

## How Did Child Representation in Dependency Cases Change as of July 1, 2024?

SB 1224 (2024) made some revisions to how Florida provides representation to children in Chapter 39 – Dependency / Child Welfare Proceedings. Significant changes in earlier versions of the bill did not pass, leaving key aspects of the law unchanged.

### What Was Deleted?

- Children in contested modification of placement hearings are no longer entitled to appointment of counsel under Fla. Stat. 39.522.

### What Stays the Same?

#### **The Court Must Appoint An Attorney Ad Litem To Dependent Children With Special Needs.** Fla. Stat. 39.01305.

- Five categories of children are entitled to be appointed an attorney. Those who:
  - Live in, or are being considered for placement in, a nursing home.
  - Are prescribed a psychotropic medication and either don't want to take it or are too young to agree.
  - Have a diagnosis of developmental disability.
  - Are in, being considered for placement in a residential treatment center (SIPP, therapeutic group home, QRTP, BQRTP).
  - Are victims of human trafficking.

#### **The Court May Appoint An Attorney Ad Litem To Any Dependent Child.**

- The court has the inherent authority to appoint an attorney to any party before it. There is no limitation on that authority – including the age or capacity of the child. See Florida Rule of Juvenile Procedure 8.217.
- §39.01305(8) specifies that the requirement that some children be appointed counsel law does not limit the court's authority to appoint an attorney for any child.
- The authority to appoint an attorney does not include the ability to order payment for the court-appointed attorney.

#### **Any Party, Including The Child, Can Ask The Court To Appoint An Attorney Ad Litem.**

- A party can file a motion pursuant to Rule 8.127 of the Rules of Juvenile Procedure.
- Children can ask the court directly, or can ask their guardian ad litem, caseworker or other trusted adults to convey their request for an attorney to the court.

#### **Who Can Be A Guardian Ad Litem** Fla Stat. 39.01(32).

- Statewide Guardian ad Litem Office (SGALO), which includes all circuit guardian ad litem offices and the duly certified volunteers, staff, and attorneys assigned by the Statewide Guardian ad Litem Office to represent children;
- A court-appointed attorney; or
- A responsible adult who is appointed by the court.

## **How A Guardian Ad Litem Can Be Discharged From A Case**

- “The court, on its own motion or that of any party, including the child, may substitute or discharge the guardian ad litem for reasonable cause.” Rule of Juvenile Procedure 8.215(g).

## **The Guardian Ad Litem Is A Party**

- The definition of “Party” continues to include the guardian ad litem separately from the child. Fla. Stat. 39.01(61).
- Reference to the GAL as a “party to the judicial proceeding as the representative of the child” is unchanged from the previous definition in Fla. Stat. 39.820 to the new definition in Fla. Stat. 39.01(32).

## **Liability For Professional Negligence Or Malpractice**

- Guardians ad litem are statutorily presumed to be acting in good faith and immune from liability. Fla. Stat. 39.822(3).
- Attorneys are liable for their professional negligence and malpractice.

## **What was Added?**

## **A Requirement That All Children Be Appointed A Guardian Ad Litem**

- Previously, the court had discretion whether or not to appoint a guardian ad litem. SB 1224 removed that discretion and requires the appointment of a guardian ad litem at the earliest possible time. See the revision to Fla. Stat. 39.822(1).
- All references to the guardian ad litem in Chapter 39 no longer say “if one is appointed” because every child must have a guardian ad litem.
- This means if the SGALO is discharged, the court MUST appoint someone else to serve as the GAL.

## **The Guardian Ad Litem’s Ability To Advocate For Children Outside Of Ch. 39.**

- “The guardian ad litem may represent the child in proceedings outside of the dependency case to secure the services and benefits that provide for the care, safety, and protection of the child.” Fla. Stat. 39.013(11).
  - For example, Medicaid Fair Hearings, Social Security Appeals, School Discipline and Special Education are some of the types of proceedings outside of chapter 39 that secure services and benefits for children.
  - The revised law does not give non-lawyers the ability to practice law. Rule 8.215(f) of the Juvenile Rules of Procedure specifies: “The duties of lay guardians shall not include the practice of law.”

## **Codification Of The Statewide Guardian Ad Litem Office’s Identification As A “Fiduciary.”**

- The SGALO previously advised its employees and volunteers that they are fiduciaries. SB 1224 defines the Guardian ad Litem to be a fiduciary, but does not explain what that includes. Fla. Stat. 39.01(32)
- However, the basic obligation of a fiduciary is the obligation to act in the other person’s best interest, and includes:
  - A duty of care – to make informed decisions as a reasonable and prudent person would.

- A duty of loyalty – the fiduciary must place the interest of the child over their own and must avoid conflicts of interest.
  - A duty of good faith – to act with honesty and transparency.
- Note: Attorneys are also fiduciaries for their clients. Their obligations to their clients are further specified in the Florida Bar Rules of Professional Conduct.

**Definitions Of Attorney Ad Litem And Guardian Ad Litem.** Fla. Stat. 39.01(32).

- **New definition of Attorney Ad Litem:** “Attorney ad litem – means an attorney appointed by the court to represent a child in a dependency case who has an attorney-client relationship with the child under the rules regulating The Florida Bar.” Fla. Stat. 39.01(8).
- **Revised & Moved definition of Guardian ad Litem:** “‘Guardian ad litem’ means a person or an entity that is a fiduciary appointed by the court to represent a child in any civil, criminal, or administrative proceeding to which the child is a party, including, but not limited to, under this chapter, which uses a best interest standard for decisionmaking and advocacy. For purposes of this chapter, the term includes, but is not limited to, the Statewide Guardian ad Litem Office, which includes all circuit guardian ad litem offices and the duly certified volunteers, staff, and attorneys assigned by the Statewide Guardian ad Litem Office to represent children; a court-appointed attorney; or a responsible adult who is appointed by the court. A guardian ad litem is a party to the judicial proceeding as a representative of the child and serves until the jurisdiction of the court over the child terminates or until excused by the court.” Fla. Stat. 39.01(32)
  - What Changed?
    - The definition was moved from Fla. Stat. 39.820.
    - The term “fiduciary” was added.
    - Administrative proceedings were added.
    - The requirement to use the “best interest standard for decisionmaking and advocacy” replaced the requirement that the GAL “represent the best interests of a child in a proceeding.”
    - The law now presumes continuous representation until the court’s jurisdiction over the child ends, previously representation ended when the GAL was discharged by the court.

**Standardization of Language**

- All reference to the “Guardian ad Litem Program” were removed from Florida statutes and replaced with the correct name, the Statewide Guardian ad Litem Office.
- References to the “guardian ad litem, if appointed” were removed because all children must be appointed a guardian ad litem.
- References to a child’s attorney were revised to use the term “attorney ad litem” and the qualifier “if appointed” added in most of Chapter 39.

**Requirement For The Statewide Guardian Ad Litem Office To Develop Training Materials and Support for Guardians Ad Litem And Attorneys Ad Litem**

- The law has always provided: “The Statewide Guardian ad Litem Office shall, within available resources, have oversight responsibilities for and provide technical assistance

to all guardian ad litem and attorney ad litem programs located within the judicial circuits.” Fla. Stat. 39.8296(2) (b).

- SB 1224 added language requiring the SGALO to:
  - Develop an attorney ad litem training program
  - Offer consultation and technical assistance to chief judges in maintaining the attorney registry.
  - Assist with recruitment, training and mentoring of attorneys ad litem, as needed.
- The revisions to Fla. Stat. 39.8296 place obligations on the SGALO. They do not require lawyers or judges to accept the assistance or attend offered training.