

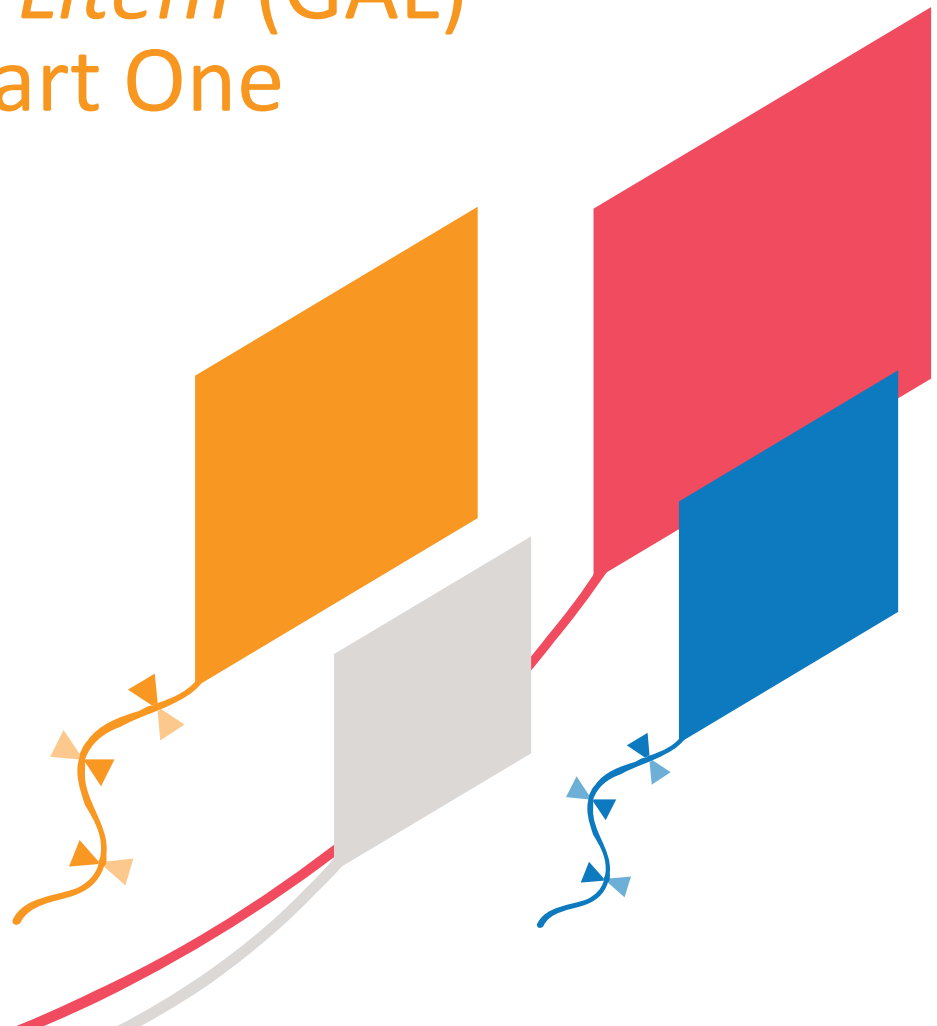
Children's Law Center

Custody Guardian *ad Litem* (GAL) Pro Bono Training - Part One

Jen Masi, Pro Bono Director



July 13, 2020



Quick Roadmap



CLC Pro Bono Program



Virtual Training Series



Today's Training



On Demand Resources

About Children's Law Center



WE REACH
1 out of 9 children
IN DC'S POOREST
NEIGHBORHOODS EACH YEAR

WE HAVE LAWYERS ONSITE AT
6 health clinics
ACROSS DC TO HELP FIND
AND FIX BARRIERS TO HEALTH



WE HAVE SERVED
**30,000 children
and families**
SINCE 1996



WE PARTNER WITH MORE THAN
500 pro bono lawyers



WE PARTNER WITH DISTRICT
AGENCIES, THE DC COUNCIL
AND COMMUNITY LEADERS TO
FIND OR IMPLEMENT
city-wide solutions
THAT BENEFIT ALL DC KIDS

Children's Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone.

CLC Pro Bono Cases

Family

- ◆ Caregiver Custody
- ◆ Custody Guardian *ad Litem* (GAL)

Health

- ◆ Housing Conditions

Education

- ◆ Special Education

Supporting Pro Bono Attorneys



Screening

CLC thoroughly screens clients when assessing cases for pro bono placement to ensure the case is a good fit for a pro bono attorney.



Training and Resources

CLC offers in-person and online training and an abundance of resources on our website, including model pleadings, training materials and videos.



Mentoring

Experienced CLC attorneys mentor our pro bono lawyers. Mentors provide initial case recommendations, discuss strategy and legal issues, and remain available throughout the duration of the case.

