



Tips for Success in Working with the Guardian ad Litem: Divorce, Paternity, Adoption, and Guardianship Cases¹

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I. Appointing a Guardian ad Litem

Judges may use their discretion in deciding to appoint a Guardian ad Litem (GAL) for a child in a dissolution of marriage, paternity, adoption, or guardianship proceeding. Some Judges decide to appoint a GAL when allegations of child abuse, neglect, or endangerment have arisen in the case. Judges also may appoint a GAL because the attorneys for the parties have requested a GAL, the child has requested a GAL, or a mental health professional or custody evaluator has recommended that a GAL be appointed. There is a statewide shortage of qualified GALs, especially those who are able to serve pro bono. Judges in most Indiana counties do not have the option of appointing a GAL every time a request for a GAL appointment is made.

Indiana case law and statutes mandate the appointment of a GAL in some specific situations. In Matter of Paternity of H.J.F., 634 N.E.2d 551, 555 (Ind. Ct. App. 1994), the Court of Appeals opined that a GAL appointment is not warranted in all paternity cases, but a “guardian ad litem must be appointed to protect the child’s interests in all cases where a party seeks to overcome the presumption that a child born in wedlock is legitimate.” In Pinter v. Pinter, 641 N.E.2d 101 (Ind. Ct. App. 1994), the Court of Appeals noted that the dissolution court erred in failing to appoint a GAL for the child because an appointment is required when a party seeks to overcome the presumption that a child born in wedlock is legitimate. In In Re Paternity of V.M.E., 668 N.E.2d 715,717 (Ind. Ct. App. 1996), the Court remanded the case and ordered the trial court to appoint a GAL to represent the children. The Court stated that “in narrow circumstances, such as when the children are not adequately represented, an

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appointment is required.” The Court opined that the enmity between the parents with a real possibility of a custody award to the father made it unlikely that the children’s rights would be adequately represented by the mother.

In dissolution and paternity cases, Indiana law states that the court may appoint a GAL, a Court Appointed Special Advocate, or both, for the child at any time. **IC 31-15-6-1** (dissolution), **IC 31-17-6-1** (custody actions); **IC 31-32-3-1** (paternity). In Schenk v. Schenk, 564 N.E.2d 973 (Ind. Ct. App. 1991), a dissolution custody case, the Court noted that the statute does not mandate appointment of a GAL in a dissolution case, and the Court found that it was not an abuse of discretion to fail to appoint a GAL in that particular case. Id. at 979.

Two guardianship statutes require the appointment of a GAL. In guardianship cases, **IC 29-3-2-3(a)** requires the Court to appoint a GAL to represent the minor, unless the court makes the written findings outlined at **IC 29-3-2-3(b)** which waive the GAL appointment. The reasons for waiver of the GAL appointment by the court are:

- The proposed guardian is capable of representing and managing the minor’s property;
- No other petition for the appointment of a guardian has been filed; and
- The petition for appointment of a guardian is uncontested.

The Court shall set out its reasons for appointing a GAL. **IC 29-3-2-3(a)**. A GAL may be appointed to represent several persons or interests if not precluded by a conflict of interest. **IC 29-3-2-3(a)**. A dissolution of marriage statute, **IC 31-17-2-11**, requires the dissolution court to appoint a temporary custodian for the child upon the custodial parent’s death when the court requires supervision during the noncustodial parent’s parenting time or suspends the noncustodial parent’s parenting time. **IC 29-3-3-6(c)** requires the guardianship court to appoint a GAL or Court Appointed Special Advocate for the minor when a guardianship petition is filed by the temporary custodian whom the dissolution court appointed. The GAL or Court Appointed Special Advocate appointed by the guardianship court serves until removed by the court. **IC 29-3-3-6(c)**.

No statute or case law requires the appointment of a GAL or Court Appointed Special Advocate for a child in an adoption case. Courts frequently appoint a GAL or Court Appointed Special Advocate to represent the child’s best interests in an adoption proceeding when birth parents are not consenting to the adoption or when two competing petitions for adoption have been filed. In Matter of Adoption of L.C., 650 N.E.2d 726 (Ind. Ct. App. 1995), the Court looked to guardianship law at **IC 29-3-2-3** and Ind. Trial Rule 17(c) to ascertain whether the trial court had erred in failing to appoint a GAL for a child in a contested adoption proceeding. The Court opined that under these rules, a trial judge needs to appoint a GAL only if the judge believes the minor is not otherwise adequately represented. Id. at 732. The Court in L.C. found no apparent necessity for such an appointment and held that the trial court had not abused its discretion by not appointing a GAL for the child. In In Re Adoption of B.C.S., 793 N.E.2d 1054, 1060 (Ind. Ct. App. 2003), the Court affirmed the trial court’s order granting the adoption petition filed by the deceased mother’s former companion and denying the adoption petition filed by the maternal great-aunt and great-uncle. The Court was not persuaded by the maternal great-aunt and great-uncle’s argument that the trial court was required to appoint a GAL in the adoption case. The

Court opined that the trial court had discretion to determine whether a minor was adequately represented in the proceedings such that no GAL was necessary. See also In Re Paternity of Baby W., 774 N.E.2d 570, 579 n.6 (Ind. Ct. App. 2002) and In Re Paternity of M.G.S., 756 N.E.2d 990, 1007 (Ind. Ct. App. 2001), *trans. denied*, in which the Court opined that the appointment of a GAL for the children in these contested adoption cases would have been both highly desirable and appropriate. In both cases the putative fathers had received pre-birth notice of the adoption, but had failed to file paternity petitions within 30 days so their consents to adoption were irrevocably implied by statute. The Court noted that a GAL could file a paternity petition for the child which would not be similarly time barred. The Court said that a GAL could assess the situation and proceed in [the child's] best interests since she is incompetent by reason of her age to do it for herself. Baby W., 774 N.E.2d 579, n.4.

