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Guardian Ad Litem Representation of Children in Florida Dependency Courts

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I. Introduction

39. When there is probable cause to believe a child has been abused, abandoned, or neglected, the child is placed under the jurisdiction of a dependency court judge. While the dependency court case is pending, the child may be placed in the foster care system or with another responsible adult, such as a relative, under the protective supervision of the Department of Children and Families. When these tragic events occur, the children need zealous advocacy that can protect their rights and acquire the services that meet their needs until they can be safely reunited with their parents or find another permanent home. These advocates must navigate the court system, the social services system, and utilize common sense in accessing the services and support that is in the child's best interests in the communities in which they live. The State of Florida established the Florida Guardian ad Litem Program ("GAL Program") to meet the unique needs of children subject to the jurisdiction of dependency court.[2] "A guardian ad litem [GAL] is a special guardian appointed by the court to prosecute or defend, on behalf of an

1 Mr. Moore is an attorney with the Statewide Guardian ad Litem Office in Tallahasee Florida. Mr. Moore graduated from Nova Southeastern University Shepard Broad College of Law and has been licensed in Florida since May 2000.

2 Florida Guardian ad Litem Program Annual Report, 25 Years of Child Advocacy, June 13, 2015.

infant or incompetent, in a suit to which he is a party, and such guardian is considered an officer of the court to represent the interest of the infant or incompetent in the litigation."[3]

40. Federal and Florida law requires the appointment of a guardian ad litem to represent the child in abuse and neglect proceedings ("dependency proceedings").[4] Unlike most other states, Florida utilizes a comprehensive multi-disciplinary guardian ad litem team. The team consists of a volunteer, a case worker, and an attorney to represent the child in dependency proceedings. "This structure was established by the State of Florida Guardian ad Litem Minimal Standards of Operation promulgated by the Florida Supreme Court to ensure quality representation of the best interests of children."[5] It is consistent with the findings of the U.S. Department of Health and Human Services, Office of Child Abuse and Neglect, Administration for Children and Families, Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian ad Litem. The Report indicated the best approach for child representation in abuse and neglect proceedings involved representation by "a GAL who either has, or has access to, the combined expertise and resources of attorneys, lay volunteers, and case workers to perform the broad range of functions and services contained in the definition of the child advocate."[6] The model also conforms to the principals for child representation established by the National Quality Improvement Center on the Representation of Children in the Child Welfare System.[7] The GAL Program's attorneys represent the legal interests of the children appointed to the GAL Program in dependency proceedings in a similar fashion as attorneys representing the legal interests of the ward in guardianship proceedings and as attorneys representing minors in lawsuits through a next of friend. In Florida, a GAL represented by an attorney is appointed at the earliest possible time to represent children in abuse, abandonment, and neglect proceedings. As with most fiduciary or trust relationships, the GAL is responsible for representing the best interests of the person whose matters in which the GAL has been entrusted.

41. Under the implementing regulations of CAPTA, states are required to ensure appointment of a guardian ad litem who will "represent and protect the rights and best interests of the child."[8] Thus, the CAPTA guardian ad litem is a fiduciary whose role is

3 *Kossar v. State*, 13 Misc. 2d 941, 943 (N.Y. Ct. Cl. 1958)

4 42 U.S.C. §5106a(b)(2)(B)(xiii); Fla. Stat. §§{} 39.820(1), 39.822(1).

5 Mary K. Wimsett, *The Guardian ad Litem Program - Expanding the Model and Meeting New Challenges*, 77 FLA. B.J. 26 (Dec. 2003).

6 U.S. Dep't of Health and Human Services, *Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian ad Litem* (1994); Donald N. Duquette, *Children's Justice: How to Improve Legal Representation of Children in the Child Welfare System*, ABA (2016).

7 QIC Best Practice Model of Child Representation, QIC-Child Rep.

8 45 C.F.R. §{} 1340.14(g) (2004); 55 Fed. Reg. 27,639 (July 5, 1990).

to investigate the child's circumstances and advocate for their best interests. [9]

42. The best interest standard "is similar to a parent acting on behalf of a child and the guardian is to make an independent decision on behalf of the ward rather than acting as a guardian believes the ward would have acted."[10] This differs, for example, from the substituted judgement standard of decision making which "requires the guardian to choose the alternative that the ward would have chosen if still able to make decisions."[11] However, if the ward has never had the capacity to make such decisions, there is no way to determine what the ward would have chosen. Therefore, the standard which is used for the representation of children is a best interest standard.[12]

43. This Article will discuss the scope and function of the multidisciplinary model of representation used by the GAL program to represent children in dependency proceedings. This discussion includes the historical development of guardian ad litem representation in Florida's dependency proceedings, an analysis of guardian ad litem ("GAL") representation generally, the legal representation by Guardian ad Litem Attorneys ("GAL Attorneys") within the Program's multidisciplinary model and the duty of care the attorneys owe to the children represented, as well as an overview of child representation provided in other selected states.

II. Overview of the Guardian ad Litem Program

44. In 1974, concerned about the alarming number of reported incidents of child abuse and neglect, the United States Congress passed the Child Abuse Prevention and Treatment Act, which was the first comprehensive federal legislation dealing with these issues. The Act provided funds to states for the appointment of GALs to represent abused and neglected children. This federal act supplied the impetus for the Florida Legislature to become the nation's leader in child representation by providing statewide multidisciplinary GAL representation. As a result of both the federal law and the efforts of dedicated child advocates in Florida, in 1975, the Florida Legislature passed legislation authorizing — but not requiring — courts to appoint a GAL in cases alleging child abuse.

9 *In re Josiah Z.*, 36 Cal. 4th 664, 679 (2005).

10 J. Eric Virgil and Stacy B. Rubel, *Is My Judgement in Your Best Interest? How Decisions are Made in Guardianships and a Suggested Reform*, 93 Fla. B.J. 50 (Jan./Feb. 2019).

11 J. Eric Virgil and Stacy B. Rubel, *Is My Judgement in Your Best Interest? How Decisions are Made in Guardianships and a Suggested Reform*, 93 Fla. B.J. 50 (Jan./Feb. 2019) (citing Linda S. Whitton & Lawrence A. Frolik, *Surrogate Decision-Making Standards for Guardians: Theory and Reality*, 2012 Utah L. Rev. 1491, 1492 (2012)).

