

# Attorney Expectations

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*“If you have integrity, nothing else matters. If you don’t have integrity, nothing else matters.”*

*Harvey Mackay*

## **Program Mission**

Advocating for the child’s best interest is the Guardian ad Litem Program’s only interest.

## **Definitions**

**Guardian ad Litem Program (GAL Program):** all individuals employed by and volunteering for the Guardian ad Litem Program, except for the purpose of these standards, CBI Attorneys as defined below. GAL Program includes Circuit Directors, Supervising CBI Attorneys, Case Coordinators, and GAL Volunteers. The team includes the CBI Attorney, the Case Coordinator, and the GAL volunteer.

**Office of General Counsel:** the General Counsel and all individuals reporting directly to the General Counsel regarding the practice of law.

**Child’s Best Interest Attorney (CBI)** refers to the attorney employed by the Program to protect a child’s best interest either in the circuit dependency courts or the appellate courts. There is no attorney-client relationship between the GAL Best Interest Attorney and the child; however, representing the best interest of the child is the sole purpose of their advocacy.

**Supervising CBI Attorney** refers to the CBI Attorney who supervises the practice of law within the Circuit by making all efforts necessary to ensure that all CBI Attorneys under his or her supervision conform to the highest standard of the profession and comply with GAL Program policies, and standards as well as Rules Regulating The Florida Bar.

**Regional Legal Director** refers to the Attorney who supervises the practice of law within their designated region of circuits within the state. The Regional Director ensures that all Supervising CBI Attorneys and CBI Attorneys conform to the highest standard of the profession and act as a liaison between the General Counsel, Director of Legal Services and the State Office.

**Guardian ad Litem (GAL)** refers to the representative of the Program who is advocating for the best interests of the child. This term refers to a volunteer Guardian ad Litem (also known as a Volunteer Child Advocate), or in cases where a volunteer GAL is not available, a paid staff member. A GAL is a member of a team that includes a Child’s Best Interest (CBI) Attorney and a Child Advocacy Coordinator (CAC). The CBI Attorney advises on matters of law and the CAC serves as an advisor, coach and support for volunteer GALs.

**Child Advocacy Coordinator (CAC)** refers to the Program employee who advises, coaches, mentors volunteer GALs, and monitors the child’s dependency case.

**Attorney ad Litem (AAL)** refers to an attorney who is appointed by the Court to represent the child. An attorney-client relationship exists between the AAL and the child.

**Pro Bono Attorney** refers to an attorney who voluntarily works with the Program. A pro bono attorney may be a CBI Attorney or an Attorney ad Litem.

**The Program** refers to the Statewide Guardian ad Litem Program, including each individual Circuit Office, the Regional Directors, Program Office, and the Statewide Office.

## **Professionalism**

The CBI Attorney shall at all times act in a professional and ethically responsible manner including compliance with GAL Program policies, and standards as well as Rules Regulating The Florida Bar.

## **Communication**

CBI Attorneys shall maintain a courteous and respectful relationship with GAL Program staff , volunteers, children and their families. The CBI Attorney shall be open and responsive to the concerns, opinions, and ideas of the children appointed to the GAL Program, staff, volunteers, outside agencies, and GAL Program. Emails and phone calls should be returned within 48 hours.

### **Communication with the Child**

It is the responsibility of the CBI Attorney to regularly communicate with the children appointed to the GAL Program. This contact shall be verbal or written, as is developmentally appropriate. Should a GAL or CBI Attorney encounter barriers in gaining access to an assigned child the CBI Attorney must pursue all administrative and legal means to gain access to the child. It is important and necessary to immediately inform the Department of Children and Families (Department), the Community Based Care (CBC) Agency, and the dependency court of any denied access and to work together with them to resolve the issue.

### **Communication with Team**

The CBI Attorney shall have regularly scheduled opportunities to meet with the team and children represented by the Program. The CBI Attorney should be available for in-person meetings as well as telephone conferences. The CBI Attorney shall respond to the team in a timely manner.

### **Communication with the Volunteer**

The CBI Attorney shall provide consultation and support of volunteers when appropriate, including: reviewing volunteer recommendations to ensure they are legally sufficient, and promote the child's best interests; attending case staffings; and consulting on case investigation and preparation when necessary. The CBI Attorney should encourage the GAL to give testimony to the court in support of written recommendations

### **Communication with Outside Agencies and Professionals**

The CBI Attorney shall at all times communicate in a dignified, polite, and respectful manner with all outside agencies and professionals. The CBI Attorney shall present a positive image of the GAL Program at community functions and meetings. The CBI Attorney shall return phone calls, e-mails, and other correspondence in a timely manner.