The postadoption visitation privileges statute states that the adoption court may appoint a GAL or Court Appointed Special Advocate for the child before the court voids or modifies a postadoption contact agreement or before the court hears a motion to compel compliance with an agreement approved by the court. **IC 31-19-16-6.** The GAL or Court Appointed Special Advocate shall “represent and protect the best interests of the child.” The postadoption sibling contact statute states that the adoption court may appoint a GAL or Court Appointed Special Advocate “to represent and protect the best interests of the adopted child” before hearing a petition to vacate, modify, or compel compliance with the postadoption sibling contact order. **IC 31-19-16.5-5.** The court may appoint a GAL or Court Appointed Special Advocate for the adopted child only “if the interests of an adoptive parent differ from the child’s interests to the extent that the court determines that the appointment is necessary to protect the best interests of the child.” **IC 31-19-16.5-5.**

Practice Tips

After the Judge decides that the appointment of a GAL is needed, the next step is to locate a GAL who can serve on the case and meet the needed time deadline for filing a report. A local nonprofit agency or a court affiliated program may be able to provide GAL services, but many such programs must devote all of their limited resources to Child in Need of Services and Termination of the Parent-Child Relationship cases and are unable to accept appointments to other types of cases. (A GAL or Court Appointed Special Advocate must be appointed for the child in every CHINS case and in every contested involuntary Termination of the Parent-Child Relationship case. (**IC 31-34-10-3; IC 31-35-2-7**)). Members of the local bar may be willing to serve as GALs, either for a fee or pro bono if the parties lack the resources to pay a GAL fee. The Judge may request an agency or attorney to serve as GAL or may delegate the task of finding a GAL to one or more of the attorneys for the parties. In requesting that an attorney serve as GAL, the person making the request should give the attorney time to complete a conflict of interest check before the attorney agrees to serve as GAL. After a GAL is located, the appointment order may be prepared.

The GAL appointment order should include the full name and birth date of each child for whom the GAL is appointed. Including each child’s name and birth date on the appointment order helps the GAL obtain records from the Department of Child Services, schools, day care centers, and others. The GAL appointment order may be general or may specifically delineate activities the Court wishes the GAL to

undertake, such as making unannounced home visits or obtaining information about child abuse or neglect allegations from the Department of Child Services or the child's therapist. A limited GAL appointment order with specific tasks may be a better use of the resources of the GAL and parties. Use of a limited GAL appointment can supplement information which the court has already received from other independent sources such as schools or mental health providers. Sometimes the court will need a complete GAL investigation which will require a greater expenditure of GAL time and resources. The court and parties should expect that the GAL will need a minimum of 75 days to conduct a complete GAL investigation and prepare a report.

It is very helpful to include the following in the GAL appointment order:

- The name, address, telephone, and facsimile number of the GAL
- Whether a report is requested
- Whether recommendations from the GAL are requested
- The names, addresses and telephone numbers of all parties
- The names, addresses, telephone numbers, facsimile numbers, and email addresses of all the attorneys
- The date by which the GAL report should be filed
- The amount of the GAL fee (if known) and how it should be divided between the parties

The GAL appointment order should be signed by the Judge and distributed to each attorney and unrepresented party as well as to the GAL. Including the GAL on the distribution list of the GAL appointment order is very important. Attorneys for the parties should contact the GAL to be sure the appointment order has been received.

When a GAL has been appointed, attorneys for the parties should communicate promptly with the GAL (or the GAL's attorney if an attorney is representing the GAL). This communication should include:

- Your client's home address, work and home telephone numbers, and work hours
- The issues pending before the Court and scheduled hearing dates
- Copies of pending motions, substantive court orders, and exhibits that are relevant to current issues
- Your client's preferred outcome from the pending case

- Legal standards which you believe are relevant to the case. For example, if a grandparent is requesting custody of a child in a dissolution case, provide your view of the standards the Court must use to determine whether the grandparent should be awarded custody. Some GALs, especially volunteers for county GAL/Court Appointed Special Advocate programs, may not be aware of legal standards in different types of family law cases, especially adoptions, third party custodianships, and guardianships
- The dates, times, and locations of any scheduled depositions or mediation sessions in case the GAL wishes to attend and participate in them

Do not include attorney-client privileged information in your communication with the GAL. Remember that the GAL does not have a legally privileged relationship with the child or any party. The GAL must share information from the GAL's file if requested to do so by counsel for a party or an unrepresented party. (**IC 31-17-2-12(c)**). Add the GAL (or the GAL's attorney if the GAL is represented) to your distribution list for motions and orders to help keep the GAL informed of new hearing dates and other new issues.

II. Guardian ad Litem Fees

IC 31-15-6-10 through **12** (dissolution) and **IC 31-17-6-9** (custody actions) allow the dissolution court to assess a Guardian ad Litem (GAL) user fee against either or both of the parents of a child for whom a GAL is appointed. The court may order the clerk of the court to collect a fee and deposit the fee into the county's GAL fund. The fiscal body of the county shall appropriate money collected as user fees to the court having jurisdiction over custody actions for the court's use in providing GAL services, including the costs of representation. The court also has the option of ordering the parents to pay the GAL user fee directly to the GAL program, individual, or attorney appointed to serve as GAL. If direct payment of the GAL user fee is made to the program, individual, or attorney who provides GAL services, the program or person receiving the GAL fee shall report the receipt of payment to the court within thirty days. See also *Danner v. Danner*, 573 N.E.2d 934, 938 (Ind. Ct. App. 1991), in which the Court of Appeals ruled that the dissolution court can assess a fee for GAL services against a parent.

The GAL user fee in a paternity case is addressed at **IC 31-32-3-9**, which states that, if any fees arise, payment shall be made under **IC 31-40**. **IC 31-40-3-1** states that the juvenile court may order the parent or guardian of the child's estate to pay a \$100 GAL or Court Appointed Special Advocate fee to the probation department for deposit by the probation department in the GAL or Court Appointed Special Advocate fund. This statute does not address GAL fees by a private agency, attorney, or individual. For example, see *In Re Paternity of N.L.P.*, 926 N.E.2d 20 (Ind. 2010), in which the child's parents entered into an agreement with an attorney to provide GAL services for an hourly fee. The attorney provided GAL services for over four years, resulting in fees and expenses which totaled \$34,800. Neither parent disputed the GAL fees, but the trial court determined that, although the GAL conducted a thorough investigation, the GAL's fees were not reasonable. The Indiana Supreme Court reversed the trial court's order, holding that, because there was no evidence that the parties' agreements were void as against public policy, and the trial court made no findings as such, the trial court was

bound to enforce the terms and conditions of the agreements. Id. at 25. The Court noted that in a paternity custody dispute, the attorneys representing the competing adults must effectively represent the interests of their clients, but the interests of the adults are not always consistent with the best interests of the child. Id. at 23. The Court cited **IC 31-32-3-1**, stating that the trial court is empowered to appoint a representative for the child in the form of a GAL or Court Appointed Special Advocate, or both. Id. The Court further quoted **IC 31-14-18-2(a)**, which states the trial court may order a party to an action to pay: “(1) a reasonable amount for the cost to the other party of maintaining an action under this article; and (2) a reasonable amount for attorney’s fees, including amounts for legal services provided and costs incurred, before the commencement of the proceedings or after entry of judgment.” Id.

