



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CMS*
DATE: July 20, 2022
RE: Children's Code Amendments: Public Comment Review with LOC Consideration

On June 15, 2022, a public meeting was held regarding the proposed amendments to the Children's Code ("the Law"). The public comment period was then held open until June 22, 2022. The Legislative Operating Committee reviewed and considered the public comments received on July 14, 2022.

Comment 1 – GAL Access to Information:

708.8. Guardian ad litem

708.8-3. Responsibilities. The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

- (a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, and all other relevant persons to gather facts when appropriate;
- (b) consider the importance of the child's culture, heritage and traditions;
- (c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- (d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- (e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- (f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- (g) inform the court of any concerns or possible issues regarding the child or the child's family;
- (h) represent the best interests of the child;
- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

Jessica Vandekamp (written): Shekoli, The recommendations I have to add to the Children's Code Amendments are to be consistent with Title 7 Children, Elders & Family Chapter 705, Child Custody, Placement and Visitation. Specifically for the purposes to carry out duties described in 705.85 Guardian ad Litem Responsibilities without undue delay.

Recommendation: Agencies (Child Support, ICW, Oneida Judiciary, GAL etc.) shall share information on family court cases that are serving in the best interest of children.

Challenge: Currently sharing of information between agencies is not included in the law, therefore, as a Guardian ad Litem, ICW requires me to retrieve a signed authorization form before releasing information – a court order isn't enough. I'm not able to get timely and important information from ICW workers or on CHIPS cases. The problem this presents is that a GAL has to make time and find the parent, meet with a parent to get a signature on a form to authorize consent to obtain information. Sometimes the parent is reluctant to sign, and/or their child that may not even be in their custody.

Question: In many cases the same judge assigning a GAL to a case is the same judge doing the CHIPS hearing so why does it have to be so difficult to for one to obtain information on a common case?

Solution: To save time, resources, money and frustration by an agency/entity (GAL), documentation regarding serving for the best interest of children must be shared for all parties to get a wholistic view of the situation.

Response

The commenter expresses concern over her experience working as a guardian ad litem (GAL) and the difficulty she faced in efficiently obtaining information from the various agencies of the Nation. Specifically, the commenter discussed an appointment as a GAL for a child in a case under the Child Custody, Placement, and Visitation law and difficulty obtaining information from the Indian Child Welfare Department for information pertaining to the same child in a related child welfare case. The commenter expresses the importance of a GAL being able to efficiently access all information regarding a child in order to come to a conclusion as to the best interests of a child.

A GAL is a person appointed by the Court to appear at any peacemaking, mediation, or hearing who is tasked with representing the best interest of the person appointed for. [7 O.C. 708.3-1(x), 705.3-1(g)].

Under the Children's Code, the GAL has the following responsibilities:

- investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, and all other relevant persons to gather facts when appropriate;
- consider the importance of the child's culture, heritage and traditions;
- consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- inform the court of any concerns or possible issues regarding the child or the child's family;
- represent the best interests of the child;

- perform other duties as directed by the Court; and
- comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem. [7 O.C. 708.8-3].

Under the Child Custody, Placement, and Visitation law GAL has the following responsibilities:

- be an advocate for the best interests of a child;
- consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- investigate the issues and provide a written report to the Court; and
- communicate to the Court the wishes of the child, unless the child asks the guardian ad litem to do otherwise. [7 O.C. 705.8-5].

Overall, an important responsibility of a GAL is to investigate and review all relevant information, records and documents.

When the Court appoints a GAL, whether that be in a case under the Children’s Code or the Child Custody, Placement, and Visitation law, the Court’s order contains the following statement:

The guardian ad litem shall be provided access to all records in possession of juvenile intake; the tribal, county or state department of social services; child welfare agencies; schools; or law enforcement agencies pertaining to the above captioned case, regardless of the originating source, including but not limited to, medical, mental health, psychological, counseling, drug or alcohol records from a non-federally assisted program as defined in 42 CFR Part 2, financial, educational, employment, probation, and law enforcement records.

The inclusion of this statement in the Court order is to avoid unnecessary delay, especially when the GAL has to meet expedited timelines included under the Children’s Code. Requiring a GAL to seek a signed authorization form from the parent in order to access information from the Indian Child Welfare Department should not be necessary when there the order made by the Court already addresses the release of information to the GAL.

In order to clarify this issue and avoid unnecessary delay in the future, it is recommended that the following revision be made to the Children’s Code:

708.14. Discovery and Records

708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation’s Child Welfare attorney or the Department that pertain to any case under this law.

708.14-2. The Department shall make available for inspection or disclosure the contents of any record kept, regardless of the originating source, to a guardian ad litem appointed in a Children’s Code or family law case when that access is granted by order of the Court.

LOC Consideration



The Legislative Operating Committee determined that the Children’s Code should be amended to clarify the issue regarding the guardian ad litem’s efficient access to information when there is an order of the Court addressing such matter to avoid unnecessary delay in the future. The Legislative Operating Committee directed that the following revision be made to the Children’s Code:

708.14. Discovery and Records

708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation’s Child Welfare attorney or the Department that pertain to any case under this law.

708.14-2. The Department shall make available for inspection or disclosure the contents of any record kept, regardless of the originating source, to a guardian ad litem appointed in a Children’s Code or family law case when that access is granted by order of the Court.