

THE ROLE OF YOUR CHILD'S ATTORNEY IN THE DIVORCE PROCESS

Many divorcing parents amicably work out their custody and parenting arrangements – together, with help of their counsel, or through an alternate dispute resolution process such as mediation. However, when divorcing parents are unable to agree upon what is in their children's best interests, the Court will often appoint a lawyer to represent the children. This lawyer will very likely have a tremendous influence on the outcome of the parenting dispute.

A lawyer who is appointed to represent the children can be identified as one of the following: an Attorney for the Child (AFC), a Guardian Ad Litem (GAL) or a Child Representative (CR). Parties often find these differentiations confusing. This article sets forth some of the differences and similarities between the AFC, GAL and CR.

An AFC, GAL and CR all **must** do the following: be neutral at the outset of the appointment with both parties' attorneys, the parents and the judge; file an appearance on behalf of their clients (ie: the children) stating in which capacity they represent the children; interview their clients (ie: the children); and interview each parent, either individually or with the respective parent's attorney.

An AFC, GAL and CR may interview other parties, such as extended family members, who have relevant information regarding the children. While it is recommended that the GAL and CR conduct such interviews, the AFC has discretion on whether to do so.

However, there remain some differences between the AFC, GAL, and CR:

- The GAL and CR must investigate the children's home situation, which may or may not involve a home visit. The AFC has discretion on whether to do so.
- The AFC and CR have confidential relationships with the children, but the GAL does not.
- The GAL may choose to file a report with the court. The AFC and CR may not file a report with the court.
- The GAL advises the court what is occurring in the case both before and at the trial. The

AFC and the CR will only advise the court what is occurring before, but not at, the trial.

- The AFC and CR may respond to pleadings that directly affect the children but the GAL may not. The AFC and CR should not file pleadings when the facts are more appropriately brought by a party with direct knowledge of those facts.
- The GAL may testify in court, be deposed, and be required to produce his or her file. The AFC and the CR may not testify in court, be deposed or be required to produce their files.

- The AFC and CR can argue evidence in court but the GAL cannot.
- The AFC and the CR may advocate for the children, but the GAL may not.
- The GAL and CR may take a position and argue

the best interests of the children. If the CR does so, the CR should also make the court aware of the children's expressed preferences, even if the CR disagrees with the children. The AFC may not argue the best interests of the children.

When the court has appointed an AFC, GAL or CR to represent the children, many parents wonder what is or is not appropriate with respect to their interactions with the children's attorney. The following are suggested "Do's" and "Do not's" about how to interact with the children's attorney.

A parent **should** do the following. Treat the AFC, GAL or CR with respect. Absent an emergency, obtain consent from the AFC, GAL or CR prior to taking a child for any mental health therapy or to a medical doctor for suspected abuse. Unless your new spouse plays a significant role in your children's daily lives,

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keep your new spouse in the background, especially at the initial meeting with the AFL, GAL or CR. Timely pay for the services of the AFC, GAL or CR.

A parent **should not** do the following. Do not ask your attorney to interview or speak with your children unless you have the AFC, GAL or CR's permission. Do not ask your attorney to speak with your children's teachers or medical or mental health providers unless you have the AFC, GAL or CR's permission.

The divorce process can be a complex one with many people involved. By understanding the role of each participant, the process can become a little smoother.

PREDICTING THE COURT'S DECISIONS *(Continued from cover)*

spouse's marital lifestyle, the Court could presume the amount was sufficient to pay for the lifestyle. During the post-decree trial, the wife tried to show she could not afford her marital lifestyle after the divorce on the agreed upon support. In the end, the wife's evidence of lifestyle before the divorce was not relevant. Courts are only supposed to let the parties present evidence going back to the latest court order so that they are not re-litigating things previously decided. The Court reasoned that both parties had lawyers when they made their marital settlement agreement; both parties said they entered into the agreement freely and voluntarily; and when the wife agreed to accept \$20,000 per month for unallocated maintenance and support for herself and her minor children, the Court could infer that both

parties and their attorneys considered all of the statutory factors (including lifestyle) to reach this agreement. If the wife had documented the differences of opinion she and her husband had about the cost of her lifestyle, she might have found herself in a different position. Even though that might only have postponed an argument about marital lifestyle, at least she would have preserved her ability to make that argument.

What are the lessons here?

- 1.) Waiting to get advice could cost you something dear;
- 2.) Be clear in how agreements are written; and
- 3.) Be clear about anything that is the basis of making an agreement.