



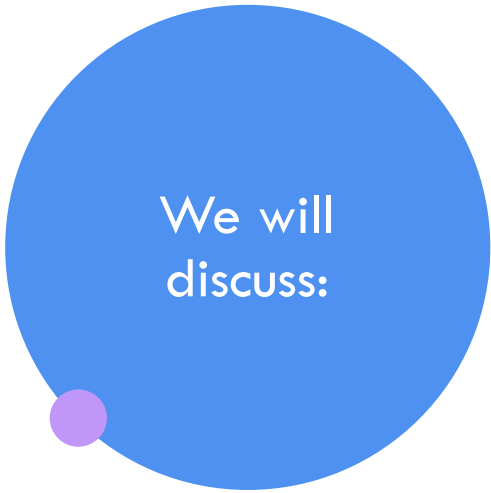
So You Want To Be A Guardian Ad Litem!

Stacie Odeneal, JD CWLS
For Tennessee Administrative Office of the Courts
March 2023



We will discuss:

- Right to a Guardian Ad Litem
- Role of a Guardian Ad Litem
- Dependency and Neglect
- Petitions
- Pre-Adjudication
- Post-Disposition



- Termination of Parental Rights
- Child and Family Team Meetings
- Permanency Plans
- Annual Permanency Hearings

March 2023

So you want to be a GAL?

3



Determining "developmentally appropriate"

TPR Grounds

Severe Abuse

Mental Evaluation

Pleading Practice

Adoption Assistance

Expert Testimony

Reasonable Efforts

Secondary Trauma

Attachment Theory

Trial Practice

Trauma Adoption

Records Requests

Education Law

DCS

Childhood Development

Getting Paid

Resource Connection

Permanency

Title IV-E

Trial Preparation

Least Restrictive Alternative

DSM-V

Post-Adoption Contact Contracts

CFTM Appeals

Ethical Obligations

Adverse Childhood Experiences

Controlled Substances and their effects

Dealing with parents in crisis


School of Origin

Placement

March 2023

So you want to be a GAL?

4



What is a Guardian Ad Litem?



Defined by Tenn. Supreme Court Rule 40:

Definitions. As used in this rule, unless the context otherwise requires: **(1)** "Guardian ad litem" is a [lawyer](#) appointed by the court to advocate for the best interests of a child and to ensure that the child's concerns and preferences are effectively advocated

Tenn. Sup. Ct. Rule 40

What is Best Interest?

Per
Tenn. S. Ct. R. 40

"Child's best interests" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following factors:

- (i) the child's basic physical needs, such as safety, shelter, food, clothing, and medical care;
- (ii) the child's emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement;
- (iii) the child's need for family affiliation;

What is Best Interest?

Per
Tenn. S. Ct. R. 40

"Child's best interests" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following factors:

- (iv) the child's social needs;
- (v) the child's educational needs;
- (vi) the child's vulnerability and dependence upon others;
- (vii) the physical, psychological, emotional, mental, and developmental effects of maltreatment upon the child;

What is Best Interest?

Per
Tenn. S. Ct. R. 40

"Child's best interests" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following factors:

(viii) degree of risk;

(ix) the child's need for stability of placement;

(x) the child's age and developmental level, including his or her sense of time;

(xi) the general preference of a child to live with known people, to continue normal activities, and to avoid moving;

(xii) whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources;

What is Best Interest?

Per
Tenn. S. Ct. R. 40

"Child's best interests" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following factors:

(xiii) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers;

(xiv) the importance of continuity in the child's life;

(xv) the home, school and community record of the child;

(xvi) the preferences of the child;

What is Best Interest?

Per
Tenn. S. Ct. R. 40

"Child's best interests" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following factors:

(xvii) the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings; and

(xviii) in the case of visitation or custody disputes between parents, the list of factors set forth in Tenn. Code Ann. § 36-6-106.

Who does the Guardian Ad Litem represent?

Tenn. S. Ct. R. 40

The Child's:

1. BEST INTEREST
2. Concerns
3. Preferences

NOT :

1. The Child's Preferences when in conflict with GAL's position
2. The Parents
3. The Court
4. The Department
5. The Family
6. The Community

Who does the Guardian Ad Litem represent?

The Child's:

1. BEST INTEREST
2. Concerns
3. Preferences

Why is this
important
?!?!?