12 J. Eric Virgil and Stacy B. Rubel, *Is My Judgement in Your Best Interest? How Decisions are Made in Guardianships and a Suggested Reform*, 93 Fla. B.J. 50 (Jan./Feb. 2019).

45. While Florida was developing its GAL representation in Washington, Seattle Judge David Soukup began to develop a construct for child advocacy that ultimately changed America's judicial procedure for over a million children. In 1977, Judge Soukup obtained funding to recruit and train community volunteers to advocate on behalf of children. These individuals were known as Court Appointed Special Advocate (CASA) volunteers and this form of advocacy spread nationally. The Florida Statewide Guardian ad Litem Office is a member of the National CASA Association.

46. In the late 1970's, Florida law changed from merely authorizing courts to appoint a GAL in child abuse and neglect proceedings, to requiring them to do so. The Florida GAL program began in 1979, when the Jacksonville section of the National Council of Jewish Women, ("NCJW") was awarded one of three NCJW grants in the country to start a CASA program. One of the key components working in Jacksonville's favor in receiving the grant was the tremendous support of its judges. The first CASA office in Jacksonville was physically located in the State Attorney's office and it opened its doors in January 1980. Following the establishment of the Jacksonville Program, during the 1980 legislative session "the Legislature provided $200,000 to the Office of the State Courts Administrator (OSCA) to develop and evaluate a pilot program using lay volunteers to serve as GALs." By January 1990, all of Florida's judicial circuits had implemented a volunteer GAL program, including the Orange County Bar Association's program that utilizes pro bono attorneys.

47. The programs began to evolve during this time with the addition of program attorneys and staff advocates. In 1982, the United States Supreme Court held that parents have a fundamental liberty interest in the care, custody, and management of their children under the 14th Amendment to the United States Constitution.[13] In *Lassiter v. Department of Social Services*, the U.S. Supreme Court held whether parents are entitled to counsel in termination of parental rights proceedings under the federal constitution must be decided on a case by case basis by the trial court subject to appellate review.[14] The Florida Supreme Court expressly rejected a parent's right to counsel in all abuse and neglect proceedings under either the federal or state constitution.[15] However, in response to *Lassiter*, Florida enacted a statutory right to counsel in all termination of parental rights and dependency proceedings. Therefore, in Florida, a parent's right to counsel in dependency proceedings is derived primarily from state statute, not the constitution.[16] In 1989, the Florida Supreme Court determined the Department of Children and Families, formerly the Department of Health and Rehabilitative Services, was required to be represented by attorneys in abuse and neglect proceedings to avoid unau-

13 *Santosky v. Kramer*, 445 U.S. 745, 787 (1982).

14 *Lassiter v. Dep't of Soc. Servs. of Durham County, N.C.,* 452 U.S. 18, 32 (1981).

15 *In Interest of D.B.*, 385 So. 2d 83, 87 (Fla. 1980).

16 Fla. Stat. §{} 39.013(1).

thorized practice of law by its social workers.[17]

48. For the same reasons the Department of Children and Families and the parents were given attorneys to represent them in court, the GAL Program as a party to the proceedings were also given attorneys to represent the GAL in the dependency proceedings. From their inception, the GAL's program attorneys represented the best interests of the children and protected the legal interests of children in all phases of court proceedings from trial through the appellate process. The increase in GAL Attorneys enabled the GAL Programs to participate more meaningfully in decision-making throughout the child's case. During this period program attorneys were being added to GAL Programs, there was a recognition that when a volunteer was not available, a staff advocate should be appointed to represent the child. The volunteer and staff advocates work in conjunction with the program attorney to advocate effectively for the child.

49. Since their inception in 1980, the Florida GAL Programs were supervised by the presiding Chief Judge within each judicial circuit. Due to the conflict of interest created by reporting to the judges they appeared before, in 2003, the Legislature provided both for the transfer of the GAL Program to the Justice Administrative Commission, and also for the appointment of a fulltime executive director to oversee the program statewide. On January 1, 2004, the Guardian ad Litem Program was transferred out of the state court system and a statewide office was established to oversee the 21 local Guardian ad Litem Programs.

III. Purpose of GALs

50. At common law, children do not have the ability to enter into contractual agreements as adults. The inability to contract is due to an unemancipated minors' lack of mental capacity to conduct business, commonly referred to as the disability of non-age. The disability of non-age is a matter of public policy and is expressly recognized in both the Florida Constitution and in Florida Statutes.[18] This doctrine requires "an adult person of reasonable judgment and integrity to conduct the litigation for the minor in judicial proceedings."[19] Therefore, unemancipated minors cannot engage legal counsel in their own right unless there is a constitutional right or through legislative act. The only instance where the United States Supreme Court has found a constitutional right to counsel for minors is in delinquency proceedings.[20]

17 See *The Florida Bar re Advisory Opinion HRS Nonawyer Counselor*, 518 So. 2d 1270, 1270 (Fla. 1988); *The Florida Bar*, 547 So. 2d 909, 909 (Fla. 1989).

18 See Fla. Const. Art. III, §{} 11(a)(17); Fla. Stat. §§{} 743.01, 07.

19 *Garner v. I. E. Schilling Co.*, 174 So. 837, 839 (Fla. 1937).

20 *In re Gault*, 387 U.S. 1, 41 (1967).

A. Child's Limited Ability to Engage Counsel

51. In *Gault*, the Supreme Court held that juveniles need counsel in delinquency proceedings because they may be subjected to a loss of liberty for years, which is comparable in seriousness to a felony prosecution for adults.[21] In addition to the appointment of counsel in delinquency proceedings, the Florida Legislature has authorized appointment of legal counsel for minors in a narrow set of circumstances: if the disability of non-age has been removed pursuant to Florida Statutes Chapter 743 (2019), at the discretion of the judge in domestic relations cases under Florida Statutes section 61.401 (2019), at the discretion of the judge in a dependency proceeding pursuant to Florida Statute section 39.4085, (2019), or if the child is within one of the five categories requiring a mandatory appointment in dependency proceedings pursuant to Florida Statutes section 39.01305 (2019). In all other circumstances, "an adult person of reasonable judgment and integrity should conduct the litigation for the minor in judicial proceedings."[22]