Virtual Training Series

July 2020				
Monday	Tuesday	Wednesday	Thursday	Friday
6	7 2:00 p.m. - 3:00 p.m. Caregiver Custody Part One: Custody Law and Practice	8 9:30 a.m. - 10:30 a.m. Caregiver Custody Part Two: Pretrial and Trial Advocacy	9	10
13 12:00 p.m. - 1:00 p.m. Custody GAL - Part One: The Role of the GAL	14	15 2:00 p.m. - 3:00 p.m. Custody GAL - Part Two: Custody Law and Procedure	16	17 10:00 a.m. - 11:00 a.m. Custody GAL - Part Three: Communicating with Children and Teens; Overview of Domestic Violence, Substance Abuse, and Child Abuse and Neglect
20 10:00 a.m. - 11:00 a.m. Special Education - Part One: What is Special Education?	21	22 3:00 p.m. - 4:00 p.m. Special Education - Part Two: Handling a Special Education Case	23 3:30 p.m. - 4:30 p.m. Cultural Humility Training	24 10:00 a.m. - 11:00 a.m. Special Education - Part Three: The Due Process Hearing
27	28 12:00 p.m. - 1:30 p.m. Housing Conditions Training	29	30	31

Today's Training

Content

- The Role of the GAL

Remote Representation

- These cases can be handled remotely.

Questions

- Zoom Chat
- Email Jen Masi

On Demand Resources



**Training
Presentations**



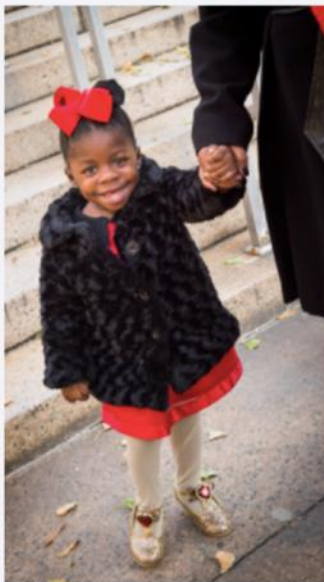
**Training
Videos**



**Training
Manuals**

On Demand Resources

Pro Bono



Though Children's Law Center is the largest non-profit legal provider in DC, many more children come to us than we can help. We are honored to partner with more than 500 pro bono attorneys every year from the area's top law firms, in-house legal departments and government agencies to help fill the gap.

If you are a pro bono attorney, we hope you will partner with us. We provide world class mentorship, training and written materials to help attorneys feel more comfortable navigating new areas of law. In addition to gaining valuable trial skills, we promise that you will be deeply touched by your experience – because our cases are life changing.

Want to learn more about becoming a pro bono lawyer for Children's Law Center? [Check out our FAQs](#) and sign up to [join our mailing list](#)! Closing a case? [Click here](#).

For information on how to partner with us, please contact Jen at JMasi@ChildrensLawCenter.org.

Resources >

Fact Sheets

Pleadings

Training Manuals

Training Presentations & Videos

Other



Meet Our Mentors



Pro Bono Partners

Interested in a case?

◆ **Email me!**

jmasi@childrenslawcenter.org

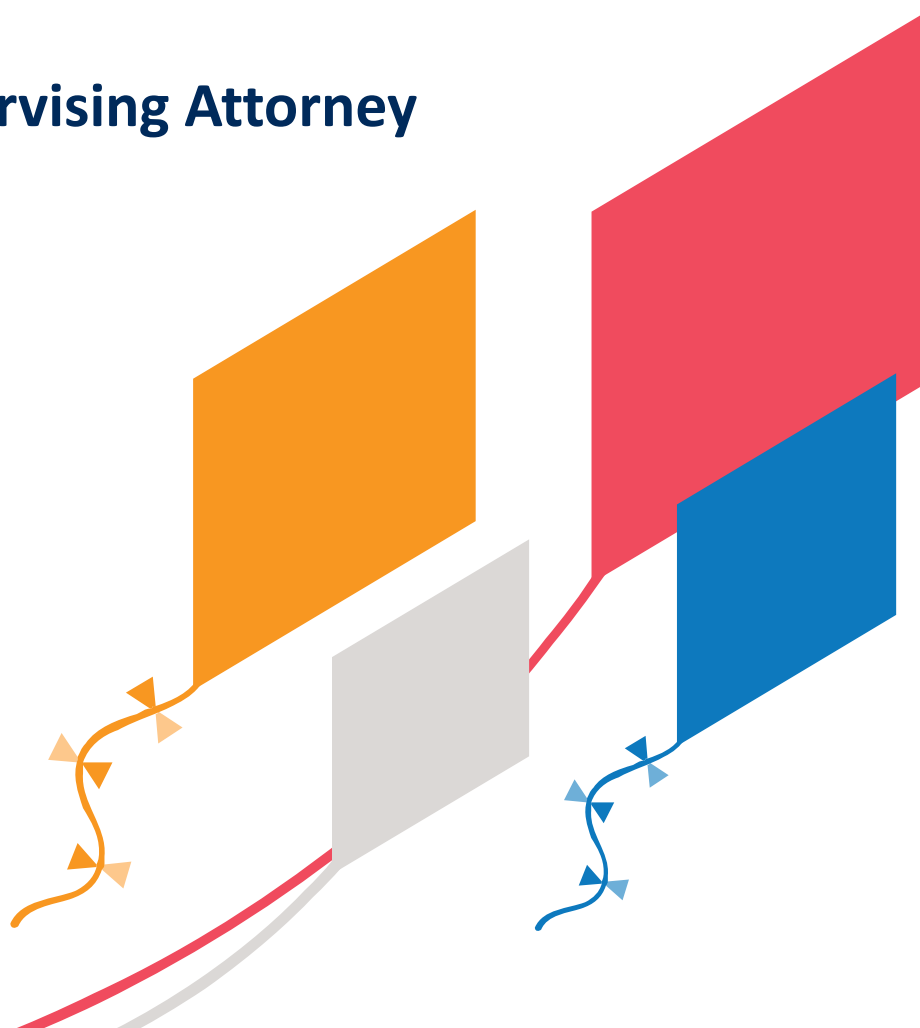


The Role of the GAL

Marissa L. Gunn, Senior Supervising Attorney



July 13, 2020



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COVID-19 Updates in **RED**

Role of GAL in Custody Cases

 **Represent**

 **Participate**

 **Investigate**

 **Advocate**

Why become a Guardian *ad litem* for a child in a custody matter?