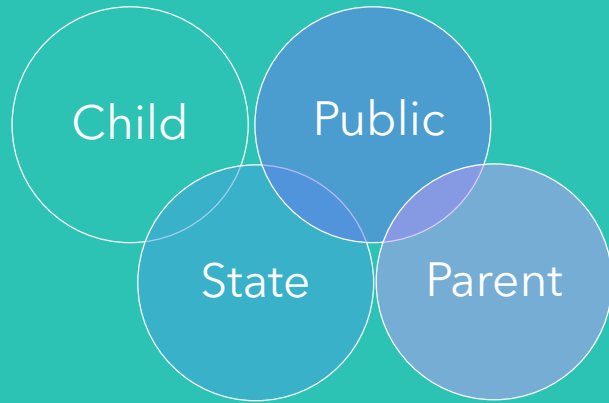
NOT :

1. The Child's Preferences when in conflict with GAL's position
2. The Parents
3. The Court
4. The Department
5. The Family
6. The Community

"[C]hildren have fundamental liberty interests at stake in deprivation and TPR proceedings. These include a child's interest in his or her own safety, health, and well-being, as well as an interest in maintaining the integrity of the family unit and in having a relationship with his or her biological parents."

Kenny A. v. Perdue, 356 F. Supp. 2d 1353 (U.S. Dist. Ct. N. Ga, 2005)

What Rights Are At Stake In A D/N Proceeding



What Does the GAL do?

Investigate

Tenn. S. Ct. R. 40

- (1) Conducting an independent investigation of the facts that includes:
 - (i) Obtaining necessary authorization for release of information, including an appropriate discovery order;
 - (ii) Reviewing the court files of the child and siblings and obtaining copies of all pleadings relevant to the case;
 - (iii) Reviewing and obtaining copies of Department of Children's Services' records;
 - (iv) Reviewing and obtaining copies of the child's psychiatric, psychological, substance abuse, medical, school and other records relevant to the case;
 - (v) Contacting the lawyers for other parties for background information and for permission to interview the parties;

What Does the GAL do?

Investigate

Tenn. S. Ct. R. 40

(vi) Interviewing the parent(s) and legal guardian(s) of the child with permission of their lawyer(s) or conducting formal discovery to obtain information from parents and legal guardians if permission to interview is denied;

(vii) Reviewing records of parent(s) or legal guardian(s), including, when relevant to the case, psychiatric, psychological, substance abuse, medical, criminal, and law enforcement records;

(viii) Interviewing individuals involved with the child, including school personnel, caseworkers, foster parents or other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians and other potential witnesses;

(ix) Reviewing relevant photographs, video or audio tapes and other evidence; and

(x) Engaging and consulting with professionals and others with relevant special expertise.

What Does the GAL do?

Communicate

Tenn. S. Ct. R. 40

(2) Explaining to the child, in a developmentally appropriate manner: (i) the subject matter of litigation;

(ii) the child's rights;

(iii) the court process;

(iv) the guardian ad litem's role and responsibilities;

(v) what to expect before, during and after each hearing or review;

(vi) the substance and significance of any orders entered by the court and actions taken by a review board or at a staffing.

What Does the GAL do?

Calculate

Tenn. S. Ct. R. 40

(3) Consulting with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. If the child is very young or otherwise nonverbal, or is severely mentally disabled, the guardian ad litem should at a minimum observe the child with the caretaker.

(4) Assessing the needs of the child and the available resources within the family and community to meet the child's needs.

(5) Considering resources available through programs and processes, including special education, health care and health insurance, and victim's compensation.

What Does the GAL do?

Litigate

Tenn. S. Ct. R. 40

(6) Ensuring that if the child is to testify, the child is prepared and the manner and circumstances of the child's testimony are designed to minimize any harm that might be caused by testifying.

(7) Advocating the position that serves the best interest of the child by:

- (i) Petitioning the court for relief on behalf of the child and filing and responding to appropriate motions and pleadings;

- (ii) Participating in depositions, discovery and pretrial conferences;

- (iii) Participating in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child;

- (iv) Making opening statements and closing arguments;

- (v) Calling, examining and cross-examining witnesses, offering exhibits and introducing independent evidence in any proceeding;

What Does the GAL do?