B. GAL as the Fiduciary

52. This reasonable person can be a guardian appointed under Florida Statutes Chapter 744 (2019), a next of friend appointed to pursue a lawsuit for the minor, or a guardian ad litem in specific matters including dependency proceedings. Under any of these circumstances, the adult acting as the minor's representative will normally retain counsel for legal representation in the judicial proceedings. Representation by a GAL has been described by the Florida Supreme Court in the following manner:

> When a child is a party to a legal action and lacks a qualified "representative, such as a guardian or other like fiduciary," the court in which that action is proceeding "shall appoint a guardian ad litem." Fla. R. Civ. P. 1.210(b). The suffix "ad litem" is a Latin phrase meaning "for the suit" or "for purposes of the suit." Ad litem, Black's Law Dictionary (9th ed. 2009). Florida law defines "guardian ad litem" in greater detail as "a person who is appointed by the court . . . in which a particular legal matter is pending to represent a ward in that proceeding." §744.102(10), Fla. Stat. (2006) (emphasis added).[23]

53. "Thus, a [Child Abuse Prevention and Treatment Act ("CAPTA")] guardian ad litem is a fiduciary whose role is to investigate the child's circumstances and advocate for her best interests."[24] As such, GALs are appointed by the court for specific matters and

21 *In re Gault,* 387 U.S. 1, 36 (1967).

22 *Garner v. I. E. Schilling Co.*, 174 So. 837, 839 (Fla. 1937).

23 *D.H. v. Adept Cmty. Servs.*, 271 So. 3d 870, 879 (Fla. 2018).

24 *In re Josiah Z.*, 36 Cal. 4th 664, 679 (2005).

do not possess plenary powers beyond those that must be addressed related to the specific appointment. For example, in Florida, the GAL appointed to represent children pursuant to Florida Statutes section 39.822(1) (2019), is limited to the matters related to the context of the dependency proceedings.[25] The scope of GAL appointments can vary with the nature of the proceedings and the rights to be protected relative to the individual that is the intended beneficiary of the appointment. However, the general scope of such appointments has been recognized in a multitude of jurisdictions and by many courts. GAL appointments have been described in the following manner:

> A guardian ad litem is a special legal representative, appointed on behalf of a minor or other legal incompetent interested in the outcome of litigation. The guardian ad litem participates on behalf of a minor because the minor cannot represent himself. Due to his legal incapacity, a minor cannot initiate, defend or function as a party in litigation without adult assistance.[26]

54. In dependency proceedings, a GAL is considered "a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court."[27] The GAL's party status in dependency proceedings is the manifestation of federal and state law requiring representation of children in abuse and neglect proceedings. It is also a reflection of the same public policy supporting the method of representing real parties in interest that cannot represent themselves in any legal proceeding. The Florida Rules of Civil Procedure illustrate this point.

C. Child as the Real Party in Interest

55. Rule 1.210, Florida Rules of Civil Procedure, establishes the general requirements for parties participating in civil proceedings. In pertinent part, the rule reads as follows:

> Parties Generally. Every action may be prosecuted in the name of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust, *a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought.* All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and any person may be made a defendant who has or claims an interest adverse

25 See Fla. Stat. §§{} 39.807, 39.820.

26 Mark Hardin, *Guardians Ad Litem for Child Victims in Criminal Proceedings*, 25 J. Fam. L. 687, 728 (1987) (citing *Montgomery v. Erie R. Co.*, 97 F.2d 289, 291 (3d Cir. 1938); *Blackwell v. Vance Trucking Co.*, 139 F. Supp. 103, 106–07 (E.D.S.C. 1956); *Johnson v. Johnson*, 544 P.2d 65, 74 (Alaska 1975); *Gray v. Clements*, 286 Mo. 100, 227 (Mo. 1920)).

27 Fla. Stat. §{} 39.820(1).

> to the plaintiff. Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause. Persons having a united interest may be joined on the same side as plaintiffs or defendants, and anyone who refuses to join may for such reason be made a defendant. (Emphasis added).[28]

56. The rule continues by addressing the specific requirements related to minors and incompetent persons by providing the following:

> Minors or Incompetent Persons. When a minor or incompetent person has a representative, such as a guardian or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. A minor or incompetent person who does not have a duly appointed representative may sue by next friend or by a guardian ad litem. *The court shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person*. (Emphasis added).[29]

57. Due to the disability of non-age, children cannot represent themselves in legal proceedings. Within dependency proceedings, the legislature has determined the child's interests and protection requires the appointment of a GAL. As such, the GAL is the party to the proceedings that in turn is the representative of the real party in interest: the child.

58. This construct is recognized in other states as well. When addressing ethical considerations related to the appointment of GALs, the North Carolina Ethics Committee of the North Carolina State Bar considered whether an attorney representing a GAL could claim attorney-client privilege. The Committee determined the role and responsibilities of the GAL is established by statute and the Court concluded by finding that a GAL must be treated as a represented party by opposing counsel. The Committee then iterated the fact that the attorney representing the GAL in such proceedings was required to follow the rules of professional conduct when representing the GAL.[30] In keeping with the general role and responsibilities of GALs at common law, GAL's appointed to represent children in Florida's dependency proceedings are parties to those proceedings representing the real party in interest within the context of those proceedings as defined by statute.

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28 Fla. R. Civ. P. 1.210

29 Fla. R. Civ. P. 1.210

30 *Direct Contact with Lawyer Appointed Guardian ad Litem for Minor Plaintiff*, Formal Ethics Opinion 8, N.C. State Bar (2002).