No specific statute or case law supports a court ordered GAL or Court Appointed Special Advocate fee in an adoption proceeding. A legal argument could be made that adoption GAL fees may be court ordered similarly to GAL fees in guardianship cases, since both adoptions and guardianships are heard by courts with probate jurisdiction. See also In Re Paternity of N.L.P., 926 N.E.2d 20 (Ind. 2010), in which the Indiana Supreme Court observed that the parties in a paternity case agreed to pay GAL fees at the GAL’s hourly rate. The Court said, “It is not unusual in litigation that the same or similar services are duplicated for different parties and the court.” Id. at 24. The Court said that the services performed by the custody evaluator were performed for the benefit of the court; and those performed by the GAL were for the benefit of the child. Id.

Indiana case law supports a court order for a GAL fee in a guardianship proceeding. In Whinery v. Hammond Trust and Savings Bank, 80 Ind. App. 282, 140 N.E. 451 (1923), the Court opined that an officer of the court, selected by the court to protect the interests of minors, should not be expected to perform his duties without compensation, and that it is incidental to the court’s appointment power to allow the GAL suitable compensation to be paid as the equity of the case shall require. In State Ex Rel. Keating v. Bingham, 233 Ind. 504, 121 N.E.2d 727 (1954), the Indiana Supreme Court opined that the compensation of a GAL for services rendered may be allowed as an expense of administration or out of the ward’s interest in the proceedings in an amount determined by the court in its discretion. Id. at 730. The Bingham decision further provided that the court may hear evidence to assist in determining the amount of compensation to be paid or the court may summarily fix the amount of compensation upon the knowledge of the judge as to the work done by the GAL. Id. In United Farm Bureau Family Life Ins. v. Fultz, 176 Ind. App. 217, 375 N.E.2d 601 (1978), the Court stated that the probate laws empower the trial court to compensate a GAL for his services either from the ward’s interest in the estate, or from the body of the estate. The Court stated that the policy reason behind such is to ensure that an officer of the court, who has been appointed by the court, will not have to render services without compensation. Id. at 613. Where the ward recovers nothing, the GAL fee shall be taken from the core of the litigation, such as the insurance policy proceeds. Id.

Practice Tips

Be careful in advising your client to agree to pay the GAL attorney’s fees at the GAL attorney’s hourly rate. Try to negotiate for a flat rate GAL fee. If the case is a dissolution or paternity case, ask the court to prorate the GAL fee based on the income of the parties as reflected in the financial declaration or the

child support worksheet. Ask the GAL about fee waivers and payment plans if your client has limited financial resources. If you are representing a party on a pro bono or modest means basis, you can ask the GAL for a fee waiver or a modest means fee. Provide documentation concerning your client's income to support your request. If your client is employed, but lacks the resources to pay the GAL fee in a lump sum, ask the GAL to allow your client to make payments over a period of time. Some GALs will serve on a case regardless of whether your client can pay the GAL fee. Other GALs require complete payment before beginning work on the case.

III. Role of the Guardian ad Litem

The Guardian ad Litem's (GAL's) statutory role in a dissolution of marriage (**IC 31-15**), custody action (**IC 31-17**), adoption (**IC 31-19-16** and **IC 31-19-16.5**), and juvenile law (paternity) case is defined at **IC 31-9-2-50** as:

An attorney, a volunteer, or an employee of a county program designated under **IC 33-24-6-4** who is appointed by a court to:

- (1) represent and protect the best interests of a child; and
- (2) provide the child with the services requested by the court including:
 - (A) researching;
 - (B) examining;
 - (C) advocating;
 - (D) facilitating; and
 - (E) monitoring;

the child's situation.

A guardian ad litem who is not an attorney must complete the same court approved training program that is required for a Court Appointed Special Advocate under section 28 of this chapter.

The statutory role of a Court Appointed Special Advocate in a dissolution of marriage (**IC 31-19-15**), custody action (**IC 31-17**), adoption (**IC 31-19-16** and **IC 31-19-16.5**), and juvenile law (paternity case) is defined at **IC 31-9-2-28** as:

a community volunteer who:

- (1) has completed a training program approved by the court;
- (2) has been appointed by a court to represent and protect the best interests of a child; and
- (3) may research, examine, advocate, facilitate, and monitor a child's situation.

Dissolution and custody action statutes and juvenile law statutes (for paternity cases) provide further information on GAL qualifications, duties, and length of service. The Court may appoint a GAL or Court Appointed Special Advocate, or both, for the child at any time. **IC 31-15-6-1** (dissolution); **IC 31-17-6-1** (custody action) **IC 31-32-3-1** (paternity). The Court may not appoint a party to the proceedings or a party's employee or representative as the GAL or

Court Appointed Special Advocate for the child. **IC 31-15-6-2** (dissolution); **IC 31-17-6-2** (custody action); **IC 31-32-3-2** (paternity). The GAL or Court Appointed Special Advocate shall represent and protect the best interests of the child. **IC 31-15-6-3** (dissolution); **IC 31-17-6-3** (custody action); **IC 31-32-3-6** (paternity). The GAL or Court Appointed Special Advocate is considered an officer of the court for the purpose of representing the child's interests. **IC 31-15-6-5** (dissolution); **IC 31-17-6-4** (custody action); **IC 31-32-3-7** (paternity). The GAL or Court Appointed Special Advocate may be represented by an attorney. **IC 31-15-6-6** (dissolution); **IC 31-17-6-5** (custody action); **IC 31-32-3-4** (paternity). If necessary to protect the child's interests, the Court may appoint an attorney to represent the GAL or Court Appointed Special Advocate. **IC 31-15-6-6** (dissolution); **IC 31-17-6-5** (custody action); **IC 31-32-3-5** (paternity). A GAL or Court Appointed Special Advocate may subpoena witnesses and present evidence regarding: (1) the supervision of the action; or (2) any investigation and report that the Court requires of the GAL or Court Appointed Special Advocate. **IC 31-15-6-7** (dissolution) **IC 31-17-6-6** (custody action). The Court may order a GAL or Court Appointed Special Advocate to exercise continuing supervision over the child to assure that the custodial or parenting time terms entered by the Court are carried out as required by the Court. **IC 31-15-6-8** (dissolution) **IC 31-17-6-7** (custody action). Except for gross misconduct: (1) a GAL; (2) a Court Appointed Special Advocate; (3) an employee of a county GAL or Court Appointed Special Advocate program; or (4) a volunteer for a GAL or Court Appointed Special Advocate program; who performs duties in good faith is immune from any civil liability that may occur as a result of the person's performance. **IC 31-15-6-9** (dissolution); **IC 31-17-6-8** (custody action); **IC 31-32-3-10** (paternity). **IC 31-32-3-3** (paternity) states that a GAL or Court Appointed Special Advocate need not be an attorney, but the attorney representing the child may be appointed the child's GAL or Court Appointed Special Advocate. The GAL or Court Appointed Special Advocate serves until the court enters an order for removal. **IC 31-15-6-4** (dissolution); **IC 31-17-6-3** (custody action).

