

Are there legal options for an adolescent who says, 'My GAL doesn't speak for me'?

Jamie Tester Morfoot and Daniel Pollack | March 8, 2022



When parents end their marriage or relationship, joint children become a central focus of negotiations. A guardian ad litem (GAL) may be appointed by the court to oversee and provide recommendations considered to be in the “best interests of a child.” The GAL’s exact responsibilities will vary by the court order, but the most consistent

responsibility is that a GAL will prepare a written report outlining the facts and provide the court with recommendation. By doing so, the interested parties can challenge the outlined facts, present evidence counter to what is presented in the report, and provide the court with information about new developments in the case that may have taken place between the submission deadline for the report and the court hearing. A full description of additional responsibilities that may be asked of a GAL can be found in New Jersey Rule 5:8B:

“(a) Appointment. ... In addition to the preparation of a written report and the obligation to testify and be cross-examined thereon, the duties of a guardian may include, but need not be limited to, the following:

1. Interviewing the children and parties.
2. Interviewing other persons possessing relevant information.
3. Obtaining relevant documentary evidence.
4. Conferring with counsel for the parties.
5. Conferring with the court, on notice to counsel.
6. Obtaining the assistance of independent experts, on leave of court.
7. Obtaining the assistance of a lawyer for the child (Rule 5:8A) on leave of court.
8. Such other matters as the guardian ad litem may request, on leave of court.

(b) Objection or Refusal of Appointment. A proposed guardian ad litem shall have the right to consent or to decline to serve as such, notice of such decision to be in writing to the court with copies to counsel. The parties shall have the right to object to the person appointed as guardian ad litem on good cause shown.”

The GAL role is unique. The client is not an individual; it is the “best interests” of the individual(s). The intent of the role is to have a third-party representative who may consider the requests of the interested

parties (parents, guardians, children), but who is not obligated to honor requests with a recommendation to the court. In child protection cases, an alternative forum in which GALs may be appointed, adolescents may also have the option of the appointment of their own counsel to protect and pursue the child's legitimate interests. However, in a family court proceeding of custody or divorce, minors typically lack representation to speak directly regarding their wishes. This is often due to the belief that children lack the developmental capacity to understand what is in their "best interest."

Exactly what is the nature of the voice that an adolescent has in the divorce process? During adolescence it is expected that children will challenge authority while craving limits and boundaries. With the turmoil of divorce impacting the family structure, clearly established limits and boundaries may shift, challenging the consistency in authority of the caretakers.

Judges historically have been hesitant to request the appearance and testimony of children in open court. At all ages of development children may experience a conflict of loyalty to each of their parents and demonstrate varying rates of psychosocial development.

In Helping in Child Protective Services: A Competency-Based Casework Handbook, published by the American Humane Association, the physical, cognitive, and psychosocial development of children by age are discussed. Developmentally, a seven-year-old child experiences anxiety when they feel they have displeased someone, but are also overly concerned with the idea of right and wrong. At 10 years of age, it is typical for a child to still have strong positive connections to their

parental figures, but are increasingly focused on material possessions and how they will be when they are a parent.

As children move into adolescence, 13-15 years of age, conflict with family members increases. Children are just beginning to develop the skills to think abstractly with practical problem-solving skills not being present until late adolescence at 17-18 years of age. Increased conflict, mixed with concrete thinking and a desire for independence—which they lack the skills to execute—can result in adolescents challenging the recommendations of the GAL for placement in the home that appears to demonstrate consistency and appropriate discipline.

Like an iceberg, there are a multitude of family dynamics below the surface that GALs and other professionals may never know about a family when making decisions. Therefore, the question remains: When is it appropriate for an adolescent to speak to the court directly? Clarity from the legislature and the courts is desperately needed.

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