IV. The GAL Attorney

59. The Statewide Guardian ad Litem Office is funded through state revenue to fulfill its statutory duties as directed by the legislature under Florida Statutes Chapter 39 (2019). While the scope of the representation is limited to the context of dependency proceedings, the GAL Attorneys are retained to represent the GALs in these proceedings in the same manner as adults retain counsel to represent the interests of minors or wards in adoptions, guardianships and lawsuits. Although GAL Attorneys cannot engage children in an attorney-client relationship due to the disability on non-age doctrine, the adult representing the child's interests as GAL is appointed for the sole purpose of protecting the interests of the ward or child. Therefore, an attorney representing the GAL owes a duty of care to both the appointed adult as well as the primary or intended beneficiary of the appointment.[31]

A. Compliance with the he Florida Bar Regulations

60. Once the court appoints the GAL Program, the Program assigns a volunteer and/or Child Advocate Manager ("CAM") to the child and either the CAM or volunteer accepts the appointment. The Program then assigns an attorney. The GAL Attorney represents the GAL Program as a legal entity, and the GAL Program is the client as referenced in Rule 4-1.13, Rules Regulating The Florida Bar.[32] When the GAL Program is appointed to represent the child using a best interests standard in dependency proceedings, a volunteer and/or CAM accepts the appointment for the child as the Program's authorized constituent.[33] The GAL Attorney provides counsel regarding the child's best interest and fully participates in the decisions regarding the child's best interests.[34]

61. The GAL Standards of Operation require the volunteer, CAM, and attorney to function as a team, with the attorney providing legal representation to the volunteer and CAM as a constituent of the Program solely for the representation of the child as the primary and intended beneficiary of the representation. The GAL Attorneys owe the same duty of care to the children represented by the Program's constituents as an attorney representing a plenary guardian owes the ward. In fact, the clearest example of this is the duty of care the attorney retained by the pre-adoptive parents owes to the child.

31 Op. Att'y Gen. Fla. 96-94 (1996).

32 Supervision of the BIAs is maintained under R. Regulating Fla. Bar 4-5.1.

33 See R. Regulating Fla. Bar 4-1.13(a).

34 Standard 1, Florida Guardian ad Litem Program Standards, pg. 8 (Revised 2015).

B. Duty of Care Owed

62. In this instance, the duty of care is owed not merely as a result of privity between the pre-adoptive parents and the attorney, but also because the adoption proceedings are to serve the best interests of the child, the intended beneficiary of the representation.[35] Similarly, dependency proceedings are in place to serve the child including the child's best interests. A GAL is required by statute to represent the child by advocating for that child's best interests in the dependency proceeding.[36] As the child is the intended beneficiary of the GAL appointment, the attorney representing the GAL is an advocate for the child's interests and owes a corresponding duty of care to the child.

63. Under Florida's guardianship statutes, it is clear that the ward is the intended beneficiary of the proceedings. Florida Statutes expressly authorize the payment of attorney's fees to an attorney who "has rendered services to the ward or to the guardian on the ward's behalf[.]"[37] Thus, the statute itself recognizes that the services performed by an attorney who is compensated from the ward's estate are performed on behalf of the ward, even though the services are technically provided to the guardian. The relationship between the guardian and the ward is such that the ward must be considered to be the primary or intended beneficiary and cannot be considered an "incidental third-party beneficiary." In a similar fashion, the child is the intended beneficiary of the GAL Attorneys' actions in dependency proceedings. Because the child is the intended beneficiary of the GAL's representation, GAL Program Attorneys owe a duty of care to the child.

64. The GAL Attorneys represent the interests of the children in myriad ways, such as filing petitions seeking termination of parental rights to achieve permanency for dependent children; advocating to prevent overmedication of children; advocating for services in administrative proceedings; advocating for the child's free and appropriate education in Individual Education Plan meetings and appeals. In short, the GAL Attorneys can advocate for anything that a dependency judge has jurisdiction to provide, or in collateral matters associated with the child's dependency case.

65. As discussed above, the disability of non-age doctrine prevents unemancipated minors from engaging legal counsel in their own right as children may not enter into contracts for legal services. In fact, the *Kingsley* court expressly held that children cannot file a termination of parental rights petition and maintain that action on his or her own behalf.[38] The Florida Supreme Court explained the process in the following manner:

> [T]he court recognizes the right of the prochein ami [i.e. guardian ad litem or next of friend] to select and employ an attorney at law to conduct the

35 *Rushing v. Bosse*, 652 So. 2d 869, 873 (Fla. 4th DCA 1995).

36 Fla. Stat. §§{} 39.822(1), 39.820(1).

37 Fla. Stat. §{} 744.108.

38 *Kingsley v. Kingsley*, 623 So. 2d 780, 783 (Fla. 5th DCA 1993).

> litigation in behalf of the minor, because it is not to be presumed that the prochein ami, while representing in his name the minor who is the real party in the controversy, is himself an attorney at law and qualified as an officer of the court to conduct the litigation in the interest of the minor. . . . In the conduct of the suit the attorney of record who is employed by the next friend of the minor would be bound by the same rules and limitations of power as the prochein ami or next friend.[39]

66. The same right of a minor to the appointment of a competent adult to act on his or her behalf is found in Florida's guardianship law.

67. When a guardian is appointed by the court pursuant to Florida Statutes Chapter 744 (2019), the attorney retained by the ward owes the same duty of care to the ward as is owed to the guardian.[40] In his opinion, the Attorney General of Florida explained that "[g]enerally, an attorney's duty of care in the performance of his professional duties. . . is to the client with whom the attorney shares privity of contract."[41] "The only instance in Florida where this rule of privity has been relaxed is where it was the apparent intent of the client to benefit a third person. . . ." In this regard, Florida courts have drawn a distinction between incidental third-party beneficiaries and intended beneficiaries.[42] However, courts have extended the exception to relationships between a third-party and a professional, despite the lack of liability or direct contractual privity when the third-party is the intended beneficiary of the attorney's actions.[43] Therefore, under existing law, an intended beneficiary of one's representation is more than an "incidental" third-party beneficiary and, therefore, is entitled to a duty of care from legal counsel retained by the representative even though the attorney is not in privity with the intended beneficiary of the representation.

68. Courts have recognized a duty of care to a third party beneficiary in other proceedings as well. Instructive for our purposes, "the Fourth District Court of Appeal in *Rushing*, held that the attorney for adoptive parents also owed a duty to the child who was the subject of the adoption." The court concluded that the child was the intended beneficiary of the adoption proceeding and that it was the intent of the adoptive parents to benefit the child by adopting her. Since adoption proceedings are intended to serve the best interests of the child, the court found that the attorney, although in privity with the adoptive parents and not the child, owed a duty of care to the child to be

39 *Garner v. I. E. Schilling Co.*, 174 So. 837, 839 (Fla. 1937).

40 Op. Att'y Gen. Fla. 96-94 (1996).

41 Op. Att'y Gen. Fla. 96-94 (1996) (citing *Brennan v. Ruffner*, 640 So. 2d 143 (Fla. 4th DCA 1994)).

42 Op. Att'y Gen. Fla. 96-94 (1996) (citing *Angel, Cohen and Rogovin v. Oberon Invest., N.V.*, 512 So. 2d 192 (Fla. 1987) (emphasis added)).