An Indiana dissolution statute specifically authorizes the court to order an investigator, including a GAL or Court Appointed Special Advocate, to conduct an investigation and report to the court concerning custodial arrangements for the child. **IC 31-17-2-12(a)**. **IC 31-17-2-12(b)** states that, in preparing a report, the GAL or Court Appointed Special Advocate (or another court appointed investigator) may: (1) consult any person who may have information about the child and the child's potential custodial arrangements; (2) upon order of the court, refer the child to professional personnel for diagnosis; (3) consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian. The child's consent must be obtained if the child is of sufficient age and capable of forming rational and independent judgments. **IC 31-17-2-12** sets out the following requirements, which, if fulfilled, allow the GAL's or Court Appointed Special Advocate's report to be received into evidence and not be excluded on the grounds that the report is hearsay or otherwise incompetent. The requirements are:

- (c) the court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days before the hearing. The

investigator shall make the following available to counsel and to any party not represented by counsel:

- (1) The investigator's file of underlying data and reports.
- (2) Complete texts of diagnostic reports made to the investigator under subsection (b).
- (3) The names and addresses of all persons whom the investigator has consulted.

IC 31-17-2-12(d) states that any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party to the proceeding may not waive the party's right of cross-examination before the hearing.

IC 31-15-4-9 (dissolution) and **IC 31-17-2-16** (custody action) authorize the child's GAL or Court Appointed Special Advocate to make a motion for counseling for the child. The court may require counseling for the child "under such terms and conditions that the court considers appropriate."

Indiana case law has clarified the role of the GAL in a dissolution case. In Deasy-Leas v. Leas, 693 N.E.2d 90, 95-99 (Ind. Ct. App. 1998), the Court opined that: (1) the GAL is a party to the proceedings and is subject to examination and cross-examination; (2) no specific evidentiary privilege attaches to the relationship of the child and GAL; (3) if the GAL is in possession of records to which the parties are entitled, the parties can use the avenues open to them to discover those items from the primary sources; (4) appointment of a GAL should not afford a shortcut to privileged information; (5) a trial court may rely on the general confidentiality provisions, such as the protection for children's speech allowed by in camera interviews (**IC 31-17-4-1**), and Ind. Trial Rule 26(C) to protect certain documents and communications, especially when requested by a party acting with a mission to guard the children's best interests. In Haley v. Haley, 771 N.E.2d 743 (Ind. Ct. App. 2002), the Court said it is highly important to note that the trial court found apparent bias for the father in the Court Appointed Special Advocate report, and yet still ruled in favor of the father's petition for custody modification. Id. at 748, n.1. In Cunningham v. Cunningham, 787 N.E.2d 930, 936 (Ind. Ct. App. 2003), the Court held that, despite the opinions of the court appointed custody evaluator and the GAL, the trial court's decision to deny the father's petition for custody modification was supported by the evidence. The Court noted the trial court's concern that the GAL did not speak directly with any of the children's teachers or school counselors, despite the fact that the decline in the older child's school performance was a primary issue in this case.

In Carrasco v. Grubb, 824 N.E.2d 705 (Ind. Ct. App. 2005), *trans. denied*, the Court affirmed the trial court's order modifying custody of one of the children to the father when the GAL who had been appointed for the original dissolution had filed a report and recommended such a change. One of the issues raised by the mother on appeal was that the GAL's participation in the post-dissolution proceedings was not authorized by law. The Court concluded that a GAL's responsibilities are not dependent upon the stage of the proceedings, and, in seeking a change of custody of one of the children, the GAL properly participated in the proceedings and was acting in the child's best interests. Id. at 710-11. The Court further noted that in Deasy-Leas it had determined that the "guardian is a

party to the proceedings and is subject to examination and cross examination” and accordingly the GAL is permitted “to present evidence regarding the supervision of the action or any investigation and report that the court requires of the guardian ad litem or court appointed special advocate.” **IC 31-15-6-7. Carrasco** at 710. Additionally, the Court held that, when the mother refused to sign the change of custody agreement to which she had previously agreed, the GAL had the authority to request a hearing in light of **IC 31-15-6-8** which provides that a GAL shall continue to supervise the situation “to assure that the custodial or visitation terms of an order...are carried out...” *Id.* at 710. The Court rejected the mother’s argument that the GAL was simply attempting to relitigate the trial court’s award of custody.

In J.M. v. N.M., 844 N.E. 2d 590 (Ind. Ct. App. 2006), *trans. denied*, a dissolution of marriage case, the father appealed the trial court’s order restricting his parenting time to supervised parenting time by a counseling service. The parties had agreed to the appointment of a GAL in a provisional order. The parties also agreed to binding arbitration pursuant to the Family Law Arbitration Statute, **IC 34-57-4-1** et seq. The GAL testified, introduced her report as an exhibit, and cross-examined witnesses at the two day binding arbitration hearing. Before the hearing, the father objected to the participation by the GAL in the proceedings, which objection was overruled. The GAL’s report, which was submitted at the hearing, recommended that the father have therapeutically supervised parenting time and that he undergo a psychological evaluation, including a drug and alcohol assessment. In his appellate claim that the decree regarding parenting time must be reversed, the father argued that the GAL was erroneously allowed to examine and cross-examine witnesses and that there was a lack of statutory authority for this role. The Court disagreed, citing the GAL’s statutory role (**IC 31-9-2-50**), the GAL appointment statute (**IC 31-15-6-1**), the GAL’s requirement to represent and protect the best interests of the child (**IC 31-15-16-3**), the GAL’s role as officer of the court (**IC 31-15-6-7**), and the ability of the GAL to subpoena witnesses and present evidence (**IC 31-15-6-7**) and be represented by counsel (**IC 31-15-6-6**).

In Swadner v. Swadner, 897 N.E.2d 966 (Ind. Ct. App. 2008), a dissolution case, the court appointed a GAL who issued preliminary recommendations for both the child of the marriage and the parties’ unborn child. The Court concluded that, because Ind. Trial Rule 17(C) grants authority to trial courts to “appoint a guardian ad litem or an attorney for persons who...are not yet born or in being[.]”, the trial court therefore had the authority to appoint a GAL for the parties’ unborn child. *Id.* at 972. The Court noted the GAL’s recommendation for joint custody and parenting time in excess of the Guidelines, among other evidence, and concluded that the trial court did not abuse its discretion by awarding joint custody and parenting time in excess of the Guidelines. *Id.* at 974-75. The Court also cited the GAL’s testimony that, in her opinion, the mother should not be allowed to relocate the children from Plainfield to Fort Wayne as evidence which supported the trial court’s determination that relocation was not in the children’s best interests. *Id.* at 976-77.