Litigate

Tenn. S. Ct. R. 40

- (vi) Filing briefs and legal memoranda;
- (vii) Preparing and submitting proposed findings of facts and conclusions of law;
- (viii) Ensuring that written orders are promptly entered that accurately reflect the findings of the court;
- (ix) Monitoring compliance with the orders of the court and filing motions and other pleadings and taking other actions to ensure services are being provided;
- (x) Attending all staffings, reviews and hearings, including permanency plan staffings, foster care review board hearings, judicial reviews and the permanency hearing;
- (xi) Attending treatment, school and placement meetings regarding the child as deemed necessary.
- (8) Ensuring that the services and responsibilities listed in the permanency plan are in the child's best interests.

What Does the GAL do?

Litigate

Tenn. S. Ct. R. 40

- (9) Ensuring that particular attention is paid to maintaining and maximizing appropriate, non-detrimental contacts with family members and friends.
- (10) Providing representation with respect to appellate review including:
 - (i) discussing appellate remedies with the child if the order does not serve the best interest of the child, or if the child objects to the court's order;
 - (ii) filing an appeal when appropriate; and
 - (iii) representing the child on appeal, whether that appeal is filed by or on behalf of the child or filed by another party



Appointment of Guardian Ad Litem

Tenn. Code Ann. 37-1-126(a)(1):

(a)(1) A child is entitled to representation by legal counsel at **all stages** of any delinquency proceedings or proceedings alleging unruly conduct that place the child in jeopardy of being removed from the home pursuant to [§ 37-1-132\(b\)](#) and **is entitled to a guardian ad litem for proceedings alleging a child to be dependent and neglected or abused.**

March 2023

So you want to be a GAL?

23



Questions?

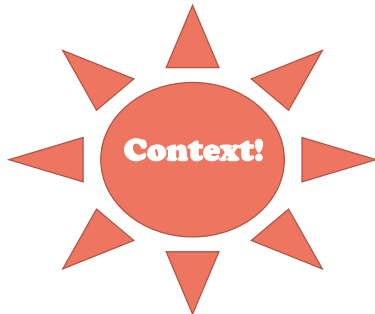
The Beginning

When does the G.A.L. get involved?

Meet my pirates!

- In foster care from 2017-2019
- Kinship Placement
- Noncustodial
- Custodial
- Adopted

We Call This:



March, 2023

So you want to be a GAL?



26

When does a G.A.L. get involved?

1 Mom has been hospitalized for 2 weeks and is being discharged. She is requesting a GAL for her child and her child's discharge planning.

2 Neighbor reports children in the yard. Consent of the parent is required. The DCS is investigating for neglect.

3 Child is being placed with another family with POA. The child has been in the system for 6 months while the parent serves a sentence.

4 Child is being placed with a family in January. The child is currently in a foster care placement with a POA pending court appearance regarding Petition for DN.

March 2023

So you want to be a GAL?

27

What is D and N?

Dependency and Neglect or Dependent and Neglected

- A State Action
- Defined by Tenn. Code Ann 37-1-102(b)(13)
- A status as to the child

9/3/20XX

Presentation Title

28

What is D and N?

March 2023

- Defined by Tenn. Code Ann 37-1-102(b)(13)
 - (A) Who is without a parent, guardian or legal custodian;
 - (B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child;
 - (C) Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school;
 - (D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child;
 - (E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law;
 - (F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others;

So You Want To Be A GAL?

29

What is D and N?

March 2023

- Defined by Tenn. Code Ann 37-1-102(b)(13)
 - (G) Who is suffering from abuse or neglect;
 - (H) Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child;
 - (I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity;
 - (J)(i) Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative;

So You Want To Be A GAL?

30

A Petition is Initiated

Facts:

- Slim P is found 2 miles from home wearing pajama pants and little else.
- Law enforcement is called and convinces Slim to return home
- Mom is apparently asleep and doesn't respond to knocking. Queen is unattended.
- Both children have second degree burns.