### **Confidentiality**

Pursuant to state and federal law, the CBI Attorney shall at all times strictly follow all laws and rules related to confidentiality. When appropriate, the CBI Attorney shall assist the GAL Program in obtaining and protecting confidential information.

## **CBI Attorney Expectations**

The CBI Attorney shall use his or her judgment, knowledge of the law and child welfare issues to facilitate the most appropriate advocacy of the child's best interests. The CBI Attorney shall at all times advocate for the child and the best interests of the child. The best interests of the child, shall be the paramount consideration in every decision or action of the CBI Attorney.

### **The CBI Attorney shall:**

- Counsel and advise the team ;
- Thoroughly and adequately prepare for all court proceedings;
- Obtain copies of all pleadings and relevant notices;
- Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
- Prepare for and participate in all internal staffings and meetings held on behalf of the child;
- Inform other parties and their representatives that he or she is representing the best interest of the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the CBI Attorney's role, and what to expect in the legal process;
- Counsel the team concerning the subject matter of the litigation, the court system, the proceedings, and what to expect in the legal process;
- Encourage the child to participate in all aspects of the dependency proceedings;
- Express the child's wishes to the court and other parties regardless of whether the child's preferences conflict with the Program's determination as to what is in the child's best interest;
- Requesting the release of the Volunteer, Staff and CBI Attorney at the close of a case and ensuring court orders reflect that release;
- Participates in GAL Volunteer training as directed by the Supervising CBI Attorney and/or the Circuit Director or designee;
- Completes training related to Juvenile Law and Program as required by local program or statewide office;
- Ensure that the GAL is recognized by the court and their name is entered into the record;
- Work with the team to develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
- Work with the team to identify appropriate family and professional resources for the child.

### **Have Knowledge of the Law**

The CBI Attorney shall fully understand and comply with all relevant state and federal statutes, case law, regulations, policies, rules, including but not limited to the following:

- Chapter 39, Florida Statutes;
- Florida Rules of Juvenile Procedure;
- Florida Administrative Code;
- Florida Evidence Code;
- Interstate Compact on Placement of Children;
- Florida Rules of Professional Conduct;

- Florida Rules of Appellate Procedure;
- Regulations and Internal Operating Procedures of the Department of Children & Families relating to dependency cases and placement issues;
- Adoption and Safe Families Act, Adoption Assistance and Child Welfare Act, Child Abuse Prevention and Treatment Act, Indian Child Welfare Act, Multiethnic Placement Act, regulations promulgated pursuant to these federal Acts, and other statutes, regulations, policies, and procedures regarding child abuse and neglect; and
- Relevant state and federal case law regarding child abuse and neglect;
- Relevant statutes, codes, policies and case law regarding special protections for child witnesses.

**Participate in all Applicable Court Proceedings**

The CBI Attorney shall appear and participate in all court proceedings related to his or her cases, including but not limited to depositions, negotiations, discovery, pretrial conferences and hearings.

**File Pleadings**

The CBI Attorney shall timely file petitions, motions, responses or objections as necessary after consulting with the team to represent the best interests of the child. This includes Termination of Parental Rights (TPR) petitions that team agrees are in the best interests of the child

**Investigate**

To represent the child and the child’s best interests, the CBI Attorney shall conduct independent investigations and discovery which may include but is not limited to:

- Gathering information from the team and obtained by the CBI Attorney from regular communication with the team;
- Reviewing the child’s social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other related reports;
- Reviewing court files of the child and siblings;
- Obtaining independent information from school personnel, department case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers and other potential witnesses (the volunteers and staff may do much of this investigation); and
- Attending case plan conferences, school conferences and staffing.

**Present and Cross-Examine Witnesses**

The CBI Attorney shall present and cross-examine all witnesses, offer exhibits, present evidence, and provide independent evidence, as necessary to prove the prima facie elements of the legal position determined by the team to serve the child’s best interests.

**Prepare and Present Exhibits**

The CBI Attorney shall prepare and present exhibits as necessary to prove the *prima facie* elements of the legal position determined by the team to serve the child’s best interests.

**Ensure Report Submitted to the Court**

The CBI Attorney shall ensure that a written GAL Judicial Review report is submitted to the court within the required submission timeframe. If not, written notification to the Circuit Director is

required within 24 hours of the court hearing

#### **Encourage Settlements**

The CBI Attorney should encourage settlements to the extent that the proposed settlement is in the best interests of the child. The CBI Attorney will not enter into a settlement with other parties without agreement from the team.

#### **Request Appointment of Attorneys ad Litem**

CBI Attorneys shall evaluate the child's case and circumstances to determine whether appointment of an attorney ad litem would further the child's best interests. Other factors to consider in making the determination to request appointment of an attorney ad litem might include but are not limited to the existence of a significant conflict between the child's expressed wishes and the CBI Attorney's best interests advocacy.