In In Re Paternity of G.R.G., 829 N.E. 2d 114 (Ind. Ct. App. 2005), a paternity parenting time and child support modification case, a GAL was appointed to represent the child. The GAL issued a report and recommendations and also testified. The father appealed the trial court’s order that the parties communicate only in writing absent an emergency, alleging that the order was against the evidence presented at trial and was an abuse of discretion. The Court quoted the GAL’s testimony and held that the evidence was sufficient to support the trial court’s findings that the parents were unable to

effectively communicate with each other, which supported the court's order that they communicate only in writing. Id. at 121. On appeal the father also argued that the trial court abused its discretion by not awarding the father parenting time on midweek evenings. The Court noted that the trial court's order stated, "Visitation is ordered pursuant to the Guardian Ad Litem's report, because it is the alternative to continued conflict of the parents." The Court opined that the trial court had not erred in entering the parenting time order in accordance with the GAL report because the order took into account the child's best interests. Id. at 123.

Indiana case law discusses the GAL's role and duties in adoption cases. For example, in In Re Adoption of J.L.S., 908 N.E.2d 1245 (Ind. Ct. App. 2009), the trial court appointed a GAL for the child in an adoption case when the court learned that one of the adoption petitioners had been found guilty of aggravated battery and attempted murder. The facts of the case include: (1) the GAL prepared a report for the adoption hearing; (2) the trial court and the attorney for the adoption petitioners read the report; (3) the GAL testified at the adoption hearing; (4) the GAL appealed the trial court's denial of the adoption petition, which was based on the trial court's interpretation that the adoption was precluded due to the petitioner's criminal convictions; (5) the GAL argued that the statute in question (**IC 31-19-11-1(c)**) violates the child's substantive due process right to familial integrity by robbing him of an individualized determination of his best interests; (6) the Court reversed the trial court's decision and remanded the case for further proceedings.

In In Re Adoption of E.L., 913 N.E.2d 1276, 1280-81 (Ind. Ct. App. 2009), the trial court had appointed a GAL for the child when the putative father objected to the stepfather's adoption of the child. The GAL recommended that the stepfather's adoption petition be denied and that the putative father's paternity should be established. In its decision, the Court reminded the parties that the trial court could not approve the proposed adoption unless it first found the adoption was in the child's best interest, and stated:

The GAL appointed to represent [the child's] interests has objected to such a finding, meaning the adoption is by no means a foregone conclusion, and whether paternity can be established in [the putative father] is a live controversy between the parties. We emphasize that the GAL has a continuing responsibility, on remand, to advocate [the child's] best interest and to continue to object to any proposed adoption that the GAL finds to be not in [the child's] best interest.

E.L. at 1281 n.5.

See also In Re Adoption of Infants H., 904 N.E.2d 203 (Ind. 2009), in which the Court noted that the trial court appointed a GAL who supplied a home study of the adoption petitioner's home in New Jersey which had been prepared by a person in New Jersey. The Court commented that the GAL never expressed an opinion on whether the adoption was in the children's best interests, but did testify that she saw no reason the court should not grant the adoption. Id. at 208.

IC 31-19-16-7, an Indiana postadoption visitation privileges statute, states that the provisions of **IC 31-32-3** [juvenile law] concerning the representation, duties, liability, and appointment of a GAL or Court Appointed Special Advocate apply to proceedings under the postadoption visitation privileges

chapter (**IC 31-19-16**). A GAL or Court Appointed Special Advocate may recommend a postadoption contact privileges agreement for the adoption court's approval. **IC 31-19-16-2**. **IC 31-19-16.5-6**, an Indiana postadoption sibling contact statute, states, "[t]he provisions regarding the representation, duties, and appointment of a guardian ad litem or court appointed special advocate by a juvenile court described under **IC 31-32-3** apply to postadoption contact proceedings under this chapter." In In Re Adoption of T.J.F., 798 N.E.2d 867 (Ind. Ct. App. 2003), the Court found that the trial court improperly denied the adoptive parents' motion to dismiss the GAL's and Office of Family and Children's Motion to Permit Biological Sibling Visitation.

No guardianship statute delineates the GAL's duties in a guardianship proceeding. Arguably, practitioners can look to the juvenile law and dissolution statutes concerning GALs for guidance. See **IC 31-9-2-50**; **IC 31-33-15-1 through 3**; **IC 31-17-6-1 through 9**. In State Ex. Rel. Keating v. Bingham, 233 Ind. 504, 121 N.E.2d 727 (1954), the Indiana Supreme Court distinguished a GAL from the attorney for the guardian, stating that a GAL is appointed to represent the ward in some particular litigation and further that the GAL is not a party to the main action but is an officer of the Court brought into the case by the appointment and order of the Court to render services pursuant to the duty imposed on him by the Court. *Id.* at 729-30. See also Carr v. Carr, 685 N.E.2d 92, 94-95 (Ind. Ct. App. 1997), in which the facts disclose that the GAL appointed for an incapacitated adult nursing home patient made observations and gave recommendations to the court. Practitioners are cautioned that, unlike custody proceedings, no guardianship statute allows a GAL report which contains hearsay to be admitted into evidence when a party objects. Practitioners should ascertain the individual court's policy on this issue. Some courts allow the Guardian ad Litem's report in a guardianship case to come into evidence if the dissolution statutory requirements for Guardian ad Litem reports, outlined at **IC 31-17-2-12(c)**, are met.

See In Re Guardianship of B.H., 770 N.E.2d 283 (Ind. 2002), in which the Indiana Supreme Court cited recommendations in the Court Appointed Special Advocate's report as providing ample support for the trial court's judgment granting the stepfather's guardianship petition despite the father's objection to the guardianship. See also Hinkley v. Chapman, 817 N.E.2d 1288 (Ind. Ct. App. 2004), in which the Court of Appeals included in the facts of the case that the GAL, who had reviewed the child's psychological evaluation and other information, testified that it was in the child's best interests to appoint the child's adult sister and her husband as the child's guardians due to the child's educational deficits.