- ◆ Fill a legal need
- ◆ Hands-on lawyering
- ◆ Direct advocacy
- ◆ Litigation and negotiation experience
- ◆ Work with children
- ◆ Support stability for children and their families

What is a Guardian *ad litem* ?

“In any proceeding wherein the custody of a child is in question, the court may appoint a disinterested attorney to appear on behalf of the child and represent his best interests.” –

D.C. Code §16-918(b)

▶ See also

- ▶ D.C. Super. Ct. Dom. Rel. R. 101(e)(2)(B).
- ▶ *Custody GAL Manual TAB 4.a: Practice Standards for Guardians *ad Litem* in Custody and Related Consolidated Cases*

Context for Your Custody GAL Case

- ◆ All cases are heard in the Domestic Relations Branch (DRB) of Family Court of D.C. Superior Court
- ◆ Six DR-II judges to whom divorce and custody cases are assigned:
 - ◆ Darlene Soltys, Elizabeth Wingo, Carmen McLean, Steven Berk, Robert Salerno, and Deborah Israel
- ◆ DR-I judges: Peter Krauthamer and Jennifer Di Toro

Legal Framework

- ◆ DC's custody statute includes enumerated best interests factors:
 - ◆ D.C. Code § 16-914, especially § 16-914(a)(3)(A-Q)
 - ◆ D.C. Code § 16-831.01 – 13, especially §16-831.08(a)(1-4)
- ◆ *See Custody GAL Manual Tab 3*

Key Points for Role of a Custody GAL

- ◆ Conduct an objective investigation.
- ◆ Respect parental autonomy without imposing personal belief systems on parties.
- ◆ Offer traditional evidence-based legal arguments, exhibits, and witnesses
- ◆ GAL shall not be a witness in the case
 - ▶ *See S.S. v. D.M., 597 A.2d 870 (D.C. 1991); Custody GAL Practice Standards Section IV*

Key Practice Pointers

- ◆ GAL has no legal authority over the child
- ◆ GAL shall ensure that the child's wishes are made a part of the record, and especially if it differs from the GAL's position.
- ◆ GAL is not a mandated reporter of child abuse or neglect.
 - ▶ *See Practice Pointers for Custody GALs in Tab 2 of the manual*

Why Judges Want GALs on Cases

Reduce Conflict

To reduce conflict between the parties and facilitate communication, mediation, or settlement.

Access Information

To access information about the child and the child's opinion without the child testifying or relying on the parents' accounts.

Balanced Understanding

To ensure the child has a balanced understanding of the custody matter.

Why Judges Want GALs on Cases

- ◆ When the court suspects undue parental influence on the child.
- ◆ For a limited purpose, e.g., whether it is necessary and in the child's interest to testify or to assist the family in locating services.
- ◆ When the child or the child's caretaker has medical or mental health concerns that may impact parenting.

