
GUARDIANSHIP
AND OTHER
PROTECTIVE
PROCEEDINGS

THE GAL'S ROLE IN PROBATE MATTERS

COMMON REASONS FOR PROBATE GAL APPOINTMENTS

Parents unavailable due to illness, mental health issues, substance abuse, incarceration

Death of parents

Guardian fails to file annual guardian's report

Court has reason to believe conservatorship funds or restricted account funds have been taken or misused

Represent minor's best interest regarding an inheritance where there may or may not be assets

ROLE OF THE GAL IN PROBATE

“Eyes and
Ears of the
Court”

Provide In-
Depth Factual
Information

ANCILLARY FUNCTIONS OF THE GAL

Explain to your child client in an age-appropriate and reassuring manner about the guardianship process

Instruct the parties about the role of the Guardian ad Litem

Instruct the parties about the guardianship process – parental rights are not being terminated

If it is necessary to go beyond the scope of the Court's order of appointment get permission - file a motion

MINOR GUARDIANSHIP

C.R.S. 15-14-201 TO C.R.S. 15-14-210

C.R.S. 15-14-204



C.R.S. 15-14-204(2) The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and...



(b) The parents are unwilling or unable to exercise their parental rights

MISCELLANEOUS HIGHLIGHTS FROM GUARDIANSHIP STATUTES



C.R.S. 15-14-205 Notice Requirements – interpretation of interested persons requiring notice can vary among judicial officers



C.R.S. 15-14-206 Children are encouraged to participate in the judicial process



At age 12 or older child can nominate a guardian, the court will honor their choice if in child's best interests



C.R.S. 15-14-207 Duties of a Guardian – Guardian has the duties and responsibilities of a parent



C.R.S. 15-14-208 Powers of a Guardian – The guardian establishes custodial dwelling; it is possible that the guardian does not maintain physical custody



C.R.S. 15-14-209 Rights and Immunities of a Guardian – The guardian is not obligated to use personal funds for the ward's expenses

MINOR CONSERVATORSHIP

C.R.S. 15-14-401 Protective Proceeding

The court may appoint a limited or unlimited conservator or make any other protective order...

COLORADO RULES OF PROFESSIONAL CONDUCT

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

Rule 1.14 Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority mental impairment or for some other reason, the lawyer shall as far as reasonable possible, maintain a normal client lawyer relationship with the client.

Note:

COMMENT

When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects...Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age and certainly those of ten or twelve are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.

THE INVESTIGATION

- Order of Appointment: JDF 742 or JDF 210
- Review the Electronic Court File – the Petition
- Introductions: proposed guardians, child/children, biological parents
- Collateral Sources:
 - therapists, health professionals
 - school (staff, counselors, administration)
 - relatives, friends
- Department of Human Services involvement?
- Court Data Access

DOCUMENTING THE
INVESTIGATION

GAL REPORTS

THE INITIAL REPORT



Purpose



Summary of Conclusions and Recommendations



Investigation



Conclusions in Detail

Parent's substance testing results

School attendance and progress reports

Information that explains involvement in a program or activity

Therapy or medical reports – *alert clerk to suppress or seal*

Criminal background information of persons in household where children reside

SUPPORTING
DOCUMENTS OR
EXHIBITS TO FILE
WITH THE
REPORT

SUBSEQUENT REPORTS

Addendum to
Initial Report

Brief Status
Update



ADDITIONAL TOOLS

Case Consultants

Allocation of
Parental
Responsibility

Limitations or
Restrictions on
Letters of
Guardianship