In In Re Guardianship of Hickman, 805 N.E.2d 808, 821-24 (Ind. Ct. App. 2004), *trans. denied*, the Court affirmed the trial court's judgment appointing permanent guardians of the person and the property of Josephine Hickman, an incapacitated adult. On appeal, the Court addressed three issues, including whether the trial court abused its discretion by admitting certain testimony of the GAL. The Court found that the appellant had waived the arguments raised on appeal of this issue by failing to make a contemporaneous objection to the admission of the evidence at trial on those grounds. Notwithstanding waiver, however, the Court noted that Indiana courts had not addressed the admissibility of a GAL's opinion in a guardianship case. After discussing statutory provisions regarding GALs in child custody matters and the guardianship statutes' lack of provisions regarding the admissibility of the GAL's recommendations, the Court found that it did not need to decide the

admissibility of a GAL's opinion in this case. The Court stated that, even assuming the trial court abused its discretion by admitting the evidence, any error in the advisory jury hearing the GAL's testimony was harmless. The Court commented that, when a case is tried to the bench, it is presumed on appeal that the trial court ignored inadmissible evidence in reaching its judgment. The Court noted, however, that it did not mean to suggest that statements and other submissions from a GAL made before a nonadvisory jury were not completely subject to the rules of evidence for their admissibility.

It is important to remember that, in all family law cases, the GAL's role differs from the roles of a custody evaluator, parenting time supervisor, or parenting coordinator.

Common Guardian ad Litem Activities

The GAL will frequently do some or all of the following activities in investigating the child's situation for the purpose of representing and protecting the child's best interests:

- Review the court's legal file, confidential file, and exhibits
- Listen to the court recording of the most recent hearing
- Conduct visits to the homes of each party, including checking for cleanliness, safety, functioning utilities and appliances, and food supply
- Interview the child (if age appropriate)
- Interview the parties to the case and significant other persons who live in the parties' households
- Conduct criminal history checks in the city or county where the parties live (Note that GALs do not have access to Indiana State Police records or F.B.I. records)
- Obtain and review DCS reports which have been substantiated regarding the child, as authorized by **IC 31-33-18-2**, and obtain and review DCS reports for other children in the parties' households if the children's parents or guardians consent
- Interview the child's school teacher and/or school staff members and review school records
- Interview the child's counselor (and parties' counselors if parties consent) and obtain and review counseling records or reports from counselors
- Review available custody evaluation reports
- Observe the child in the presence of both parties if distance and court orders so permit

- Observe the child at school and/or day care
- Interview the day care provider and one to three personal references for each party
- Confirm parties' employment and leases for the parties' houses or apartments
- Review medical records and/or interview medical providers for the child (and parties if parties consent), especially when health issues are a factor in the case
- Note and research the child's regular prescription medications (and parties' medications if parties consent)
- Provide referrals for social, educational, and other services for the child and parties
- Give on the spot advice to parties to remedy unsafe home situations and rectify problems during parenting time exchanges
- Prepare a report, file it with the court and distribute it to attorneys and unrepresented parties if authorized to do so by the court
- Prepare and file needed motions to facilitate GAL representation and address or respond to legal issues involving the child
- Attend depositions, mediations, and negotiations to obtain information and provide input on the child's best interests
- Help to negotiate and sign Agreed Entries
- Testify in court, subpoena and question witnesses for the GAL, offer exhibits, cross-examine witnesses, make legal arguments, file trial briefs and memoranda of law, and submit proposed findings of fact and conclusions of law

Practice Tips for Advising Your Client on Working with the GAL

- Encourage timely cooperation with the GAL in scheduling interviews and visits.
- Explain that the GAL will be making home visits and may check cleanliness, utility functioning, food supply, the child's clothing, and the child's possessions.
- Inform your client that the GAL will probably ask the client to sign consents to release confidential information about the child and the client to the GAL. Determine in advance how

your client will respond to this request, explaining that information released to the GAL may be accessed by the other parties to the case.

- Ask your client to prepare a list for the GAL of the names, addresses, and telephone numbers of the child's school, teachers, day care providers, counselors, and medical providers.
- Ask your client to prepare a list for the GAL of the names, addresses, and telephone numbers of the child's closest relatives and of three personal references who have information from personal observation of how your client interacts with and cares for the child.
- Encourage your client to tell the truth to the GAL.
- Advise your client not to coach the child, nor allow others to coach the child, about what to say to the GAL.
- Encourage your client to provide details about the positive ways your client is caring or can care for the child.
- Tell your client to inform the GAL of the other parties' problems and bad behavior, but not to dwell only on these negative issues.
- Remind your client that he should not seek legal advice from the GAL.
- Remind your client not to call the GAL too frequently or at inappropriate hours and not to display anger toward the GAL in conversations, voicemails, or emails.
- Ask your client to provide copies of recent, relevant school records and medical records to the GAL.

III. The Guardian ad Litem Report

The Guardian ad Litem (GAL) report format will vary, depending on the GAL program and/or the individual GAL appointed to serve on the child's case. The GAL report will probably include the following information:

- The names of the persons interviewed or observed (observation usually refers to young children who are not formally interviewed)
- The relationship of the persons interviewed to the child (for example, maternal grandmother, neighbor, teacher)
- The date of the last contact the GAL had with each person

- A list of the records reviewed by the GAL
- A summary of the GAL's activities on the case (for example, making home and school visits, listening to a recording of a hearing, making telephone calls to relatives)
- A summary of the most relevant information about the child(ren) and parties
- A summary of the most relevant information received from collateral sources such as medical and school records, interviews with teachers, counselors, and non-party relatives
- A summary of the observations made of the facilities and condition of each party's home
- A summary of the GAL's viewpoint of the child's best interests
- Recommendations (if requested by the Court) regarding the legal issues before the Court (for example, custody, parenting time, whether a guardianship petition or adoption petition should be granted)
- Recommendations of social services and other services that are in the child's best interests
- Attachments of the most relevant documents gathered by the GAL

The GAL will likely have spent 25-50 hours in investigating the case. Attorneys should understand that the GAL's report is usually a summary, not a date by date contact log, so some information the GAL received will probably not be included in the report. The focus of the GAL report is to represent the child's best interests, so the report may not include all of the concerns expressed by the parties. The GAL's report will not usually include recommendations on specific amounts of child support to be ordered, property division, or division of attorney fees. In some cases, the GAL's report may contain recommendations for health insurance for the child and the manner of paying child support. Most often, the GAL will mail the completed report directly to the attorneys for parties and unrepresented parties. The GAL usually also files the report with the court. Some courts prefer that attorneys and unrepresented parties review the GAL report at the court office, and file a motion to receive a copy of the report. Most courts place the GAL report in a confidential file which members of the public cannot access. **IC 31-17-2-20** (custody action).