43 Op. Att'y Gen. Fla. 96-94 (1996).

adopted.[44] This construct is mirrored in the requirements needed to maintain a legal malpractice action. A person seeking to bring a legal malpractice action must either be in privity with the attorney or, alternatively, the person must be an intended third-party beneficiary of the attorney's actions.[45]

69. In sum, irrespective of the nature of the representation, an attorney appearing on behalf of a third-party's representative owes a duty of care to the third-party if the third-party is an intended beneficiary of the representation and not merely an incidental beneficiary. Pursuant to both statute and rules of court, the GAL is appointed for the sole purpose of representing the child in the dependency proceedings. Specifically, the GAL must at all times represent the best interests of the child that is the subject of the appointment.[46] The child is not only the intended beneficiary, he or she is the only beneficiary of the GAL's representation. Therefore, GAL Attorneys owe a duty of care to the child the same as to the GAL.

70. The State of Florida provides immunity to GALs as long as the GAL is acting in good faith. Pursuant to Fla. Stat. § 39.822, "Any person participating in a civil or criminal judicial proceeding resulting from such appointment shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed."[47] Under Fla. Stat. § 39.820(1), a "'Guardian ad litem' as referred to in any civil or criminal proceeding includes the following: a certified guardian ad litem program, ... a staff attorney, ... staff members of a program office...."

V. GAL Representation in Dependency Proceedings

71. Invoking the jurisdiction of dependency court to protect abused, abandoned, or neglected children, is the state exercising its parens patriae authority codified by the legislature in Florida Statutes Chapter 39.[48] When the state exercises parens patrie authority and a child is placed in the state's care, the court "acts in the protective and provisional role of in loco parentis" for the child. In Florida's abuse and neglect proceedings, "[i]t is the dependency court which has been charged with protecting the rights and interests of dependent children."[49]

44 *Rushing v. Bosse*, 652 So. 2d 869, 873 (Fla. 4th DCA 1995).

45 Op. Att'y Gen. Fla. 96-94 (1996); *Espinosa v. Sparber*, 612 So. 2d 1378, 1380 (Fla. 1993).

46 Fla. Stat. §§{} 39.820(1), 39.822(1); Fla. R. Juv. P. 8.215(c).

47 Fla. Stat. §{} 39.822

48 *In Interest of Ivey*, 319 So. 2d 53, 58 (Fla. 1st DCA 1975).

49 See *Buckner v. Family Servs. of Central Fla.*, 876 So. 2d 1285, 1288 (Fla. 5th DCA 2004).

A. The State's Parens Patrie Authority

72. The Florida Constitution recognizes that matters related to juveniles are equity proceedings.[50] In fulfilling this role, the dependency judge retains many of the characteristics of equity/chancery courts. The Fifth District Court of Appeals explained the dependency court function in the following manner:

> In Florida the circuit judge acting as juvenile judge has succeeded to all of that exceptional common law jurisdiction of courts of chancery to act on the court's own volition to protect the interests of infants. In addition, section 39.40(2), Florida Statutes, explicitly recognizes the continuing jurisdiction of the juvenile court over a child adjudicated to be dependent. The proper exercise of this unusual jurisdiction recognized by the common law and by statute imposes a duty to affirmatively act in the interest of a child in a manner which is abnormal to the usual judicial function of acting only on matters presented by pleadings filed by the parties. Such duties and obligations include protection of the interests and best welfare of the minor children adjudicated by the court to be dependent.[51]

73. In this sense, it is the court that must temporarily act as a guardian would act because the child can no longer rely on his or her parents for care and protection.

> Independent of statute or rule a court of chancery has inherent jurisdiction and right to control and protect infants and their property, and enjoys a broad discretion in making orders protecting their welfare. Though the courts should be careful not to disturb rights which have once been properly settled, they must exert the utmost vigilance to see that the rights of so unprotected a class as that of infants are not infringed on or destroyed. The court itself is, in legal contemplation, the infant's guardian. And the legal guardian of a minor is regarded as the agent of the court and of the state in the discharge of his duty as such.[52]

74. The court's parens patrie role provides a distinct contrast from the juvenile proceedings contemplated in *Gault*. This distinction has been explained in the following manner:

> Children accused of delinquent acts are nearly always old enough to communicate their wishes to an attorney. Children involved in dependency proceedings, on the other hand, are often very young and unable to articulate their interests. When children cannot verbally communicate, a court has

50 Fla. Const. Art. V, §20(c)(3).

51 *In re Interest of J.S.*, 444 So. 2d 1148, 1149–50 (Fla. 5th DCA 1984).

52 *Brown v. Ripley,* 119 So. 2d 712, 717 (Fla. 1st DCA 1960).

> little choice but to revert to the parens patriae doctrine and appoint a GAL to determine a child's best interests.[53]

75. In addition to the restrictions on representation associated with the disability of non-age, this practical necessity has produced a public policy that allows the GAL to represent the child while assisting the dependency court judges in fulfilling their obligations to the child.

B. The GAL's Role in Dependency Proceedings

76. The court is assisted in fulfilling its parens patrie charge through appointment of guardians ad litem and attorneys ad litem.[54] The GAL assists the court by gathering information to provide the court with a report and representing the child throughout the proceedings.[55] The GAL may ethically perform the functions of information provider and representative because the GAL is not in an attorney-client relationship with the child. Therefore, there is no confidentiality between the GAL and the child or the GAL attorney and the child under Rule 4-1.6, Rules Regulating The Florida Bar. In addition, the reporting requirement makes practical sense if one considers the unique role of the court in dependency matters.

77. As discussed above, the court performs a unique function in dependency proceedings. The court is actually in loco parentis, or in the shoes of the parent. This is why the dependency court retains the flexibility and discretion to act affirmatively in the child's interests.[56] In this regard, the dependency court is more than just a referee and if the court is to fulfill its function, it needs accurate information provided by the person that is a party participating solely for the benefit of the child. The court is assured of this commitment by the GAL because statute directs the GAL to only represent what is in the child's best interests to the court.[57] The GAL's reporting requirement works hand in hand with the advocacy requirement to ensure the court has information and argument needed to make decisions that are not only in the child's best interests, but that also protect the child's safety and welfare. In addition, the GAL appointed in dependency proceedings is focused only on those items associated with the dependency proceedings themselves.