Accepting a GAL Case

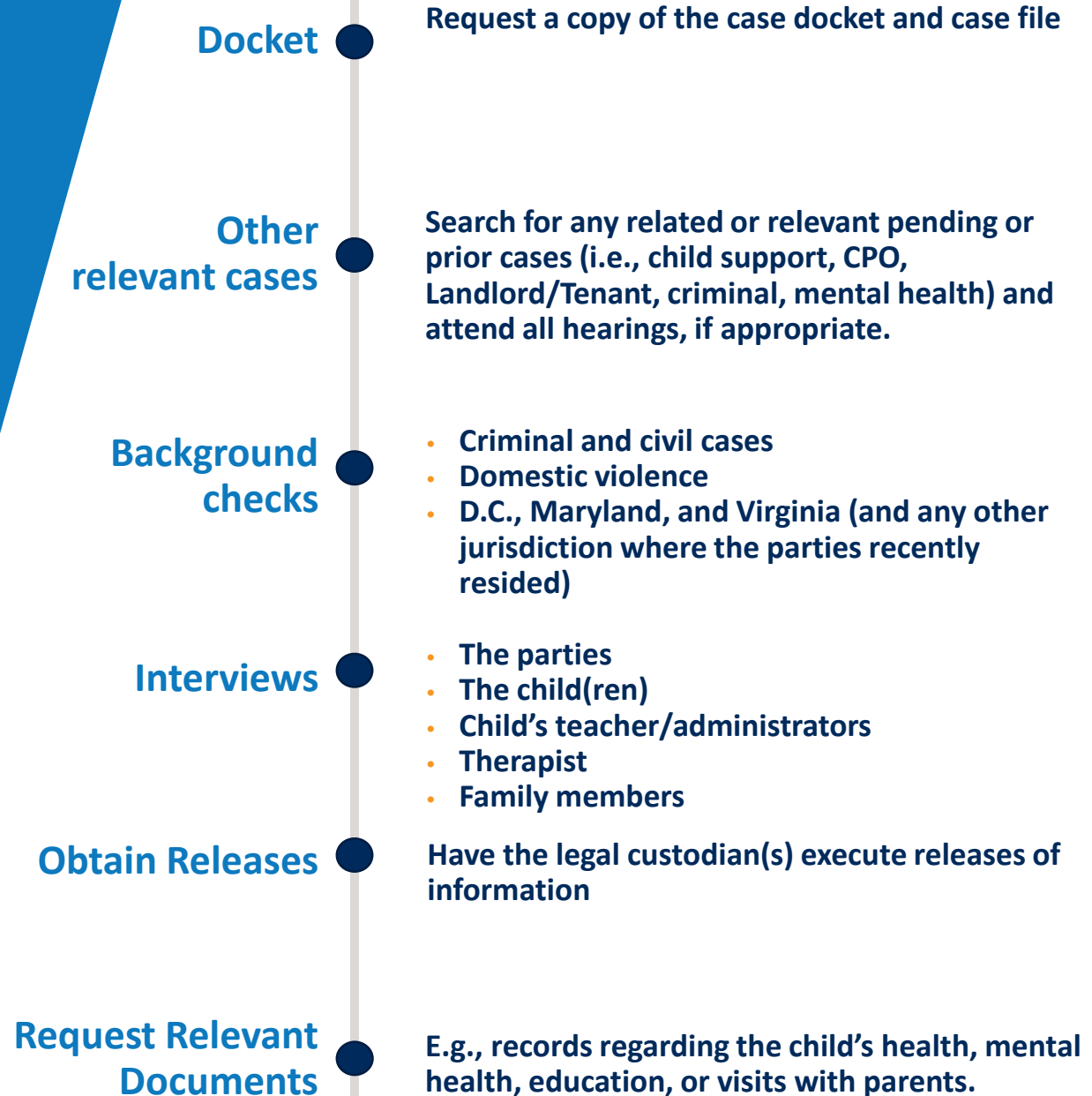
- ◆ Select an available case and email jmasi@childrenslawcenter.org
- ◆ Receive an email from CLC attaching:
 - ◆ The case referral
 - ◆ A sample appointment order
 - ◆ A sample praecipe of appearance
- ◆ Prepare your appointment order and email it to the judge's chambers.

Getting Started on Your GAL Case

- ◆ Court signs, issues, and mails appointment order to the parties.
- ◆ GAL files praecipe of appearance and serves it on the parties/counsel.
 - ◆ Practice Tip: Rule 5 service by regular mail OR e-mail service if agreed to by receiving party.
- ◆ GAL contacts parties/counsel and begins investigation.

Common First Steps

(Custody GAL Manual Tab 2)

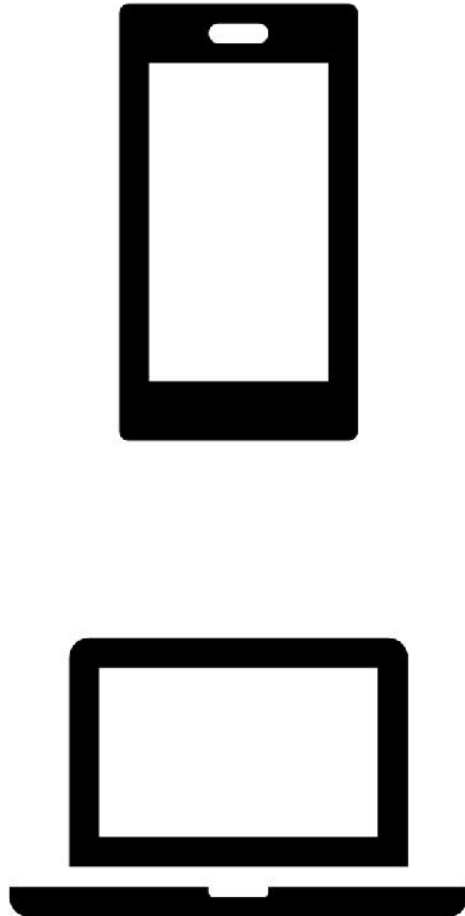


**See D.C. Superior Court Notice of Clerk's Offices
Operations for information regarding remote
operations**

Available online at:





<https://www.dccourts.gov/sites/default/files/Superior-Court-Clerks-Offices-Remote-Operations.pdf>

Meeting Your Child Client



- ◆ Once appointed, promptly contact whomever the child lives with to set up a **virtual/remote** visit.
 - ◆ **FaceTime**
 - ◆ **Google Duo**
 - ◆ **Skype**
 - ◆ **Microsoft Teams**
 - ◆ **Zoom**
 - ◆ **Phone call**
 - ◆ **Whatever works for you and the parties/client!**

Virtual Visit Practice Tips

-  **Request “privacy”**
-  **Consider client’s surroundings**
-  **Build rapport**
-  **Consult your mentor!**

Explaining Your Role

- ◆ If it is in the child's best interest, the GAL should explain to the child, in a developmentally appropriate manner, the court process, the GAL's responsibilities, and that the GAL will:
 - ▶ Investigate and advocate for the child's best interest,
 - ▶ Discern the child's views relating to the case and inform the court,
 - ▶ Use information from the child for those purposes, but
 - ▶ Not necessarily advocate for what the child wants.