Practice Tips for Working with Your Client When the GAL Report Has Been Issued

- Do not mail the report to your client. Meet with your client in person and review the GAL report together. Advise your client not to confront or punish the child for disclosing or failing to disclose information to the GAL.
- Use your own judgment and your knowledge of your client in deciding whether to give your client a copy of the GAL report to take away from your office.

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- If you decide to give a copy of the GAL report to your client, tell your client not to allow the child to read the GAL report, not to discuss the GAL report in the child's presence, and not to leave the report in a place where the child might see it. Your client also must not allow others (such as spouses or grandparents) to allow the child to read the GAL report or to discuss the GAL report in the child's presence. In Marion County, allowing the child to read the GAL report, discussing the GAL report in the child's presence, or allowing others to do so is a violation of Local Rule 508 G and may result in a contempt of court proceeding.
- Emphasize that the GAL report contains confidential information, which should not be discussed with casual friends or placed on social media sites.
- Emphasize that the GAL report likely will not contain everything your client told the GAL. Discuss with your client information that your client feels should have been included in the GAL report. Strategize other ways to present this information to the court through your client's testimony, the testimony of witnesses you subpoena, and exhibits you submit.
- Remind your client not to telephone or visit the GAL and confront the GAL about the report's contents or recommendations with which your client disagrees.
- Inform your client that the Judge, not the GAL, is determining the outcome of the case. If the GAL report is not favorable to your client, identify witnesses and other evidence which you can bring to court which are favorable to your client and support your client's position.
- Remind your client that you can cross-examine the GAL. Develop cross-examination questions that your client would like for you to ask the GAL.
- Inform your client that, even if the conclusions and recommendations in the GAL's report do not agree with your client's position, the report may still contain useful information for the court. Agreeing to the submission of the GAL report into evidence may reduce your client's legal expenses because information from medical providers, schools, and criminal court records in the GAL report can be admitted into evidence without the need for you to subpoena witnesses and obtain exhibits.
- If your client agrees with the GAL recommendations for services for your client or the child, encourage your client to begin implementing the recommendations before the court hearing. Your client's case will often be positively impacted when your client demonstrates a willingness to work on issues identified by the GAL such as attending counseling or obtaining medical care for the child.

IV. The Guardian ad Litem's Role in Settlement Agreements

The Guardian ad Litem's (GAL's) role in a settlement agreement is not specifically addressed by Indiana statutes or case law. The GAL's role in a settlement agreement varies from court to court and county to county. Factors which influence the GAL's role in a settlement agreement include:

- The Judge's view of the GAL's role;
- The GAL's own view of his or her role;
- Whether the GAL is an attorney or a community volunteer;
- The type of legal proceeding (divorce, paternity, adoption, or guardianship case);
- The contents of the agreement (custody, parenting time, child support, property division).

Case law clearly states that the GAL is a party to a divorce case (Deasy-Leas v. Leas, 693 N.E.2d 90 (Ind. Ct. App. 1998); Carrasco v. Grubb, 824 N.E.2d 705 (Ind. Ct. App. 2005), *trans. denied*; J.M. v. N.M., 844 N.E.2d 590 (Ind. Ct. App. 2006), *trans. denied*.) It therefore seems very appropriate for the GAL to participate fully in divorce settlement agreements on issues affecting the child's custody, parenting time, and services needed for the child and parents. Sometimes the GAL is an effective person to suggest and convene a settlement negotiation conference because the GAL is likely well informed about each party's strengths and weaknesses. The GAL may be the only person at the settlement conference who has a good relationship with all parties. Attorneys for the parties may choose to involve the GAL in settlement negotiations or, at least, provide a copy of the parties' proposed agreement to the GAL for review and comment before submitting the agreement to the Court. Frequently, the GAL will be able to support the parties' settlement agreement, either by signing the agreement as a party or signifying the GAL's approval of the agreement "as to form." If the GAL does not support the parties' settlement agreement, the GAL should inform the Court by motion of the reasons why the GAL does not believe the agreement is in the child's best interests.

Although Indiana paternity case law does not provide that the GAL is a party to a paternity case, case law states that the child is a necessary party to a paternity proceeding, and the child's interests may differ from those of the parents. See Marsh v. Paternity of Rodgers by Rodgers, 659 N.E.2d 171 (Ind. Ct. App. 1995) and Clark v. Kenley, 646 N.E.2d 76 (Ind. Ct. App. 1995). It could be argued that, because the GAL represents the best interests of a party to the case, the GAL should be included in paternity settlement conferences.

In adoption cases, there is no formal recognition of the GAL as a party to the case other than **IC 31-19-16-2(5)**, which requires the GAL to recommend that the Court approve a postadoption contact agreement executed by the adoptive parents and the birth parents. The GAL may be helpful in negotiating a settlement agreement in an adoption case because the GAL may be the only person who has knowledge of the strengths and weaknesses of each party.

Some Judges extend divorce case law that the GAL is a party to the case to all types of legal proceedings, including paternity, adoption, and guardianship cases. These Judges expect that the GAL will be a party to negotiating all settlement agreements on all cases and that the GAL will sign settlement agreements.

Practice Tips for Working with the GAL on Settlement Agreements

- Inquire of the Judge at the time of GAL appointment whether the Judge considers the GAL to be a legal party to the case and whether the GAL should be included in case settlement.
- Be sure that all attorneys on the case understand the Judge's view on whether the GAL should be a party to settlement.
- Use the information from the GAL report (and recommendations, if made) as a base to determine outstanding issues and promote settlement.
- If the Judge views the GAL as a party, include the GAL and the GAL's attorney (if the GAL is represented) in the settlement process, including mediation.

V. The Guardian ad Litem's Role at the Court Hearing

Separation of Witnesses

The purpose of separation of witnesses is to promote truthful testimony by preventing witnesses from hearing or discussing the testimony of other witnesses. One of the first issues surrounding the Guardian ad Litem (GAL) at trial is whether the GAL is subject to a separation of witnesses. The answer to this question may turn on whether Indiana law states or the Judge views the GAL as a legal party to the case. Ind. Evidence Rule 615 requires the Court to order witnesses excluded and separated at the request of a party or on the Court's own motion. Evid. R. 615 states that this rule does not authorize the exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause. See J.M. v. N.M., 844 N.E.2d 590, 601 (Ind. Ct. App. 2006), *trans. denied*, a dissolution case where the Court found no merit in the father's argument that the GAL's presence at the hearing was barred by the separation of witnesses order.

Even if the GAL is not a legal party to the case (as in a paternity, adoption, or guardianship case), the GAL could be shown to be essential to the presentation of a party's cause. A party seeking to except a witness from exclusion as "essential to the presentation of the party's cause" must convince the trial court that the "witness has such specialized expertise or intimate knowledge of the facts of the case that a party's attorney would not effectively function without the presence and aid of the witness."