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53 Bridget Kearns, *A Warm Heart but A Cool Head: Why A Dual Guardian Ad Litem System Best Protects Families Involved in Abused and Neglected Proceedings,* 2002 WIS. L. REV. 699, 708 (2002).

54 *Buckner v. Fam. Services of Cent. Fla., Inc.*, 876 So. 2d 1285, 1288 (Fla. 5th DCA 2004).

55 See Fla. Stat. §{} 39.822(1), (4); Fla. R. Juv. P. 8.215(c)(1), (3).

56 *In re Interest of J.S.*, 444 So. 2d 1148, 1149–50 (Fla. 5th DCA 1984).

57 Fla. Stat. §{} 39.820.

78. As discussed above, "Ad litem" limits the scope of representation to a specific suit. When referring to either guardian ad litem or attorney ad litem, such appointment denotes a limitation of the scope of the representation to specific proceedings.[58] In judicial proceedings, "[t]he necessity of a guardian ad litem or next friend, the alter ego of a guardian ad litem, to represent a minor is required by the orderly administration of justice and the procedural protection of a minor's welfare and interest by the court and, in this regard, the fact that a minor is represented by counsel, in and of itself, is not sufficient."[59]

79. As discussed above, in Florida, courts are required to appoint a GAL at the earliest possible time to represent the child in any abuse, abandonment, or neglect proceedings. "A guardian ad litem is a special legal representative, appointed on behalf of a minor or other legal incompetent interested in the outcome of litigation. The guardian ad litem participates on behalf of a minor because the minor cannot represent himself. Due to his legal incapacity, a minor cannot initiate, defend or function as a party in litigation without adult assistance."[60] While there has been some confusion created by the imprecise use of the term guardian ad litem, the primary model of GAL representation utilized in Florida adheres to the traditional definition of GAL.

C. GAL's Effective Legal Representation

80. The GAL Program's multidisciplinary model of representing children in dependency court is effective because it utilizes the resources required to fulfill the mandatory requirements for such representation specified in both federal and state law. The practical benefit of this approach is that it brings together resources that, in other states, are controlled and operated by separate entities. In many other states the attorney and community volunteer, CASA, are housed separately. Often times the attorney and CASA are without the support of a social worker skilled in navigating the child welfare system. Florida has brought these resources together under the Statewide Guardian ad Litem Office. This method of representing children not only follows the legally sound approach for representing unemancipated minors, which is based upon longstanding public policy, it produces an efficient means to bring together three distinct forms of child advocacy that provides powerful representation to Florida's abused, abandoned and neglected children.

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58 See *Kossar v. State*, 13 Misc. 2d 941, 943 (N.Y. Ct. Cl. 1958); Fla. Stat. §{} 39.820.

59 *Buckner v. Fam. Services of Cent. Fla., Inc.*, 876 So. 2d 1285, 1286 (Fla. 5th DCA 2004) *(*citing *Brown v. Ripley,* 119 So. 2d 712 (Fla. 1st DCA 1960)). See also *Roberts v. Ohio Casualty Ins. Co.*, 256 F.2d 35, 39 (5th Cir. 1958); *Zaro v. Strauss*, 167 F.2d 218 (5th Cir. 1948).

60 Mark Hardin, *Guardians Ad Litem for Child Victims in Criminal Proceedings*, 25 J. FAM. L. 687, 728 (1987) (citing *Montgomery v. Erie R. Co.*, 97 F.2d 289, 291 (3d Cir. 1938); *Blackwell v. Vance Trucking Co.*, 139 F. Supp. 103, 106–07 (E.D.S.C. 1956); *Johnson v. Johnson*, 544 P.2d 65, 74 (Alaska 1975); *Gray v. Clements*, 286 Mo. 100, 227 (Mo. 1920)).

81. The GAL in Florida must use the best interest standard to represent the child. However, the GAL must also determine the child's wishes and present them to the court.[61] The process of ascertaining the child's wishes assists in informing the GALs advocacy and recommendations to the court. Most other states do not take this approach. While most states require best interest advocacy, many states have attempted to reconcile best interest representation with the attorney-client relationship under the individual state rules governing the professional conduct of attorneys. This approach has resulted at times, in a heated debate regarding whether attorneys are the proper best interest advocate and whether an attorney is even acting as an attorney when engaged in such an activity.

VI. GAL and Attorney-Client Representation

82. In some states, the GAL in dependency proceedings is an attorney rather than a trained non-attorney of reasonable judgment and integrity who is party to the proceedings, as is the GAL in most of Florida's dependency proceedings.[62] "Although child advocates have been recommending stronger client directed roles for lawyers for more than two decades, state legislatures have not moved consistently in that direction."[63] For the most part, states have enacted statutes and promulgated regulations that describe the GAL appointment in terms of attorney-client representation for the unemancipated minor. This is the result of legislative attempts to reconcile the public policy related to the disability of non-age and the requirement under CAPTA to provide guardian ad litem representation to children in abuse and neglect proceedings. The problem is that CAPTA requires the GAL to gather information and report to the court its recommendations regarding the child's best interests.[64] These activities are inconsistent with the attorney-client relationship under most applicable state rules of professional conduct for attorneys.

83. The attempt to place the GAL into an attorney-client relationship has resulted in conflict among practitioners and legal scholars. This debate has produced consensus on the point that "lawyers should act like lawyers in custody proceedings, and not like GALs."

61 Fla.Stat. §{} 39.807(2)(b).

62 https://www.childwelfare.gov/pubPDFs/represent.pdf .

63 Barbara Ann Atwood, *The Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act: Bridging the Divide Between Pragmatism and Idealism*, 42 FAM. L.Q. 63, 91 (2008) (summarizing and addressing the various criticisms). See also Barbara Ann Atwood, *Representing Children Who Can't or Won't Direct Counsel: Best Interest Lawyering or No Lawyer At All?*, 53 ARIZ. L. REV. 381, 391 (2011) (collecting state statutes and cases retaining the "best interest" approach).

64 42 U.S.C. §5106a(b)(2)(B)(xiii) (2018).

