

Raising The Bar 2022

Social Investigations Vs. Guardian Ad Litem And Other Parenting Issues

The Honorable Michael Davis
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Social Investigations Vs. GAL and Other Parenting Issues: The Judge's Perspective

Honorable Michael Davis

Guardian Ad Litem & Social Investigation A Judge's Window into Family Issues



Guardian Ad Litem Power and Authority

- Guardian Ad Litem's are granted authority under Florida Statute §61.403
- Guardians have broad discretion to investigate family court matters as well as domestic violence cases



Practice Tip: There is no requirement under Florida law that a Guardian Ad Litem be an attorney!

Assist the Court

- Guardian Ad Litem often assist the Court by providing insight into the wants, needs and desires of minor children in family court and domestic violence matters.
- Hearsay is frequently waived for the Guardian Ad Litem so that the need for a minor to testify in open court is obviated.



Best Interest of the Child

- A Guardian Ad Litem is charged with advocating for the best interests of the child in Court proceedings.
- What is best interest? It's as simple as an ice cream cone! If a child asks for ice cream for dinner an advocate for their interest would say "yes absolutely enjoy your dinner ice cream!"
- An Advocate for the child's BEST INTERESTS may say "no that's not nutritious, have some dinner and then a little ice cream for dessert."



Social Investigation

- Social investigations are governed by Florida Statute §61.20
- A Social investigation encompasses all pertinent details relating to the child and each parent.
- The social investigator **MUST** be a qualified mental health professional as defined within the statute.



How does this help?

- Social investigations are wonderful tools in the judge's toolbox for high conflict and complex matters.



- Social investigation frequently provides a deep and meaningful insight into the functioning of a family's inner workings.
- Don't forget that the finder of fact is a stranger to your client and may need a mental health professional's perspective to assist the family in every way.

Social Investigations
Vs. GAL and Other Parenting
Issues: The GAL's Perspective
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GUARDIAN AD LITEM

RELEVANT FLORIDA STATUTES

RELATING TO GALs

(Fla. Stat. §§61.401 - 61.405)

Fla. Stat. §61.401 Appointment of guardian ad litem.

Fla. Stat. §61.402 Qualifications of guardians ad litem.

Fla. Stat. §61.403 Guardians ad litem; powers and authority.

Fla. Stat. §61.404 Guardians ad litem; confidentiality.

Fla. Stat. §61.405 Guardians ad litem; immunity.

Fla. Stat. §39.201(1)(a-d) Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

Fla. Stat. §39.204 Abrogation of privileged communications in cases involving child abuse, abandonment, or neglect.

GUARDIAN AD LITEM

- A Party to the Action
- *Child's Best Interests* Primary Consideration
- Know what powers and authority you have as GAL and which you do NOT have
 - You are **not** a PC
 - You are **not** a mediator
 - You are **not** an attorney advocate
 - You are **not** a therapist
 - You are **not** an expert on educational placement
- GAL is NOT a substitute for the parent's decision making / co-parenting when the parents are in agreement

ORDER APPOINTING GUARDIAN AD LITEM

HOT TIP #1:

Give the GAL the opportunity to provide input and review the draft Order of Appointment

HOT TIP #2:

Important for the GAL to have access and communication with **the entire team** of professionals involved with this family

➤ Obtain necessary releases/ consents

HOT TIP #3:

Permit the GAL to ask for a CMC without retaining legal counsel

ORDER APPOINTING GUARDIAN AD LITEM

A. The GAL was appointed to investigate and report on the following areas affecting the minor child(ren) relevant to the parties' pending _____proceeding:

B. The GAL's report shall address the following areas, subject to any conditions ordered by this Court:

C. Parental Responsibility;

D. Time sharing/residence, including times, pick up and drop off locales, and third persons who may assist to facilitate;

E. Appearance of children at depositions/hearings;

F. Preference(s) of the child(ren);

- G. Substance abuse issues;**
- H. Relocation (best interests of the child(ren));**
- I. Reunification issues;**
- J. Best interests of the child(ren) regarding scientific tests/medical procedures, regimen, medical needs;**
- K. Education/schooling issues;**
- L. Form of communications between parents and between parents and child(ren);**
- M. All outstanding issues raised in the pleadings or motions which affect the child(ren);**
- N. All issues which may arise during the GAL's appointment which affect the child(ren);**
- O. Other:**

THE ORDER AND HEARSAY

1. The parties and their respective counsel agree to waive all hearsay objections regarding the Guardian Ad Litem's testimony and written reports relating to statements of the minor child(ren), witnesses and parties for purposes of the Guardian ad Litem's report and ultimate presentation thereof in any Court proceeding.
2. The GAL report shall be admitted into evidence without hearsay objections by either party.