“Considered Judgment”

- ◆ Focus on the child’s decision-making process rather than the child’s decision.
 - ◆ Does the child understand the risks and benefits of their position?
 - ◆ Can the child reasonably communicate their wishes?

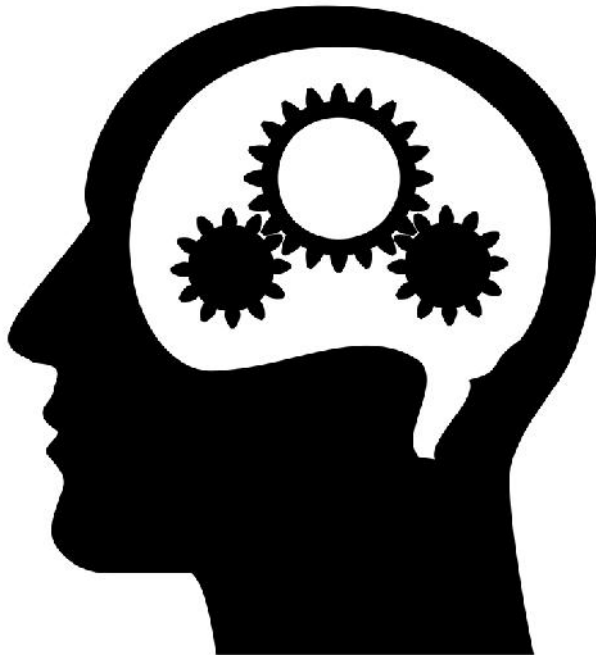


“Considered Judgment”

- ◆ Factors to help determine whether a child has considered judgment:
 - ◆ The child’s developmental stage:
 - ▶ Cognitive ability
 - ▶ Socialization
 - ▶ Emotional and mental development.
 - ◆ The child’s expression of a relevant position:
 - ▶ Ability to communicate with the GAL
 - ▶ Ability to articulate reasons for her position

“Considered Judgment”

- ◆ Reports from collateral sources such as social workers, psychiatrists, psychologists, health professionals, and schools



Tips for Working with Children

- ◆ Consider context of your role and relationship with the child.
 - ◆ Adults are not (necessarily) protectors
 - ◆ Child's possessions may have great significance



Tips for Working with Children

- ◆ Consider what you ask, and how.
 - ◆ Avoid compound questions
 - ◆ Avoid asking “why?”
 - ◆ Don’t repeat questions in search of more detail:
 - ▶ Children might assume that you know what they’ve told the other adults who have interviewed or talked to them and wonder why you’re asking the same questions again.
 - ▶ Children often think they’ve answered the question wrong the first time and then try to please the interviewer by providing more but inaccurate information when you ask a second time.



Questions to Consider Asking the Child(ren)

- ◆ Consider the age and maturity level of the child when deciding what questions to ask.
 - ▶ Who takes care of you?
 - ▶ What kinds of activities do you do with your parents?
 - ▶ Who takes you to school?
 - ▶ Who takes you to the doctor?
 - ▶ Who makes your meals?
 - ▶ Who is present during your visits with your mother?
 - ▶ What happens at the visits?
 - ▶ What is your favorite thing to do on the visits?

Working with Parties

- ◆ Make your role clear. Do not give legal advice.
- ◆ Take a balanced approach.
- ◆ **Virtually** meet with parties:
 - ◆ Separately at least once;
 - ◆ Consider meeting with the parties together unless inappropriate (e.g., power imbalance, DV concerns or CPO).
- ◆ Give each party equal amount of time to share their goals and position.
- ◆ Provide reality checks (e.g., presumption in the law of joint custody).

Ideas for Conflict Resolution

(See Recognizing and Managing Conflict handout)

- ◆ Use active listening
- ◆ Break it down
- ◆ Reframe
- ◆ Encourage fairness
- ◆ Consider strengths
- ◆ Focus on interests and values
- ◆ Look to the future
- ◆ Take a break



Resources Available in DRB Cases

(Custody GAL Manual Tab 9)

- ◆ Home Study or Brief Focused Assessment
(Custody Assessor Unit)
- ◆ Psychological and/or psychiatric evaluation of the child/parents/caregivers
(Department of Behavioral Health - Assessment Center)
- ◆ Interactive assessments of parents/caregivers and your client
(Department of Behavioral Health - Assessment Center)

Modified, but still available during pandemic!

Resources Available in DRB Cases

(Custody GAL Manual Tab 9)

- ◆ Supervised Visitation Center
- ◆ Mediation
- ◆ Attorney Negotiator

Modified, but still available during pandemic!

Pre-trial Responsibilities

- ◆ Conduct thorough, continuing, and independent investigation (including engaging in discovery if appropriate).
- ◆ Establish a relationship with your child client and the adults involved in their life.
- ◆ Develop your case strategy.
- ◆ Stay apprised of any other court proceedings affecting the child, the parties, and other household members.
- ◆ Attend meetings involving issues within the scope of the appointment.

Pre-trial Responsibilities

- ◆ Take action to expedite the proceedings, if appropriate.
- ◆ Participate in and initiate negotiations and mediation.
- ◆ Participate in depositions, pretrial conferences, and hearings.
- ◆ File petitions, motions, responses and/or make objections when necessary.

Pre-trial Responsibilities

- ◆ Take a position on whether the child should testify and file any necessary motions to further that position.
- ◆ Take lead on Joint Pre-Trial Statement to be submitted to court prior to pre-trial hearing and trial.

