

GUARDIAN AD LITEM C.L.E. TRAINING

Session: ***Ten (or More!) Ethical and Professional Quandaries for GALs, and How to Handle Them***

Presenter: Scott Kording
Attorney at Law
Meyer Capel, A Professional Corporation
202 North Center Street, Suite 2
Bloomington, IL 61701
Phone: (309) 829-9486
Fax: (309) 827-8139
E-mail: SKording@MeyerCapel.com

Sponsor: McLean County Bar Association

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Overview: This year's presentation during the October 23-24 GAL training seminar, which is still partially under development, is intended to be a scenario-based presentation in which attendees will be confronted with at least ten different scenarios that may present ethical quandaries or professionalism issues for guardians *ad litem* in the context of divorce or parenting time scenarios. It is anticipated that more than 10 different scenarios will actually be presented, especially including derivative scenarios and suggested scenarios from attendees during the presentation's discussion.

The presenter is still gathering potential fact patterns to constitute the minimum of ten intended scenarios to cover during the presentation. The following list of more than ten exemplar fact-pattern summaries illustrates of a pool from which some of the anticipated hypothetical scenarios that will be presented to attendees for consideration:

- A minor child whose best interests the GAL is charged with advocating discloses what the minor believes to be confidential information with the express request that the GAL guarantee to keep the information confidential and not disclose it further [and certain related derivative scenarios].
- A mother of a child for whom a GAL was appointed is accused by the child's father of allowing the child to be present for a major domestic violence altercation with the mother's husband (the child's step-father), and after repeatedly insisting that the allegations are untrue, the mother admits to the GAL far into the case that the allegations were true and that the mother feels the need to be honest so everything can be made right.

- After receiving from each parent a court-ordered “retainer” payment, a GAL deposits the money in trust, waits until he or she has performed enough work, issues an invoice, and then transfers the retainer payments from a trust account into the GAL’s law firm operating account [and certain related derivative scenarios].
- After completing his or her investigation, a GAL writes, files with the court, and distributes to the parents’ attorneys a written report containing the GAL’s findings. During a contested trial, the GAL does not testify, no reference is made to the GAL report in the file, and no party or the GAL attempts to offer the report into evidence. At the conclusion of the case, the judge’s ruling is expressly influenced by observations and claims made by the GAL in the written report.
- After completing service as a GAL and being discharged from that court-appointed office by the court, the minor for whom the GAL had been appointed later turns age 18 and subsequently contacts the attorney who had been GAL for purposes of engaging the attorney to file suit against one of the parents [and certain related derivative scenarios, such as if the former minor wishes to initiate an adult adoption, thereby potentially changing the parent-child relationship with one or both of his parents].
- After an award of GAL fees is approved in a court order, one of the parents refuses to pay fees by the court-ordered deadline [and certain related derivative scenarios, including a fees award that contains no payment deadline].
- When investigating the best interests of a minor who is two months shy of his 17th birthday, a GAL files a motion for appointment of an attorney for the child after interviewing the minor and determining that the minor’s view of his own best interests likely will differ materially from the position the GAL expects to take at the time of trial.
- After a few months of investigation following appointment by the court to serve as GAL for a minor child, counsel for one of the child’s parents serves upon the GAL a set of written discovery requests directed to the GAL and a notice of deposition directed to the GAL.
- During his or her investigation, the GAL files with the court a written report (or testifies) containing findings and conclusions based in part upon certain materials that the GAL reviewed that are undisputedly inadmissible in the proceeding itself.
- A GAL is asked to provide signature approval as to form and substance of an eleventh-hour, fully negotiated parenting plan that the parents and their attorneys wrote and signed the evening before a two-day contested bench

trial, which contains three or four provisions that do not comport with the GAL's view of what would be best for the parents' children [and certain related derivative scenarios].

- During the course of his or her investigation, a GAL's office assistant is repeatedly the recipient of rude or otherwise awkward or inappropriate communications from one of the parents involved in the case [and certain related derivative scenarios, including handling communications with parents hostile to the GAL's involvement, etc.].
- After entry of a final pretrial order containing a cutoff date by which all litigants are to exchange exhibits with one another, one parent's counsel delivers to the GAL's office the day before a contested hearing a new exhibit that could have a meaningful impact on the case in a way that is adverse to the position the GAL intended to take during the trial.

From the foregoing scenarios and discussion that results, the presenter anticipates touching upon several additional topics, including (i) the interplay of the Rules of Professional Conduct that apply to attorneys and the view that GALs are not actually practicing law or acting as attorneys; (ii) the requirements for documenting work performed and seeking fees awards; (iii) the potential for seeking formal leave of court to engage in pretrial discovery; (iv) the potential for seeking formal leave of court to exercise evidentiary privileges (i.e., calling and examining trial witnesses, offering exhibits, etc.) in a contested hearing; and (v) the differences and practices for Central Illinois circuit courts that use plenary GALs and those that use "limited" GALs (LGALs).

In support of the development of this presentation, the presenter is currently still working through a set of approximately 574 Illinois reviewing court opinions since January 1, 2015, that touched in some way upon a "guardian *ad litem*," whether by mere reference or through detailed discussion of the GAL's involvement. Relevant cases that do or could impact the scenarios referenced above will be cited to attendees and distributed by way of the McLean County Bar Association's webpage for the GAL CLE seminar. The final selection of cases will be inserted into the presentation once the caselaw review is complete.

Although not yet finalized, the instructor has considered modifying the traditional presentation manner for this kind of subject matter into a "game" of sorts, possibly including a modified version of a gameshow such as *Hollywood Squares*. If a change in the presentation method is implemented, then the presentation's subject matter will remain basically the same even if the method of delivery is modified. In the absence of a change in format, the presentation will advance through the presentation of a scenario (potentially including either a hypothetical from the presenter, a brief skit playacted to present the facts of the hypothetical scenario, or other similar method of conveying the hypothetical facts).

Methods: The presenter will use one or more of the following instructional methods to deliver the session content:

- Prepared hypothetical fact patterns/scenarios
- Prepared questions-and-answers
- Potential game simulation
- Group discussion on relevant issues/cases/statutory provisions
- Individual commentary from presenter
- Humorous anecdotes/commentary

Materials: The presenter intends to distribute the following selected materials via the McLean County Bar Association's website for this CLE presentation:

- The Illinois Rules of Professional Conduct (hyperlinked);
- Selected opinions of reviewing courts related to the final set of hypothetical fact patterns/scenarios;
- Relevant statutory provisions, including Section 506 of the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/506; and
- Potential handouts describing hypothetical fact patterns.