GUARDIAN AD LITEM

- Psychologists as GALs do not conduct psychological assessments/evaluations.
- However, pursuant to Florida statutes, the GAL “through Counsel, may request the Court to order expert examinations...”
- The GAL “may assist the Court in obtaining impartial expert examinations.”

GUARDIAN AD LITEM

- GAL report may include statement of the wishes of the child.
- Conduct home studies and consider collateral sources of information.
- GALs can (and often do) issue interim reports.
- Statute provides that GAL may interview the child and “witnesses or any other person having information concerning the welfare of the child.”

GUARDIAN AD LITEM

- GAL shall submit recommendations re: any stipulation within 10 days after the stipulation is served on the GAL.
- GAL “shall maintain as confidential all information and documents received from any source...and may not disclose [same] except, in the GAL’s discretion, in a report to the Court...”

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Social Investigation

(Fla. Stat. §61.20)

- Replaced custody evaluations
- The Social Investigator is always neutral and conducts the investigation via a Court or agreed order.
- Social Investigators are not a party to the action (unlike the GAL).
- Social Investigators make recommendations regarding timesharing and parental decision-making.

Social Investigation (cont.)

- Child's best interests are the primary consideration.
- If a Social Investigation is conducted by a reputable psychologist, the investigation will include psychological testing of all parties as dictated by ethics and law.
- Social Investigators will conduct home studies and consider collateral sources of information.
- Social Investigators cannot issue interim reports.

Differences Between Psychologists and Mental Health Counselors as Social Investigators

- Laws and ethics require licensed psychologists to conduct psychological testing when rendering opinions about factors set forth in F.S. 61.13(g) concerning the parents' mental health.

Differences Between Psychologists and Mental Health Counselors as Social Investigators (cont.)

- Licensed Mental Health Counselors, Licensed Clinical Social Workers and other professionals licensed at the Master's Degree level cannot conduct psychological testing. Psychiatrists cannot conduct psychological testing either.
- Be wary of those with legitimate Doctorate Degrees who are only licensed at the Master's Degree Level.

Independent Psychological Evaluations

- Psychological evaluations of one or more persons within a family.
- Via a Court/Agreed Order – perceived as neutral and more helpful to the Court than non-neutral professionals conducting these evaluations.
- Hired by one-side – often perceived as biased (hired gun phenomenon).

Independent Psychological Evaluations (cont.)

- Fewer collateral contacts and sources of information are considered in a psychological evaluation than a social investigation.
- Psychological evaluations can provide useful information of a person's psychological, personality, and behavioral functioning.
- Psychological evaluations can provide information as to parenting knowledge, and the manner by which mental health functioning impacts parenting.

Independent Psychological Evaluations (cont.)

- To a lesser extent, psychological evaluations can provide information as to parenting behavior.
- Those conducting psychological evaluations without conducting a social investigation cannot make time sharing, access, and parental decision-making recommendations. FI Statute 61.13 factors are not applied in a psychological evaluation.

Social Investigation Sample Orders for Professionals

Should include:

- A waiver of confidentiality
- Allocation of payment
- Any deviations from the statute –such as only releasing the social investigation report to the attorneys and not to the judge
- Hearsay may be considered by a Social Investigator

Independent Psychological Evaluations (cont.)

- The psychologist conducting psychological evaluations can testify as to their findings in court; and/or
- Provide their report to the Guardian Ad Litem or Master 's Degree level Social Investigator.

Social Investigations and Psychological Evaluations: Biopsies

- Any form of assessment is a “biopsy” and not an exhaustive rendering of an individual or the family. These assessment methods are often more time-limited and finite than the GAL’s ongoing involvement with a family.
- Do not “try your case” through the social investigator or the psychological evaluator –it costs the clients time and money.
- **Any data** collected by the evaluator/investigator is considered “data” and can only be released to another psychologist on a signed Order of the Court.

Report Acknowledgement on Recommendations/ Based on Recent Law

“...it is recognized by the evaluator that the Court may not delegate its statutory authority to formulate or modify a parenting plan or determine time sharing to third parties including, but not limited to, a guardian ad litem, attorney, or any expert.”

Any change or modification in time-sharing and access such as one would observe in a step-up plan may only be effectuated by the Court, if not agreed upon by the parties.

Contact Information

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