Going to Trial

- ◆ Start preparing early.
- ◆ Plan to call witnesses, enter exhibits, and put on evidence which supports what you believe is in your client's best interest.
- ◆ Subpoena your witnesses
 - ◆ If you can do so safely
 - ◆ Consult your mentor
- ◆ Prepare all your witnesses and interview other parties' witnesses as appropriate.
- ◆ Don't rule out possibility of settlement the day of or mid-trial.

Child Testimony or Interview with Judge

- ◆ GAL's duty to minimize any adverse consequences to your client.
- ◆ If a child is to meet with the judge or testify, prepare the child by familiarizing the child with the places, people, procedures, and questioning to which the child will be exposed.
- ◆ **Consult your mentor!**

Trial



REMOTE Hearings and Trials

- ◆ Remote hearings/trials are happening via WebEx
 - ◆ Video and audio capabilities
 - ◆ Court provides parties with instructions for use
 - ◆ Continuances as appropriate considering pandemic-related issues
- ◆ Proceedings are happening more slowly
 - ◆ Court has a backlog of pre-pandemic trials and initial hearings
 - ◆ Court is hearing emergency matters as well as playing catch-up

After the Trial

- ◆ The GAL and parties may submit proposed findings of fact and conclusions of law.
- ◆ After trial, a final written custody order will be entered. SCR-Dom. Rel. 52.
- ◆ See SCR-Dom. Rel. 101(e)(4) about when a GAL's representation ends.
 - ◆ Consider filing and serving a Praecipe indicating the GAL's appointment has ceased 30 days after a final order is entered.
- ◆ Talk to the child about the end of representation.

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Pretrial and Trial Advocacy: Special Considerations for GALs

Goals

- ◆ To understand best practices for GALs in pretrial and trial advocacy
- ◆ To highlight evidentiary issues unique to domestic relations practice and/or the role of the GAL

What is the Burden of Proof?

- ◆ **Parent v. parent:**

- ◆ Best interests → preponderance of the evidence
(D.C. Code § 16-914)

- ◆ **Third party v. parent:**

- ◆ Parental presumption → rebutted by clear and convincing evidence (D.C. Code § 16-831.07)

then

- ◆ Best interests → preponderance of the evidence
(D.C. Code § 16-831.08)

Who Bears the Burden of Proof?

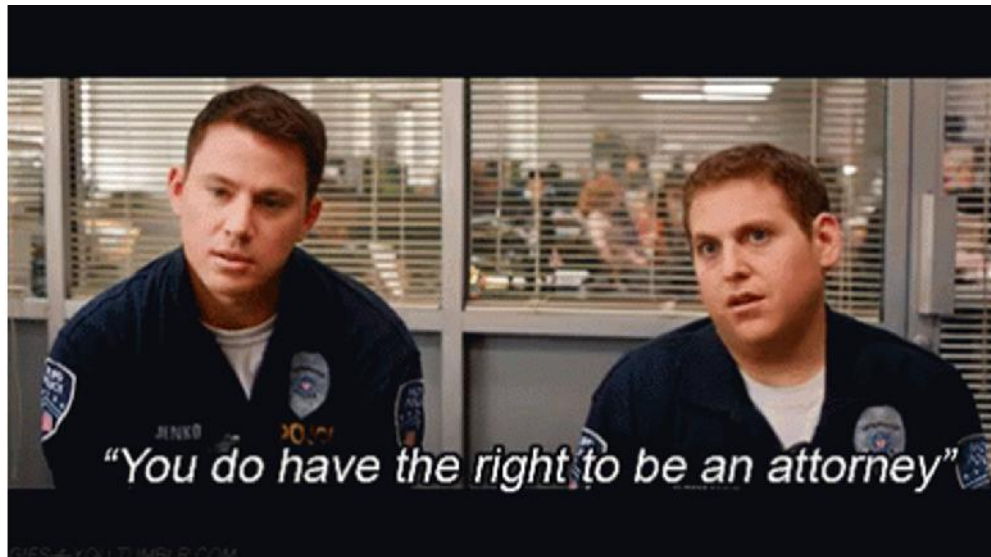
- ◆ Plaintiff
- ◆ Moving party



Role of the GAL up to and During Trial

- ◆ Take positions on factual and legal issues
 - ◆ Positions may change during the investigation
 - ◆ Positions should be consistent with the best interests of the child
- ◆ Present/challenge evidence to advance your position

Role of the GAL up to and During Trial



GALs have rights of a party!
Custody GAL Practice Standard III(B)

How Should a GAL Raise Issues Before Trial?

- ◆ NOT through *ex parte* communications
 - ◆ Judicial Canon 3(B)(7) – only for administrative purposes
 - ▶ When in doubt, call a CLC mentor
 - ◆ Rule of Professional Conduct 3.5
 - ◆ Custody GAL Practice Standards IV(E)

How Should a GAL Raise Issues Before Trial?

- ◆ Preferably not through GAL Reports
 - ◆ Custody GAL Practice Standard III(C)(7)
 - ◆ Reports are not evidence
 - ◆ Reports are not responsive pleadings
- ◆ If a GAL report is filed:
 - ◆ “. . . should be limited to information the GAL believes to be supported by admissible evidence and intends to introduce at trial or an evidentiary hearing.”

How Should a GAL Raise Issues Before Trial?

Motions!

Why a Motions-based Practice?

