification would not substantially alter the placement times. In that situation, the court may find that a GAL would not assist it in making its orders.

How is a GAL appointed?

A GAL is appointed by a family court commissioner or judge, acting alone or when asked by one of the parents. The procedure varies – some counties have lists of attorneys who take GAL appointments, other counties have contracts with specific attorneys for GAL appointments.

What is the GAL's role?

In representing the best interests of the children, the GAL may negotiate settlements, conduct formal and informal discovery, hire experts, interview witnesses, investigate whether there has been interspousal

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battery or domestic abuse, comment on any parenting plan filed by any party or any stipulation or mediation agreement reached by the parties, and participate in all court proceedings. Either party may request a status hearing before the court on the actions taken and work performed by the GAL anytime after 120 days from the GAL's appointment. A second status hearing can be requested after an additional 120 days from the first status.

Will the GAL meet with my child and me?

The GAL will meet with both parents, usually separately and in the GAL's office. The GAL also will decide whether and when to meet with your child, which could be in the GAL's office, each parent's home, the child's school, or another location.

How does the GAL investigate issues that affect my child?

Because the GAL is an attorney, the GAL investigates facts that are relevant to the issues in your case. Much of the investigation is called "informal discovery," which is conducted through interviews with both parents, the child, or other people with significant information. You also may be asked to sign a release authorizing the GAL to review relevant records, such as school, medical, or mental health records.

The GAL may ask other experts, such as a social worker or a psychologist, to provide input and possible future testimony regarding the case. If there are problems with alcohol or drugs, the GAL may ask the judge to order a parent to have screening tests.

The GAL also may use the "formal discovery" process to assist in the investigation, including interrogatories, requests for document production, or conducting a deposition.

What factors does the GAL consider in the investigation?

In investigating and developing input for the court's consideration, the GAL must consider: the wishes of your child and both parents; whether a parent has engaged in a pattern or serious incident of interspousal battery; the safety and well-being of the child and the safety of the parent who was the victim of the battery or abuse; your child's

interaction and relationship with you and other family members; the amount and quality of time you have spent with your child in the past; any necessary and reasonable custodial and life-style changes you propose to make to spend time with your child in the future; your child's adjustment to home, school, religion, and community; your child's age and developmental and educational needs at various ages; the mental or physical health of a parent, the child, or other person living in the proposed custodial household; the need for regularly occurring and meaningful placement to provide predictability and stability for your child; availability of child care services; the cooperation and communication between parents and whether either one unreasonably refuses to cooperate or communicate with the other; a parent's likelihood to interfere in the other parent's continuing relationship with the child; any physical abuse or problems with alcohol or drugs; the reports of appropriate professionals; and other significant factors that would affect your child's well-being.

What happens when the GAL completes the investigation?

The GAL generally will give the parents and/or attorneys a preliminary summary of what the GAL will present to the judge. The input could change depending on additional evidence or facts that are uncovered. Generally, the parents' attorneys will discuss the GAL's preliminary recommendations with their clients. Frequently, settlement proposals are exchanged and the case may be resolved by agreement. If the parents cannot agree, the case is prepared for trial before the judge, who will make the final decision.

Who pays for the GAL?

The judge decides who pays for the GAL's services. The requirements vary from county to county. Generally, each parent is responsible for one-half of the GAL's total costs, including the GAL's time and investigation costs, such as tests and experts. The court also may require the parents to pay an initial deposit and periodic payments to the GAL during the case. If the judge decides that both parents are unable to pay for the GAL's services immediately, the judge may have the county pay the GAL bill. However, the parents still are responsible for the GAL fees and the county may require the parents to reimburse the county.

Can I change GALs?

There are very limited circumstances in which a new GAL would be assigned to your case. Only the judge can remove a GAL.

How long will the GAL be involved in my case?

By statute, the GAL serves in a case until either the parents reach a written agreement resolving the issues and the judge approves it, or there is a hearing and the judge decides the case. The judge can discharge the GAL if one is no longer necessary. If your case is appealed, the GAL is involved in the appeal process unless the court orders otherwise. If a new motion is filed in your case in the future, the judge may reappoint the same or a different GAL as an advocate for your child's best interests. ◀

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