Case:

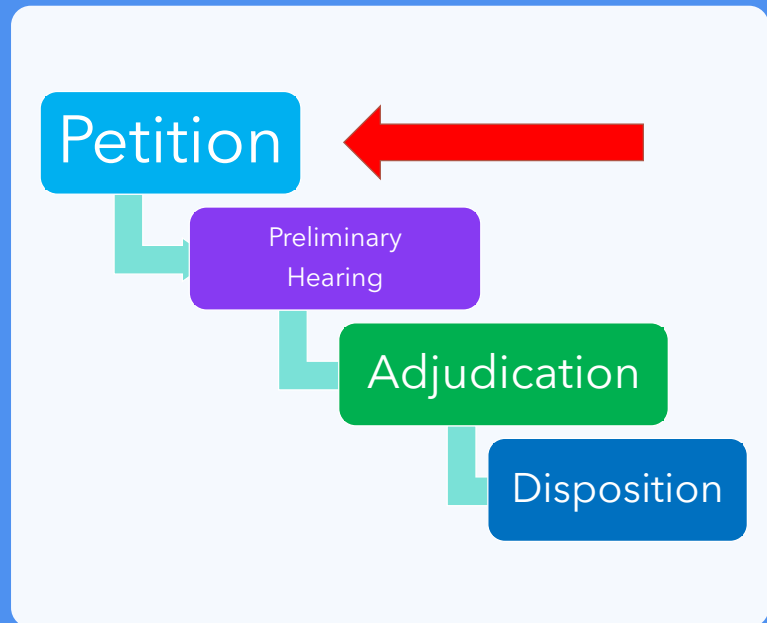
- DCS exhausts placement options
- SLO agrees to serve as IPA placement until court
- DCS files IPA and Petition alleging children are DN

March 2023

So you want to be a GAL?

31

Dependency and neglect Process





Petition

March 2023

- Starts the case
 - Tenn. R. Juv. Pro. 301
- Made within 48 hours of removal
 - Tenn. Code Ann. 37-1-117(b)
- Made by anyone over 18 years of age with knowledge of the facts
 - Tenn. Code Ann. 37-1-119
- Must be verified
 - Tenn. Code Ann. 37-1-119(a)

- Must contain:

(1) The facts that bring the child within the jurisdiction of the court, including the approximate date, manner, and place of the acts alleged, with a statement that it is in the best interest of the child and the public that the proceeding be brought;

(2) The name, age, and residence address, if any, of the child on whose behalf the petition is brought and the places where the child has lived for the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period;

So you want to be a GAL?

33



Petition

March 2023

- Must contain:

(3) The names and residence addresses, if known to petitioner, of the legal parents, guardian, or custodian of the child and of the child's spouse, or of any person who has physical custody of the child or claims rights of legal or physical custody of, or visitation with the child;

(4) The names and residence addresses, if known to the petitioner, of any person or persons, other than the legal father, alleged to be the biological father of the child whose parental rights have not been terminated;

(5) The court, case number, and nature of any proceeding, if known to the petitioner, that could affect the current proceeding including proceedings for custody, visitation, enforcement, domestic violence, protective orders, termination of parental rights, or adoption;

(6) A statement whether the petitioner has participated as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, a statement that identifies the court, the case number, and the date of the child custody determination, if any;

(7) A statement whether or not the parents are currently serving in the armed forces; and

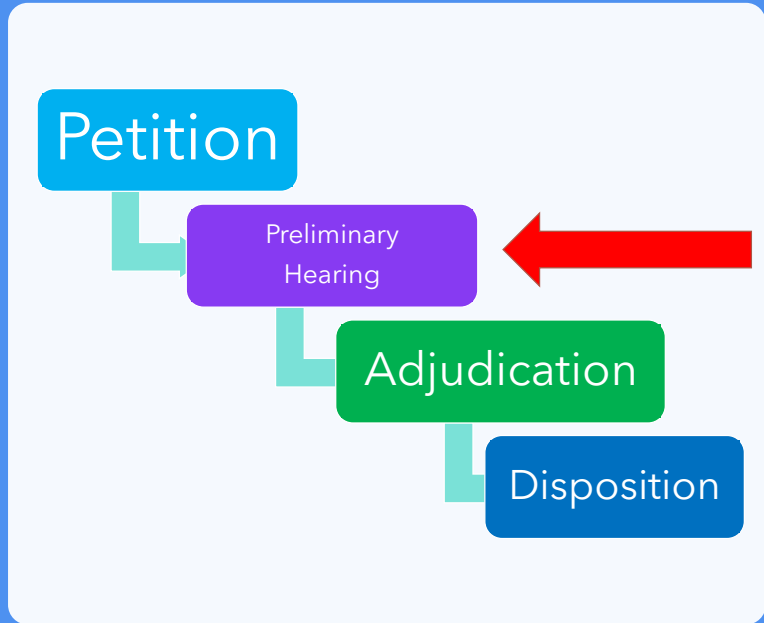
(8) A statement whether the child or child's parent is a member or eligible for membership in any recognized Indian tribe under the federal Indian Child Welfare Act ([25 U.S.C. § 1901](#)).