84. Thus, lawyers should be limited to presenting information to the court in the manner that lawyers have traditionally presented information to the court – through admissible evidence and proper legal argument. Therefore, lawyers should be prohibited from offering personal opinions regarding the outcome of custody proceedings, from testifying as witnesses in custody proceedings, and offering reports to the court, like GALs traditionally offered, containing hearsay and other inadmissible evidence.[65] The New York State Supreme Court Appellate Division explained the differences between the role of GAL and attorney for the child in the following manner:

> Historically, the definition of the role of the attorney for the child has engendered a great deal of confusion. Many attorneys, and indeed many Judges, have viewed the role of the attorney for the child to be in the nature of a guardian ad litem. It is clear, however, that the role of the attorney for the child is very different from that of a guardian ad litem. A guardian ad litem, who need not be an attorney, is appointed as an arm of the Court to protect the best interests of a person under a legal disability. In contrast, the role of the attorney for the child is to serve as a child's lawyer. The attorney for the child has the responsibility to represent and advocate the child's wishes and interests in the proceeding or action.[66]

85. At least one national group of practitioners within the legal community has reduced this position to a formal opinion. The American Academy of Matrimonial Lawyers rejects as fundamentally flawed any rule requiring lawyers to represent a child of diminished capacity in a traditional attorney-client relationship.[67] In the final analysis, some legal scholars argue that "best interest" representation is not consistent with an attorney's responsibilities under the rules of professional conduct.[68] Other scholars echo this argument and insist that it is not possible to reconcile the roles of both guardian as well as attorney.[69]

86. The Supreme Court of Kentucky addressed these issues in an attempt to reconcile the role of both GAL and attorney for the child within Kentucky's hybrid model of representation. In *Morgan v. Getter*,[70] the Court summarized the issues as follows:

65 Steven K. Berenson, *The Elkins Legislation: Will California Change Family Law Again?*, 15 CHAP. L. REV. 443, 479–80 (2012). See also, Robert E. Shepherd, Jr. & Sharon S. England, *"I Know the Child is My Client, But Who Am I?"*, 64 FORDHAM L. REV. 1917, 1922 (1996).

66 New York State Supreme Court, *Ethics for Attorneys for Children, Summary of Responsibilities of Attorney For The Child,* Section 7.2 (Jan. 2017).

67 *American Academy of Matrimonial Lawyers Representing Children: Standards for Attorneys for Children in Custody or Visitation proceedings with Commentary*, 22 J. AM. ACAD. MATRIM. LAW. 227.

68 Barbara Ann Atwood, *The Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act: Bridging the Divide Between Pragmatism and Idealism*, 42 FAM. L.Q. 63, 92–100 (2008).

69 Martin Guggenheim, *A Law Guardian by any Other Name: A Critique of the Report of the Matrimonial Commission*, 27 PACE. L. REV. 785 (2007).

70 441 S.W.3d 94, 116 (Ky. 2014).

> Certainly, a lawyer undertaking to serve in the hybrid role of attorney-for-the-child/advisor-to-the-court is immediately confronted with a likely conflict between his or her duty to report to the court and the duties to maintain the child-client's confidences, and not to act as both advocate and witness. Even absent the likely conflicting responsibility as agent of the court, moreover, critics maintain that a "best interest" lawyer who substitutes his or her best-interest judgment for that of the child runs afoul of the duties to "advocate ... zealously ... the client's position," Preamble, and to "abide by a client's decisions concerning the objectives of representation."[71] (Internal citations omitted).

87. The *Morgan* Court acknowledged a variety of legitimate concerns associated with attempts to reconcile best interest representation with the attorney-client relationship. For example, the Court observed that many critics maintain legal training does not provide a qualification for attorneys to make best interests judgements for other people. The Court also recognized the practical and financial considerations associated with providing multiple forms of representation to children in dependency proceedings. The Kentucky Supreme Court held it would not abandon the best interests approach in these proceedings and found that having two advocates appointed for each child, one to represent the child's best interests and another to represent the child's wishes, "however worthy of consideration in theory, [was] unwieldy and impractical in practice." In the final analysis, the *Morgan* Court held that children "are entitled to representation that does not blindly disregard the limitations on their ability to look after themselves."[72]

88. In Colorado, a GAL must be appointed to all children in dependency proceedings and the GAL must also be a licensed attorney.[73] The dependency judge may appoint a CASA volunteer in the dependency proceedings, however, the court is under no obligation to do so and the CASA volunteer is not always a party to the case when appointed.[74]. This compartmentalization of resources and desire to fit the GAL into an attorney-client relationship has again resulted in confusion and raised issues associated with legal ethics.

89. The Colorado "Supreme Court's decision in *People v. Gabriesheski* highlights the tension between the potential dual roles of a lawyer serving as guardian ad litem."[75]

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71 Florida Rules of Professional Conduct for attorneys mirror the Kentucky regulations reviewed in Morgan. See *Fla. Rules Prof'l Conduct, Confidentiality of Information*, R. 4-1.6; *Fla. Rules Prof'l Conduct, Lawyer as Witness*, R. 4-3.7; Ch. 4; *Fla. Rules of Prof'l Conduct, Preamble: A Lawyer's Responsibilities*; *Fla. Rules Prof'l Conduct, Objectives and Scope of Representation*, R. 4-1.2.

72 *Morgan v. Getter*, 441 S.W.3d 94, 116, 117 (Ky. 2014).

73 See Colo. Rev. Stat. §§{} 19-1-111, 19-3-203.

74 Colo. Rev. Stat. Ann. §{} 19-1-206

75 Lisa Bliss, *Colorado Denies Privilege for Guardian Ad Litem*, Litigation News, News, Analysis and Publications from the ABA Section of Litigation (December 20, 2011).