CBI Attorneys shall also request appointment of an Attorney in all cases in which a child:

- Resides in, or is being considered for placement in, a skilled nursing facility;
- Is prescribed a psychotropic medication and declines it;
- Has been diagnosed with a developmental disability;
- Is being placed in, or is considered for placement in, a residential treatment center; or
- Is a victim of human trafficking as defined in § 787.06 Florida Statutes

#### **Inform Supervising CBI Attorney of any Punitive Action Taken Against the GAL Program**

Any and all motions filed by any party directed to the GAL Program requesting fees, costs, sanctions or a finding of contempt as well as orders to show cause directed to the GAL Program by the court shall be immediately brought to the attention of the CBI Supervising Attorney.

#### **Communicate Order to the Child and the Team**

The CBI Attorney shall discuss court orders, actions, and their consequences with the child (as developmentally appropriate) and the team

#### **Review of Proposed Orders**

The CBI Attorney shall review all proposed orders submitted to the court to ensure that the proposed orders are accurate, preserve appellate issues, and clearly state desired outcomes. If a proposed order is drafted incorrectly, the CBI Attorney shall act in a timely and appropriate manner to correct the record, such as by filing objections to the proposed order or by filing a separate proposed order.

#### **Compliance with Orders**

The CBI Attorney shall follow all court orders and shall make reasonable efforts to ensure that the GAL Program complies with all court orders. If compliance with a court's order will jeopardize the child's best interests, the CBI Attorney should consider filing a motion for rehearing or an appeal.

#### **Communicate with the Child**

The CBI Attorney is encouraged to partner with team to counsel the child in a developmentally appropriate manner concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process.

## **The Supervising CBI Attorney**

The Supervising CBI Attorney shall supervise the practice of law within the Circuit Program by making all efforts necessary to ensure that all CBI Attorneys under his or her supervision conform to the highest standard of the profession and comply with GAL Program policies, and standards as well as Rules Regulating The Florida Bar.

### **The Supervising CBI Attorney Shall at a Minimum:**

- ensure that the CBI Attorneys understand their roles and responsibilities;
- organize, delegate and direct the legal practice of CBI Attorneys;
- implement, monitor, and evaluate work standards of CBI Attorneys; ensure case coverage when the CBI Attorneys are absent or unavailable;
- work with the Circuit Director to allocate caseloads fairly;
- work with the Regional Legal Director to ensure continuity of representation;
- be available to provide in-house educational and training opportunities;
- evaluate and mediate conflicts between the CBI Attorneys, CAC's and the GAL Program pursuant to the GAL Program Standards of Operation;
- contribute to the development of GAL or State Office policies;
- act as a liaison between the GAL Program, the community and the courts through communication with community groups regarding GAL Program issues in order to gain support for the GAL Program; and
- supervise law clerks, legal research assistants, and law school graduates that are not members of The Florida Bar.

## **Appeals**

When an appellate issue arises, the CBI Attorney should discuss the appellate issue with the Supervising CBI Attorney, Regional Legal Director, Appellate Director and Program Circuit Director. In appropriate circumstances, the CBI Attorney, the Supervising Attorney, Regional Legal Director, Appellate Director or Program Circuit Director may also consult the State Office. Where a case involves an appellate issue that poses potential statewide implications, the Appellate Director shall notify the State Office at the earliest opportunity.

### **Communicate Result**

The CBI Attorney shall communicate the decision of all appeals to the child, and the team to explain its implications. The CBI Attorney shall follow all orders of the appellate court. When following the order of the appellate court jeopardizes the child's best interests, the CBI Attorney should consider filing a motion for rehearing or seeking review by a higher court.

## **Child's Testimony**

If the child has been subpoenaed by another party to testify at a hearing, the team shall determine whether it is appropriate for the child to testify, considering the necessity, possible benefits, and repercussions of the child's testimony. Consideration should also be given to the availability of other evidence, including evidence admissible through hearsay exceptions that may substitute for direct testimony.

If the team determines testifying to be contrary to the child's best interests, the CBI Attorney shall seek agreement of all parties to refrain from calling the child as a witness. In the absence of such agreement

and when appropriate, the CBI Attorney shall seek other remedies, such as court orders limiting the scope or circumstances of the child's testimony. If the child is compelled to testify, the CBI Attorney should seek to minimize the negative consequences of such testimony by seeking appropriate accommodations allowed by law, such as in camera testimony or testimony via closed circuit television.

If the child is compelled to testify, the CBI Attorney shall ensure the child is prepared to testify. If an attorney ad litem is appointed to the child, preparation for court testimony should be conducted in collaboration with the child's attorney.