Tenn Code Ann. 37-1-120(c)

So you want to be a GAL?

34

Dependency and neglect Process



Protective Custody/ Shelter Care


Tenn. Code Ann. 37-1-117

(b)(1) When the court finds, based upon a sworn petition or sworn testimony containing specific factual allegations, that there is **probable cause** to believe that the conditions specified in [§ 37-1-114\(a\)\(2\)](#) exist and a **child is in need of the immediate protection of the court**, the court **may** order that **the child be removed from the custody of the child's parent, guardian, legal custodian, or the person who physically possesses or controls the child** and be placed in the custody of a suitable person, persons, or agency, as specified in [§ 37-1-116\(d\)](#), pending further investigation and hearing. When a child alleged to be dependent and neglected is removed from the custody of such child's parent, guardian, legal custodian, or the person who physically possesses or controls the child prior to a hearing on a petition, a preliminary hearing shall be held no later than seventy-two (72) hours after the child's removal to determine whether such child's continued removal is required under [§ 37-1-114](#). In computing the time limitation for purposes of such preliminary hearing, nonjudicial days are excluded, but in no event shall the hearing be held later than eighty-four (84) hours after the child is removed from the home.

March 2023

So you will

36



Protective Custody/ Shelter Care

March 2023

Can occur when a court finds:

probable cause to believe that the child is dependent and neglected

AND

a **child is in need of the immediate protection of the court,**


the court **may** order that **the child be removed** from the custody of the child's parent, guardian, legal custodian, or the person who physically possesses or controls the child

AND

Place the child in the custody of a suitable person, persons, or agency, as specified in [§ 37-1-116\(d\)](#), pending further investigation and hearing.

So you want to be a GAL?

37



Preliminary Hearing

March 2023

Tenn. R. Juv. Pro. 302

- Occurs only when child is or is sought to be removed
 - From a parent
 - Legal guardian
 - Legal custodian
- Requires findings of fact
- Appoint GAL *before* preliminary hearing
- Reliable Hearsay is allowed at hearing to determine:
 - Is child DN
 - Is child in immediate risk to health or safety or
 - Is child subject to being removed from jurisdiction
 - **Is there any less drastic alternative to removal?**
- Probable Cause standard

So you want to be a GAL?

38

The Beginning

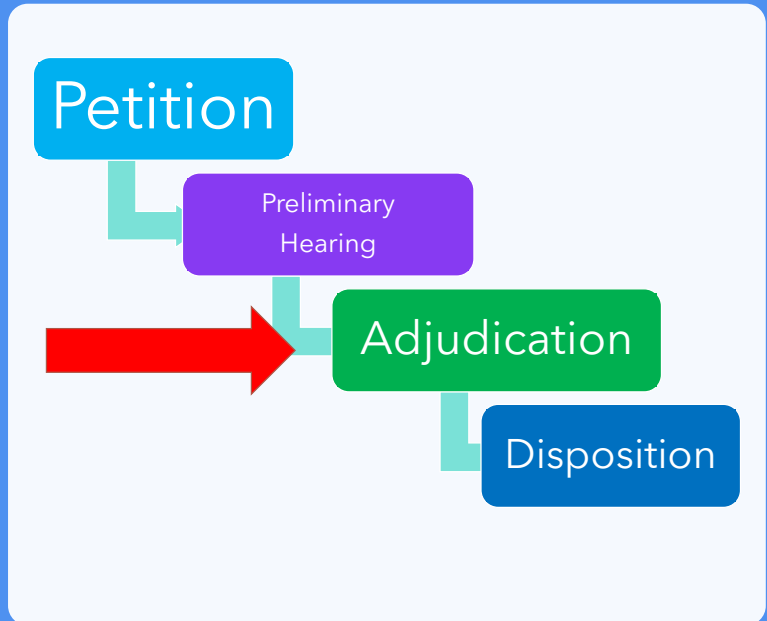


Investigate
Communicate
Calculate
Litigate

How does a GAL get involved?