- ◆ GAL's job is to be the attorney for the child's best interests
- ◆ GAL may not be both an advocate and witness
 - ◆ *Custody GAL Practice Standard IV(G)*
 - ◆ Cf. *S.S. v. D.M.*, 597 A.2d 870 (D.C. 1991)

Tips to Avoid Becoming a Witness

- ◆ Request, update, and creatively utilize records about the child
- ◆ Interview and regularly check in with disinterested or otherwise reliable people familiar with the child and/or parties
- ◆ Take a third party to home and other **VIRTUAL** visits involving client or parties

Discovery

- ◆ SCR-Dom. Rel. Rules 26-37
- ◆ GALs may serve and may be served with discovery
 - ◆ Contact a mentor if you are served with discovery!
 - ◆ See GAL Practice Standard for Guardians *ad Litem* in Custody and Related Corresponding Cases, Standard IV(B) Confidentiality of Communications
- ◆ Consider whether discovery is necessary and likely to be fruitful

Joint Pretrial Statements and Pretrial Hearings

- ◆ Request a pretrial hearing (if time permits)
- ◆ Where one or more parties is self-represented, court may look to the GAL for help in the pretrial process
 - ◆ Prepare and circulate a Joint Pretrial Statement, including:
 - ▶ Stipulated facts
 - ▶ Facts for judicial notice
 - ▶ Exhibit lists
 - ▶ Witness lists

Joint Pretrial Statements and Pretrial Hearings

- ◆ Note objections
 - ◆ Exhibits (e.g. relevance, hearsay, lack of authentication, cumulative)
 - ◆ Witnesses (e.g. competence, lack of personal knowledge, cumulative)
- ◆ Remember to request and provide disclosures for experts
 - ◆ SCR-Dom. Rel. Rule 26(a)

Primary Methods of Presenting Evidence



Sources of Authority

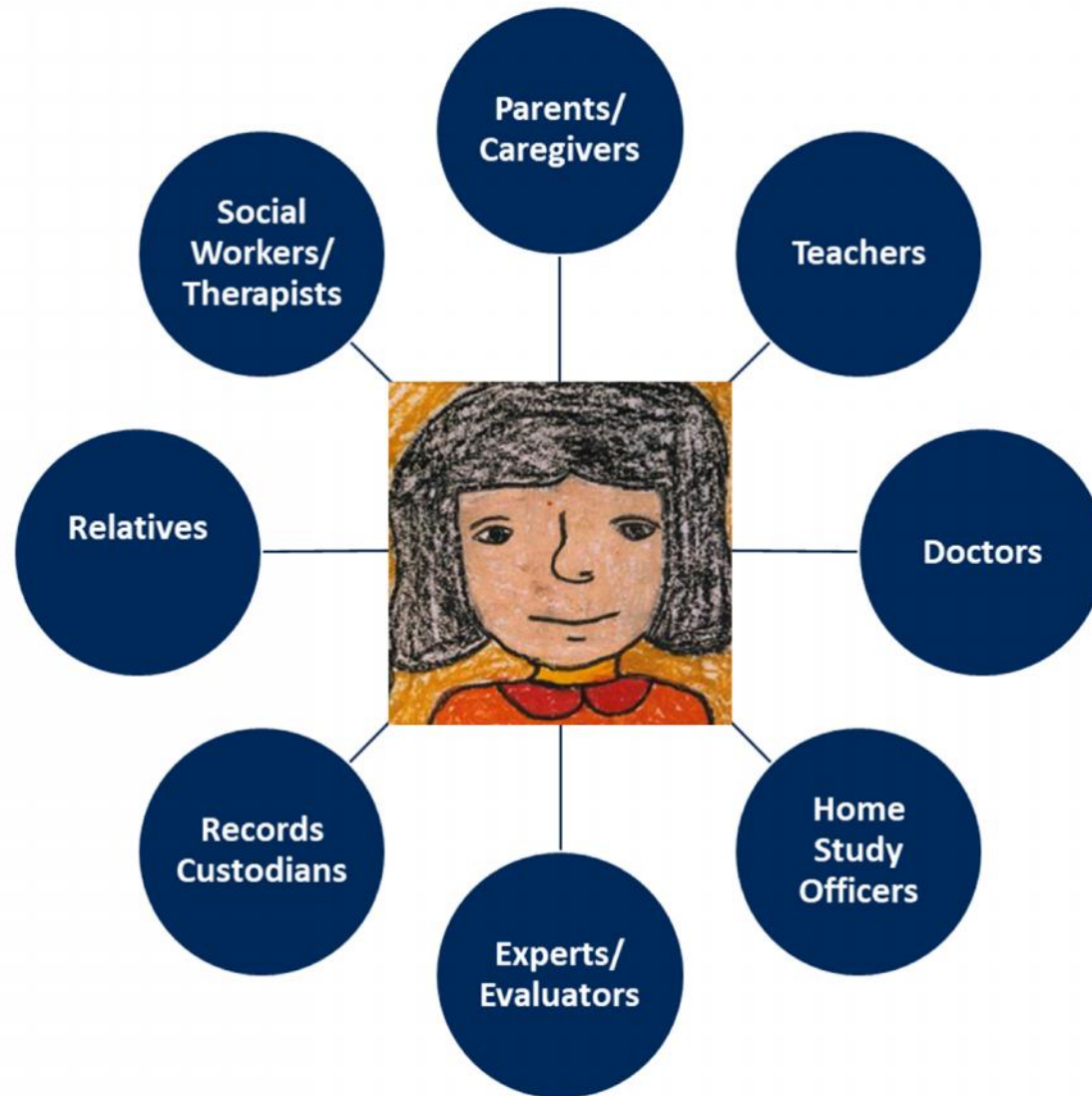
- ◆ Law of evidence in D.C. is largely common-law (based on case law)