Hernandez v. State, 716 N.E.2d 948, 950 (Ind. 1999). The determination of whether a witness qualifies for exception from separation of witnesses due to being essential to a party's cause is within the trial court's discretion and is subject to review for an abuse of discretion. Fourthman v. State, 658 N.E.2d 253, 257 (Ind. Ct. App. 1995), cited in Long v. State, 743 N.E.2d 253, 257 (Ind. 2001). Other arguments which support a decision to allow the GAL to be present for the entire hearing are: (1) the GAL is an officer of the Court; (2) the GAL's prior submission of a report lessens the likelihood that the GAL will substantially change his or her testimony due to hearing the testimony of others; (3) the Judge may ask the GAL to continue representing the child's best interests after the hearing so excluding the GAL could impede the GAL's access to relevant information.

The Guardian ad Litem's Court Testimony

The GAL's role at the Court hearing will likely depend on whether the GAL is represented by an attorney. Dissolution, custody, and paternity statutes provide for the GAL to be represented by an attorney. **IC 31-15-6-6** (dissolution); **IC 31-17-6-5** (custody action); **IC 31-32-3-4** (paternity). If the GAL is represented by an attorney, the GAL's attorney will usually call the GAL as a witness, ask direct examination questions and offer the GAL report into evidence. Then, attorneys for the parties will have the opportunity to cross-examine the GAL. If the GAL is not represented by an attorney, an attorney for a party will usually call the GAL as a witness. The Judge could possibly call the GAL as a witness if no attorney does so (or if none of the parties is represented); but Judges should not call witnesses except in extraordinary circumstances. See Isaac v. State, 590 N.E.2d 606 (Ind. Ct. App. 1992) (Judge called witness against defendant, Court reversed because Judge took sides.) A Judge's discretion to question witnesses is greater in bench trials than in jury trials. Jones v. State, 847 N.E.2d 190 (Ind. Ct. App. 2006) *trans. denied*. See also Rosendaul v. State, 864 N.E.2d 1110 (Ind. Ct. App. 1997), in which the conviction was affirmed because the Judge's questioning of the defendant in a bench trial aided fact-finding responsibilities and was done in an impartial manner. The GAL, if unrepresented, could also ask to take the witness stand, be sworn, make a statement, offer exhibits, and answer cross-examination questions from attorneys for the parties. The GAL should also respond to the Judge's questions.

The GAL may request to be excused after testifying or may remain at Court to obtain additional information for ongoing best interests representation of the child.

The Guardian ad Litem's Other Courtroom Activities

In dissolution and custody cases, the GAL may subpoena witnesses and present evidence regarding the supervision of the action or any investigation and report that the Court requires of the GAL. **IC 31-15-6-7** (dissolution); **IC 31-17-6-7** (custody). See also J.M. v. N.M., 844 N.E.2d 590, 601 (Ind. Ct. App. 2006), *trans. denied*, in which the Court stated that, inasmuch as the statute authorizes representation of the GAL by an attorney, it is arguable that such authority inherently includes the GAL's ability to examine and cross-examine witnesses. No statutes or case law in paternity, adoption, or guardianship specifically authorize the GAL to subpoena witnesses, present evidence, or cross-examine witnesses. In practice, many Indiana Judges allow these types of advocacy on the part of the GAL.

Practice Tips

- Before the hearing, ask the GAL to provide you with the names and addresses of persons whom the GAL has consulted, the GAL's file of underlying data, and complete copies of reports received by the GAL. Of course, you should make this request to the GAL's attorney if the GAL is represented.
- Find out whether the GAL will be represented by an attorney at the hearing and when the GAL attorney is able to be present. Sometimes the GAL attorney is a volunteer who can attend the hearing only to facilitate the GAL's testimony. Ask the GAL's attorney for information on the GAL's background and training.
- If the GAL is not represented by an attorney, cooperate with the other attorneys on the case to decide who will call the GAL as a witness and when the GAL will be called to testify. Calling the GAL as the first witness allows the GAL report to be admitted into evidence. The GAL report likely contains extensive background information which will assist the Judge in understanding the parties' testimony. Inform the GAL when his or her testimony will be needed.
- Confer with your client in advance of the hearing and determine whether you plan to object to the admission of the GAL report or any portion thereof.
- If your client believes the GAL has shown bias against your client and you believe that there is evidence of bias, prepare to cross-examine the GAL on the issue of bias. See Indiana Evidence Rule 616.
- If the GAL report does not support your client's position, seek and plan to present witnesses (such as teachers, counselors, or clergy) at the hearing who can present a more positive image of your client to the court.
- If the GAL report does not support your client's position, and is very factually inaccurate, seek and plan to present witnesses and exhibits at the hearing that show substantive, relevant factual errors in the report.
- Be careful not to use so much courtroom time in cross-examining the GAL that you detract from presenting positive aspects of your client's case.
- Remember that the Judge appointed the GAL and likely had some confidence in the GAL's abilities, so do not let cross-examination impugn the GAL's character or motives unless absolutely necessary.
- If the Judge orders the GAL to monitor your client's compliance with Court orders, encourage your client to comply and to inform the GAL regarding compliance.

VI. Release of the Guardian ad Litem from Service

In dissolution cases and custody actions, the Guardian ad Litem (GAL) serves on the case until removed by Court order. **IC 31-15-6-4** (dissolution); **IC 31-17-6-3** (custody action). The timing of the GAL's removal from a case varies according to the child's needs in the individual case. Some GALs request to be removed from the case as soon as the GAL report has been filed with the Court. Other GALs continue to serve on the case until after the Court hearings have been concluded, the Court has issued its judgment, and monitoring of the Court's orders has been completed. Usually the GAL will request to be removed from the case when the GAL believes that the legal issues pertaining to the child's custody and parenting time have been resolved. If the Court has appointed the GAL on a guardianship case, and the guardianship has been terminated, the GAL's role on the case ends due to the termination order. The Court lacks authority to issue ongoing orders after the guardianship has been terminated. See In Re Guardianship of K.T., 743 N.E.2d 348, 351 (Ind. Ct. Ap. 2001), in which the Court said that the trial court lost jurisdiction over the case when it closed the guardianship. There is no provision in the guardianship statute for the trial court's continuing jurisdiction over a closed guardianship. Id.

Practice Tips

- Explain to your client that the GAL does not have a permanent role in the case, and the GAL strives to refer the parents and child to other services which can help after the GAL is removed.
- Confer with your client about his or her views on removal of the GAL. Communicate your client's position on removal to the Court, GAL (or GAL's attorney if the GAL is represented) and the other attorneys for the parties.