Dependency
and neglect
Process





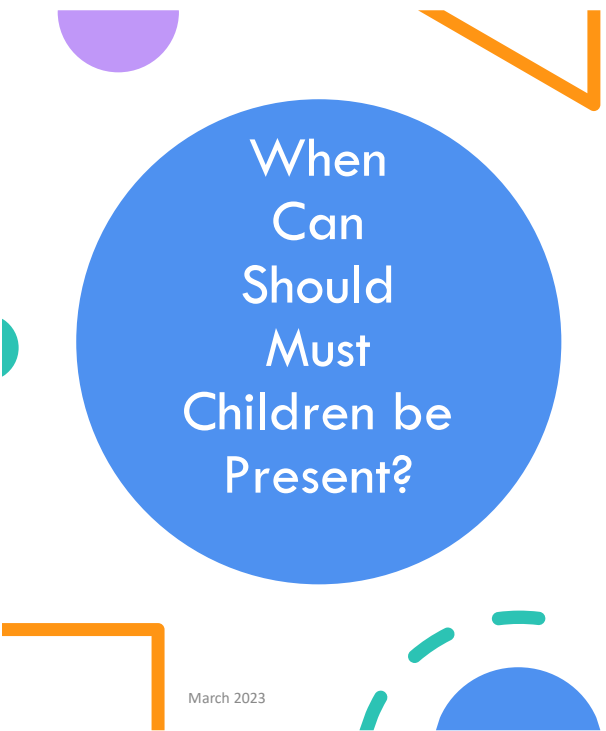
Adjudication

March 2023

So you want to be a GAL?

41

- Made within 30 days of Child's removal
OR
- Within 30 days of filing of petition
- Or at least within 60 days of petition
 - Tenn. R. Juv. Pro. 307
- Clear and Convincing Evidence
 - Tenn. R. Juv. Pro. 307
- If D/N then to disposition
- OR
- If not D/N, then dismissed
 - Tenn. Code Ann. 37-1-129(b)



When Can Should Must Children be Present?

March 2023

So you want to be a GAL?

42

Tenn. R. Evidence 803(25) requires declarants age 13 or older to testify as to experiences that reflect abuse within the narrow exceptions set forth in the rule.

Tenn. R. Juv. Pro. 103(a) requires children age 14 or older to be served with DN petitions.

Tenn. R. Juv. Pro. 112 requires the attendance of necessary parties which can include children.

Tenn. Code Ann. 33-8-202 allows children aged 16 or older to consent or deny certain medical care including mental health treatment.

Tenn. Code Ann. 36-1-117(i)(6) requires children aged 14 or older to consent to their own adoption.

Tenn. Code Ann. 37-2-409(a)(2) requires children of all ages at permanency hearings unless under a doctor's care that prevents attendance.

Tenn. Code Ann. 37-1-149(a)(1) requires the court to appoint a GAL when the best interest of the child and the preferences of the child conflict. Similarly **Tenn. S. Ct. R. 40** requires a GAL to communicate the child's preferences to the Court.

DCS policy 15.15 requires a child 12 or older to be consulted about SPG and also participate in the Child and Family Team Meeting when SPG is discussed.



As G.A.L., what do you do?

March 2023

Investigate:

What is likely going to be addressed at the hearing/meeting?

What is the child's reaction or need?

Communicate:

Address the upcoming event with your client in an age and developmentally appropriate manner.