Presenting Evidence Through Stipulation of Facts

- ◆ Parties agree to the admission of certain facts without presenting evidence
- ◆ Parties and GAL provide a written list of stipulated facts to the court
- ◆ May help narrow issues, allow for more time to be devoted to disputed issues
 - ▶ However, because of the nature of contested custody cases, may be of limited utility

Presenting Evidence Through Witnesses



Presenting Evidence Through Witnesses

- ◆ Draft questions in advance for your witnesses and for parties' witnesses
 - ◆ Direct examination: non-leading questions, no compound questions
 - ◆ Cross examination: leading questions, one fact per question

Presenting Evidence Through Witnesses

- ◆ Interview all potential witnesses
- ◆ Prepare your witnesses to testify
 - ◆ Practice the questions with the witness
 - ◆ Describe layout of courtroom, order of examination, whom to speak to when testifying, practice cross-examination, explain what to do when witness forgets something, etc.

Child Witnesses

- ◆ Rare for GAL to call child as a witness
 - ◆ Call a CLC mentor
- ◆ Other parties may seek to call child as a witness/have the court interview the child
 - ◆ *Duguma v. Ayalew*, 145 A.3d 517 (D.C. 2016)



Child Witness

Decide

- ◆ Take a position on whether it is in the child's best interest to testify

Advocate

- ◆ Advocate with the parties and court to further this position
- ◆ Consider other means to get the same information into evidence

Minimize

- ◆ Attempt to minimize any adverse consequences to child
- ◆ See Custody GAL Practice Standards III(C)(6)

Child's Out-of-Court Statements as Evidence

- ◆ *In re L.W.*, 613 A.2d 350, 352-53 n.6 (D.C. 1992)
 - ◆ . . . “[W]here, as here, the future of a child is at stake, the judge should do her (or his) best to obtain all of the information needed to effect a judicious disposition....**The rigorous application of evidentiary rules is out of place in a case of this kind, and technical defects will not be given primacy over the best interest of the respondent.**” (citations omitted)

Child's Out-of-Court Statements as Evidence

- ◆ *In re T.W.*, 623 A.2d 116, 117 (D.C. 1993)
 - ◆ “The statute does not say the judge must derive this opinion even partly from questioning of the child herself when ‘feasible’, . . . **[I]n many cases the most probative evidence of the child's opinion may lie in statements the child has made to others . . .**”


Child's Out-of-Court Statements as Evidence

- ◆ See also *In re L.E.K.*, 2003 D.C. Super. LEXIS 38 at 75 (Dec. 29, 2003)
 - ◆ “This Court notes that while our appellate court recognizes that the opinion of a child may be communicated to a trial court through the testimony of social workers and psychologists, **where a child is old enough to testify, a trial court must consider calling the child as a witness unless testifying will be emotionally detrimental to the child.**”

Limits and Conditions on Child Testimony

- ◆ All witnesses presumed competent
 - ◆ *O'Brien v. United States*, 962 A.2d 282 (D.C. 2008)
- ◆ BUT testifying may have detrimental impact on the child
 - ◆ *In re Jam. J.*, 825 A.2d 902 (D.C. 2003) (three-part test in neglect matters for precluding testimony)
 - ◆ *N.D. McN. v. R.J.H.*, 979 A.2d 1195 (D.C. 2009) (court can regulate conditions; process for in camera interviews of child by judge)

Presenting Evidence Through Documents

 **Certified copy of a D.C. criminal Judgment and Probation/Commitment Order**

 **Drug test results**

 **Expert reports**

 **Home study reports**

 **Observation notes from the Supervised Visitation Center**

 **Report cards, medical records**



Documentary Evidence: Considerations

- ◆ Subpoena the witness who will provide foundation for admitting the documents
 - ◆ If you can do so safely
 - ◆ Counsel for institutions may agree to accept e-service of subpoenas
- ◆ Consider the basis for admission of documents or particular statements within them
- ◆ Prepare responses to hearsay and other objections in advance
- ◆ Prepare your documents/exhibits for trial

Social Media and Other Electronic Evidence

- ◆ Check social media during investigation
- ◆ Lay a foundation
- ◆ Address other evidentiary questions



Common Records Rules

Business Records

- ◆ SCR-General Family Rule Q

Judicial Notice

- ◆ *Daniels v. United States*, 33 A.3d 324 (D.C. 2011); *S.S. v. D.M.*, 597 A.2d 870 (D.C. 1991); *W.M. v. D.S.C.*, 591 A.2d 837 (D.C. 1991)

Certified Public Records

- ◆ SCR Dom. Rel. 44

Training Part One – Complete!

- ◆ What's next?
 - ◆ Custody GAL Training Part Two
 - ▶ Custody Law and Procedure

**Questions?
Interested in a case?**

**Email Jen Masi
jmasi@childrenslawcenter.org**



Thank you!



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[CHILDRENSLAWCENTER.ORG](#)

