



The Guardian ad Litem

## Working with the Young Child

Nebraska Young Child Institute  
June 27-28, 2016

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### Guardian ad Litem Authority

- Statute Overview
  - 43-272.01 GAL; appointment; powers and duties; consultation; payment of consultation; payment of costs; compensation
- Appointment Orders
  - Differences between counties
  - Supreme Court practice standards  
Supreme Court Rule 6-1705(D)(1)(d)

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### Legal Practices

- Motions
  - Motion for In Chambers
  - Motion to Quash Deposition/Subpoena
  - Motion for Change of Placement
  - Motion for Bonding Assessment
  - Motion for Therapeutic Visitation
  - Motion to Suspend Visits
  - Motion for Out of State Travel
  - Motion for Protective Order of Discoverable Information
  - Motion to Terminate Parental Rights
  - Motion for Educational Surrogate
  - Motion for Separate Counsel
  - Motion for a CASA

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**Legal Practices**

- Objections
  - Change of Placement and Stay
  - Rule 34(A) Subpoena
  - Complaint for Leave to Intervene
  - ICWA Motion to Transfer
  - Written v. Oral

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**Legal Practices**

- Discovery
  - Mutual and Reciprocal
  - Depositions
  - Request for Production
  - Interrogatories
  - Rule 34A subpoena
  - Motion to Compel
  - Police/Project Harmony videos and reports

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**Legal Practices**

- GAL as a witness
  - When & Why
    - Cross-examination of GAL report
    - Investigatory function of GAL
    - Not necessarily an Expert in Child Welfare
  - Can a GAL be both legal advocate and witness in the same proceeding
  - Objection to being called
  - Request for court appointed representation by legal counsel
  - Post case closure/post appointment termination

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**Reports**

- Guardian ad Litem Reports
  - Supreme Court Format
    - Information to include or attach
    - Relaxed Rules of Evidence
  - When are GAL reports required?
  - Who gets a copy?
  - Objections to GAL report

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**Reports**

- NDHHS Reports
  - Relaxed Rules of Evidence
  - Provider reports vs. caseworker summary
  - Dissemination to others
- Other reports
  - Young Child court report forms
  - Caregiver reports
  - Foster Care Review Office

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**Medicating Young Children**

- ADHD versus trauma symptoms
- What do you need to ask?
- Who do you need to talk to?
- Statistics

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**Relationship with your child client**

- GAL visits and contacts
  - Statutory requirements
    - Initial appointment
    - Minimum contacts
    - Nature of contact
  - Where should you/can you visit
  - Explaining your role to the child
  - What kind of information are you seeking

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**Relationship with your child client**

- Neb. Rev. Stat. §43-272.01(2)(g).
- Requesting information
  - Schools
  - Daycare
  - Medical Records
  - Caregivers
  - Evaluations
  - Treatment providers
  - \*Parents

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**Relationship with your child client**

- Very young child or diminished capacity child?
  - Understand their developmental stages and limitations
  - Get down on their level and interact with the child
  - Personal observation of development markers
  - Caregiver observations
- Non-verbal clients/infants
  - Caregiver observations
  - Have you held the baby?
  - Assumption that the child wants a relationship with the parent if it can be safe and healthy

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### Relationship with your child client

- Child Witness
  - Whose witness is it?
  - Is the child a necessary witness?
  - Competency
  - Therapeutic preparation/coping skills
  - Motion for In-Chambers
  - Familiarizing child with court room
  - Age appropriate language
  - Age appropriate questioning

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### Relationship with your child client

- Child Witness
  - Age appropriate language.
    - Truth, lies, right, wrong
    - One thought per simple sentence question
    - Frame questions in terms of the child's experience
    - Avoid legal words and phrases
    - Don't assume child understands meaning of a word just because they use the word
    - Use specific names and places
    - Avoid "do you remember" in your questions
    - Avoid using negatives in questions

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### Ethics

- NE Statutes
  - Neb. Rev. Stat. §27-503 does not directly address how the attorney-client privilege applies to minors
- Rules of Professional Conduct
  - Communications
    - Rule 1.14(a) – client capacity to make adequately considered decisions may be diminished by minority
    - Rule 1.14(c) – implied authority, but only to extent reasonably necessary to protect client's interests
  - Confidentiality
    - Rule 1.6(a) – reveal confidential information when a client gives informed consent
    - Rule 1.6(b)(1) – to extent lawyer believes reasonably necessary to prevent client from committing crime or to prevent reasonable certain death or substantial bodily injury
    - Rule 1.6(b)(4) – to extent lawyer reasonably believes necessary comply with law or other court order
- ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases

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## Ethics

- Family Team Meetings/Group Conferences
  - Non-disclosure forms
- Privacy/Protected Information
  - Exhibits
  - Medical Records, Evaluations, School Records, others
  - Sharing with necessary parties in pursuance of child's best interests.

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## Ethics

- Child disclosures
  - Assuming the Attorney-Client privilege of Neb. Rev. Stat. §27-503 applies.....However, if the juvenile did not intend the information to be disclosed to third parties, the GAL must consider whether the disclosure should be made because it is necessary to protect the juvenile from exposure to a high risk of harm.  
  
In re Christina W. 219 W. Va. 678, S.E.2d 770 (2006)
  - While a child's wishes should be presented to the Court, the main concern is the child's best interests

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## Questions and Answers



- It can be fun and fulfilling to be a GAL! Children are the entire reason for the Juvenile Court. Guardian ad Litem have a unique opportunity to play an important role in their safety, health, and general well-being.

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