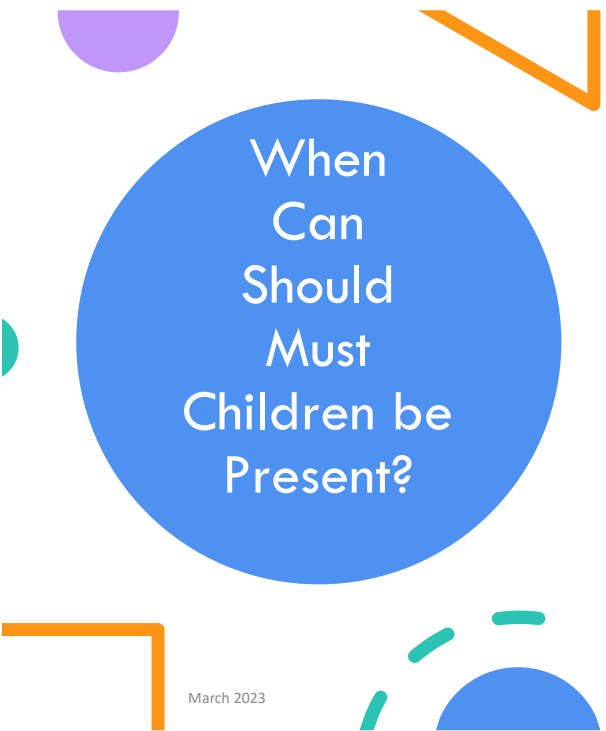
Ask what he/she/they need from this meeting?

Do you want me to say anything for you?

Do you want to say anything?

So you want to be a GAL?

43



When Can Should Must Children be Present?

March 2023

Calculate:

What precautions do I need to take for my client's best interest?

Litigate:

Ask for informal or formal discovery to identify possible relevant information

File motions:

in limine

for expert fees

for modification of hearing procedures

to continue or reschedule

So you want to be a GAL?

44



Taking Children's Testimony

March 2023

Tenn. R. Juv. Pro. 306

- (a) Any examination of a child witness shall be conducted in a manner that takes into account the child's age and developmental level. Such testimony shall be recorded.
- (b) When a child testifies, the examination shall be conducted either in chambers or in a courtroom which has been cleared of observers and non-party witnesses.
- (c) Upon motion of any party or upon its own initiative and upon good cause shown based upon the best interest of the child, the court may order one or more of the following accommodations:
- (1) Arrangement of the courtroom or chambers so that certain individuals are not within the child's line of vision;
 - (2) Exclusion of the parties from chambers or the courtroom while the child is testifying; any motion for exclusion of the parties shall be made prior to trial, except in extraordinary circumstances;
 - (3) Examination of the child through written questions and written answers;
 - (4) Observation by the parties of the child's testimony by closed circuit television or other contemporaneous audio-visual transmission;
 - (5) Examination of the child by the court rather than directly by the parties or attorneys;
 - (6) Allowing the presence of a properly trained comfort animal;
 - (7) Permitting the child to have a stuffed animal or similar comfort toy while the child is testifying; or
 - (8) Permitting the child to be accompanied by a support person who is not a party or a witness.

So you want to be a GAL?

45



Taking Children's Testimony

March 2023

Tenn. R. Juv. Pro. 306

- (d) If the court excludes the parties from chambers or the courtroom while the child is testifying, the court shall ensure the following procedures are followed:
- (1) Counsel for the parties and child(ren), including the guardian(s) ad litem, shall be permitted to be present during the child's testimony.
 - (2) The court shall inform any party who is not represented by counsel of the right to be represented by counsel and shall appoint counsel if requested by an indigent party who is entitled to an attorney.
- (e) If the court examines the child rather than permitting the parties or attorney to directly examine the child, the court shall ensure the following procedures are followed:
- (1) The parties or their counsel if represented, the guardian(s) ad litem, and attorney(s) ad litem shall submit written questions to the court prior to the child's testimony. The court shall ask the questions as written.
 - (2) If a party or attorney has an objection to a question, he or she may make the objection by raising his or her hand and then submitting the objection in writing. The written objection shall be provided to the party or attorney who wrote the question, and he or she shall be provided an opportunity to respond to the objection, before the court may sustain the objection.
 - (3) After all of the submitted questions have been asked by the court, the court shall take a recess. During the recess, the attorneys shall have an opportunity to consult with their clients. If a party or attorney wishes to ask additional questions, he or she shall submit the questions in writing prior to the end of the recess.
 - (4) The court shall continue the above process until there are no further questions for the child from any party or attorney.

So you want to be a GAL?

46

Taking Children's Testimony

March 2023

Tenn. R. Juv. Pro. 306

Advisory Comments:

The Commission drafted this rule in order to provide guidelines to courts and attorneys as they seek to balance the due process rights of the respondents with the need to protect child witnesses from unnecessary trauma.

