



EDWARDS &
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FAMILY LAW ATTORNEYS

Guardian Ad Litem

Black's Law Dictionary currently defines a *guardian ad litem* as "a guardian, usually a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party."

The Guardian Ad Litem, for the purpose of pending litigation puts themselves in the shoes of a legally incompetent person such as a minor child. The Guardian Ad Litem investigates all issues associated with the case they are assigned to and files a report with the court.

Guardian Ad Litem are usually lawyers. They investigate the matter, use their own judgment in determining what is in the best interest of the child, and report their findings and recommendations to the court. In contested custody and visitation cases, courts frequently appoint a Guardian Ad Litem for the children. A party may request a Guardian ad Litem at any point during the case.

If you have a case in the court that requires a Guardian Ad Litem, treat him/her professionally. Return phone calls and try to be as cooperative as possible.

It isn't easy having an outsider poking their nose into your business but, at times it is necessary. It is imperative that you get past any negative feelings or resentments you have about the situation because the impression you make on the Guardian Ad Litem could have a lot to do with the outcome of your case. To not put your best foot forward will only hurt your children.

The Process:

The Pre-interview and Interview Process

The guardian should first notify the parties of his or her representation. Usually, the Guardian will include questionnaire for the party to fill out prior to a first meeting. Guardians often use a questionnaire that is comprehensive, at least several pages long. There are questions about the party's family history, the background of the current marriage or current family dynamics, the litigants' goals, details regarding the children (including school and medical information) and the party's opinion of the other parent. This information can be invaluable to the guardian. For example, how one party views the other parent can alert the guardian to issues of alienation and programming of the child. This could lead the guardian to request testing of the parents or child. The initial interview with the party and the guardian usually takes

place at the guardian's office. Most guardians said that they always offer to have the attorney for the party present at the initial interview. As a practical matter, most would prefer to speak with the litigants without the attorney present, but would not deny an attorney the right to be present if the attorney or litigant so requested.

The Home Visit

There should be at least one home visit with each litigant and the child(ren)—barring extraordinary circumstances. Guardians have said that children are more forthcoming in a familiar environment. When the home visit occurs, the home should be clean and orderly (as much as possible) the children should be told a guest will be coming to visit them. There is no need to tell them of the nature of the Guardian's visit. The Guardian will get a better grasp of the true home environment if the children act naturally.

Interview of Collateral Sources / Witnesses

We believe that the guardian also has a duty to contact other appropriate witnesses, such as school personnel (including counselors and therapists if the child is in counseling) and, in some cases, health care providers. The drafters of the order anticipated that contact with schools, mental health care providers and physicians might be necessary for the guardian to perform his or her duties. Therefore, the guardian, at a minimum, should contact the schools, counselors and doctors. It is a good practice to contact other appropriate witnesses.

Written Report

Often the Guardian will write a written report. This may help to spur settlement talks, or conversely, may entrench the parties in their positions, as one party may feel they have "won." The Guardian's recommendations regarding custody are just recommendations. There is no requirement that the Judge presiding over the case accepts the Guardian's recommendations. There may be additional evidence that comes out at trial that the Guardian did not or could not consider that sways the judge in a different direction. However, most often the Judges will accept the Guardian's recommendations.

Important Points to remember:

1. Make sure the Guardian is paid
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4. Be polite and courteous to the Guardian. Return all phone calls. Be on time for all visits.
5. Provide the Guardian with a list of witnesses of people who can help you in your custody case. Let the witnesses know ahead of time that you will be providing their name, and make sure they agree and will actually help your case.
6. And finally, Make sure the Guardian is paid.