In *Gabriesheski*, a 16 year old child was removed from her parents' custody and placed in the dependency system as a result of sexual abuse by her stepfather. As required by Colorado statute, the child's lawyer was also her GAL. The child's stepfather was charged with two counts of sexual assault on a child by one in a position of trust. Prior to the commencement of the stepfather's trial, the child recanted her accusations and the prosecution sought to call the GAL as a witness. The prosecution sought to offer the GAL's testimony to establish the mother coerced the child to recant. The defense attorney objected to the GAL's testimony on the grounds that all communications between the GAL and the child were confidential and inadmissible absent appropriate waiver. Specifically, defense counsel argued the communications were subject to the attorney-client privilege provisions of the Colorado Rules of Professional Conduct.[76] The trial court agreed with defense counsel, held the communications were inadmissible and that order was affirmed by the appeals court.[77]

90. The Colorado Supreme Court reviewed the decision of the lower court upon application for writ of certiorari. The Supreme Court held that general law determines whether the attorney-client privilege was applicable to a GAL and the law requiring appointment of a GAL made no mention of the privilege. The Court also determined that while the Chief Justice may establish rules and duties for the GAL as authorized by general law, the rules established by the Chief Justice also made no mention of the attorney-client privilege associated with the appointment of the GAL.[78] The Court then succinctly explained the differences between the roles of GAL and attorney as follows:

> Nothing in the term "guardian ad litem," which on its face indicates merely a guardian for purposes of specific proceedings or litigation, suggests an advocate to serve as counsel for the child as distinguished from a guardian, charged with representing the child's best interests. See generally Black's Law Dictionary (9th ed. 2009) (quoting from Homer H. Clark, Jr. & Ann Laquer Estin, Domestic Relations: Cases and Problems 1078 (6th ed. 2000)).[79]

91. Ultimately, the Court was "unwilling to impute to the statutory guardian ad litem-child relationship the legislatively-imposed, evidentiary consequences of an attorney-client relationship."[80] The decision, once again, illustrates the fundamental differences between a guardian and an attorney and the confusion and difficulties inherent in the tortured attempt to force the two roles together into an attorney-client relationship.

76 *People v. Gabriesheski*, 262 P.3d 653, 655–56 (Colo. 2011). The opinion does not state whether the child was appointed a CASA.

77 *People v. Gabriesheski*, 205 P.3d 441 (Colo. App. 2008).

78 *People v. Gabriesheski*, 262 P.3d 653, 654 (Colo. 2011).

79 *People v. Gabriesheski,* 262 P.3d 653, 658–59 (Colo. 2011).

80 *People v. Gabriesheski,* 262 P.3d 653, 658–59 (Colo. 2011).

92. A similar scenario has occurred in Florida.[81] In *R.L.R.*, a child under the jurisdiction of dependency court had not returned to his court ordered placement and was missing. The court had previously appointed an attorney ad litem to represent the child in addition to the GAL. The trial court ordered the child's attorney to disclose the child's location "for the proper administration of justice." Though the attorneys knew where the child was, they refused to tell the court the child's location or cell phone number because the child expressly told them not to disclose. On appeal, the Third District Court of Appeal acknowledged the concern for the child's safety, but found no applicable exception to the attorney-client privilege stating:

> To find that there is a "dependency exception" or, as specifically put forth in this case, that there is an exception where the client may be a danger to himself, would require this court to carve out an altogether new exception to the attorney-client privilege. That, however, is the rulemaking function of the legislature or, possibly, the Florida Bar—not of this Court.[82]

93. The attorney cannot provide information to the court or make independent recommendations regarding the child's best interests because that would impermissibly require the attorney to substitute his or her judgment for that of the client.

94. By refusing to read an attorney-client relationship into Colorado legislation or Court rules, in practical terms, the Colorado Supreme Court's decision in *Gabriesheski* functions as a reaffirmation of the public policy disfavoring the encouragement of children keeping secrets from the court after removal from their parents for abuse and neglect. It also illustrates the confusion and inefficiency of this practice noted throughout this section. The *Gabriesheski* court concluded by noting several other jurisdictions that refused to extend the attorney-client privilege to attorneys functioning as GALs including Rhode Island, Illinois, New Hampshire, Alaska, Arkansas, and Massachusetts.[83] In Florida, the GAL Program does not encounter the same issues related to the rules of professional responsibility of attorneys because the GAL is not attempting to engage the child in an attorney-client relationship.

81 *R.L.R. v. State,* 116 So. 3d 570, 574 (Fla. 3d DCA 2013).

82 *R.L.R. v. State*, 116 So. 3d 570, 574 (Fla. 3d DCA 2013).

83 *People v. Gabriesheski,* 262 P.3d 653, 660 (Colo. 2011) (citing R.I. Gen. Laws §{} 15–5–16.2(c)(1)(iv)–(v) (2010); *In re Guardianship of Mabry*, 666 N.E.2d 16 (Ill. App. 4th Dist. 1996) ; *Ross v. Gadwah*, 554 A.2d 1284 (N.H. 1988); Alaska Bar Ass'n Ethics Comm., Ethics Op. 85–4 (1985); Ark. Sup. Ct. Admin. Order 15.1, Attorney Qualifications and Standards § 5(g); Mass. Prob. & Family Ct. Standing Order 1–05, Standards for Guardians Ad Litem/Investigators §§{} 1.3(c), 1.5 & cmt. .

VII. Conclusion

95. In Florida, most minors in the dependency system are appointed a GAL from one of the guardian ad litem programs organized under the Statewide Guardian ad Litem Office. These programs are comprised of volunteers, social workers (Child Advocate Managers or CAMs), and attorneys. All volunteers and CAMS are required to undergo extensive background screening and complete 30 hours of initial training related to the judicial proceedings, social services systems, and child maltreatment. When the court makes an appointment, the program will hopefully have a volunteer to assign. Each volunteer and CAM is represented by an attorney at all legal proceedings. There is no attorney-client relationship between the GAL Attorney and the child; however, representing the best interest of the child is the sole purpose of their advocacy. Applying the same analysis used to determine the responsibilities of attorneys retained by non-legal professionals and fiduciaries, the GAL Attorneys owe a duty of care to the primary and intended beneficiary of the GAL appointment, the child. While there is no compensation from the child's estate as in guardianship proceedings, the Statewide Guardian ad Litem Office is funded by the State and there is an express directive in general law related to the GAL's sole purpose stated above, which is to represent the child by representing his or her best interests until discharged by the court. As the program has no other directives related to its mission, there can be no question the child is the primary and attended beneficiary of this appointment.

96. Because dependency proceedings themselves, as well as the GAL appointment, is intended to serve the best interest of the child, although the GAL Attorneys represent the programs through their authorized constituents, i.e., volunteers and CAMs, they owe a duty of care to the child. This duty of care is codified in general law, court rules, and the GAL Standards, which requires the GAL Attorneys to protect the interest of the child throughout the proceedings and until discharged by the court. The Florida GAL Program represents the child in a fiduciary relationship and the GAL is retained to represent the GAL in the proceedings. The GAL Program effectively provides high quality representation to children in Florida's dependency court.