

## Article of Note

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### Four Tips for Navigating a Case Involving a Guardian Ad Litem

By Liz Huntley

On any typical day in the life of an attorney, a new case may land on our desks involving an injury to plaintiffs. We roll up our sleeves and get to work: We assess the legal claims, determine the substance of discovery, and on occasion, negotiate an early resolution for our clients. After hours of negotiating and numerous exchanges of redline edits to finalize a settlement agreement, we almost always prepare a proposed order of dismissal and realize—there’s a child involved in the case.

Suddenly, the settlement comes to a screeching halt to figure out how to proceed, because *when a minor is involved in a civil lawsuit and a settlement is reached, a guardian ad litem must be appointed to represent the interest of the minor.*

As a lawyer who is regularly appointed by judges to represent minors in civil cases, I often receive calls from my colleagues who find themselves in the situation above. They realize that a guardian ad litem must be involved, but they don’t know where to begin.

#### **One: Do Your Homework on the Guardian Ad Litem Appointment Process**

The manner in which a guardian ad litem is appointed not only varies from state to state, but from courtroom to courtroom within the same jurisdiction. So I advise my colleagues to do their homework and find out their judge’s preference for appointing a guardian ad litem. For example, in Alabama, I have practiced in front of some judges that have a group of “go-to” attorneys for this purpose and will usually appoint someone from their list.

Other judges accept the recommendations of the parties’ counsel for a guardian ad litem and appoint the person of their choice. With that said, *it is best to reach out to the court to determine its preference for selection of the guardian ad litem.* My colleagues are grateful for this guidance and get a guardian ad litem appointed.

#### **Two: Allow the Guardian Ad Litem to Assess the Case Thoroughly**

Then, I sometimes get a second phone call. My colleagues will ask, “Do we really have to give the guardian ad litem all of this information? Can’t they just look at the settlement and see that it’s fair?” I then respond, “I am glad that you were appointed a good guardian ad litem!”

*A good guardian ad litem does not just sign off on a settlement that appears fair on its face.* They have the responsibility, based on their experience and competence in the area of personal injury law, to assess the case thoroughly.

As a guardian ad litem in personal injury cases, I request copies of relevant pleadings, medical records, depositions, and other documents that will assist me in a thorough evaluation of the claims, injuries, and future needs of the minor. I *always* visit with the minor (sometimes more than once) and may even interview the caregivers and treating physicians to determine the extent of the injuries and the long-term effects of the injuries on the minor.

I consider myself the jury for the judge because I will make a recommendation to him or her based on my impression of the facts and evidence. Although sometimes frustrated by the delay for this type of evaluation, my colleagues understand my explanation for the guardian ad litem’s access to information.

#### **Three: Get the Guardian Ad Litem’s Recommendation to Approve the Settlement**

Once a guardian ad litem concludes his or her evaluation, he or she will prepare a report with a recommendation on whether the proposed settlement is in the best interest of the minor.

If the guardian ad litem makes a favorable recommendation regarding settlement, the parties can move forward with a pro ami hearing or a hearing for the court to determine whether the settlement is in the best interests of the child.

However, there are occasions when a guardian ad litem does not approve the proposed settlement. That's when I get a third phone call from my colleagues, who may say something like, "The guardian ad litem is messing up the settlement! How am I going to explain this to my client?"

This situation can certainly present an issue with your client. That is why it is a good "client management" practice *to prepare the client that the matter is not ready for a proposed settlement to the court until the guardian recommends approval, and sometimes, gaining that approval may require further negotiations.*

Once the guardian ad litem's concerns are resolved, you can move forward with a pro ami hearing where the guardian ad litem recommends approval of the settlement.

*I recommend that you work with the guardian ad litem and get his or her recommendation to approve the settlement.* I do not advise proceeding with a pro ami hearing when the guardian ad litem does not recommend approval of the settlement. Although I have never experienced a pro ami hearing without my recommendation for approval of a settlement, one of my colleagues has—and it did not go well with the judge.

#### **Four: Determine Guardian Ad Litem Fees in Advance**

The final call that I often get from my colleagues involves payment of the guardian ad litem fees. They are frustrated because they think that the fees are excessive, or they believe that the judge allowed too high of an hourly rate.

As defense attorneys, they are worried about their client's response when they see the fee amount. As plaintiffs' attorneys, they are concerned about their client's reaction when they see the amount paid to the guardian ad litem. This is another "client management" issue.

I very rarely have an attorney ask my rate or the amount of time that I have invested in a case prior to the pro ami hearing. The proposed order will usually have a blank line for my guardian ad litem fee, but it is not discussed until we get to the hearing. *The best practice is to ask in advance so that you can manage your client's expectations.*

Good luck navigating the waters of settling a case with a kid! These tips will make the process go a lot more smoothly for you and your client.



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