Subdivision (b) requires that when a child testifies the examination must be conducted either in chambers or in a courtroom which has been cleared of observers and non-party witnesses. Court appointed special advocates (CASAs) appointed pursuant to T.C.A. § 37-1-149, as well as foster parents, prospective adoptive parents, and relatives providing care for a child in state custody are not parties to the dependent and neglected action and should be excluded from the courtroom while the child is testifying.

When an unrepresented party requests appointment of an attorney or time to retain an attorney due to the court's decision to allow a child's testimony to be taken pursuant to subdivision (d), the hearing will likely need to be continued. In addition to the time it takes to appoint or retain the attorney, the attorney will need reasonable time to prepare.

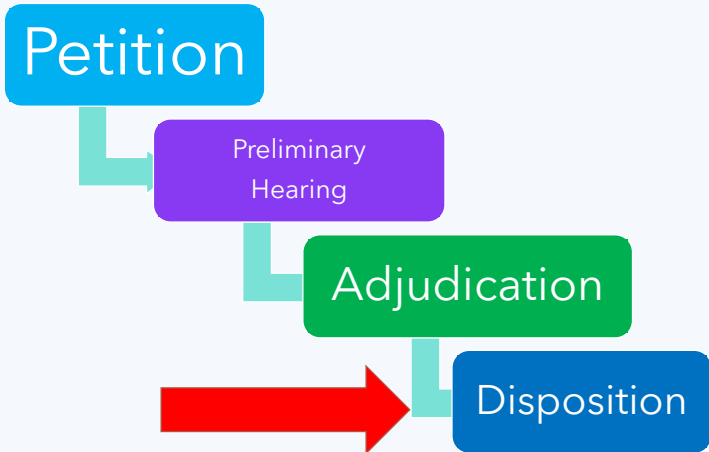
Courts and attorneys should note that it is neither necessary nor desirable for the alleged perpetrator to be made a party to the dependent and neglect proceeding unless that person is the child's parent or legal guardian. In cases where the alleged perpetrator is not the parent or legal guardian, and where a court order limiting the alleged perpetrator's access to the child is appropriate, a related petition for a restraining order pursuant to T.C.A. § 37-1-152 and Rule 108 could accomplish the goal of protecting the child without granting the alleged perpetrator party status in the underlying action. In addition to other benefits, this strategy could limit or eliminate the alleged perpetrator's participation in the dependent and neglect case hearings and increase the child's comfort level.

Courts and attorneys may find it helpful to refer to Rule 112 concerning when testimony may be taken by audio-visual means

So you want to be a GAL?

47

Dependency and neglect Process





Disposition

March 2023

So you want to be a GAL?

49

- Made within 15 days of adjudication if child is placed out of home
- OR
- Within 90 days of adjudication
 - Tenn. R. Juv. Pro. 308
- Reliable Hearsay allowed
 - Tenn. R. Juv. Pro. 308
- Preponderance Standard
 - Tenn. R. Juv. Pro. 301
- Disposition can be to parents without limitation,
- Parents with limitations
- Someone else approved by court
- Agency/DCS
 - Tenn. Code Ann. 37-1-130



Disposition

March 2023

So you want to be a GAL?

50

- Appropriate language can trigger loss of Superior Parental Rights
- "It is after an order of final disposition that a natural parent may lose the right to invoke the doctrine of superior parental rights in a petition to change custody.
In re T.B.H., No. M2006-01232-COA-R3-JV, 2007 Tenn. App. LEXIS 239, at *10 (Ct. App. Apr. 20, 2007)
- Triggers appeal of adjudication and disposition to Circuit, or rehearing of magistrate's decision
 - Tenn R. Juv. Pro 308

The Middle



How does a GAL get involved?

Investigate
Communicate
Calculate
Litigate



Other “stages”
where a child is
entitled to
representation

Child and Family Team Meetings

- Called by DCS, parents, GAL, anybody
- First held within 7 days of foster care
- Another within 30 days of foster care
- Reviews
- Special-called
- Placement
- Plan development
- 10 days notice in writing, 7 days if by phone or email
- [CFTMGuide.pdf \(tn.gov\)](#)



Other “stages”
where a child is
entitled to
representation

Permanency Plan Ratifications

- Required to be developed within 30 days of foster care
- A plan to exit kids from foster care: return to parent, exit with kin, PPLA, SPG, PG, Adoption
- Action steps for DCS, children, placement, parents, others
- “Narrowly tailored and reasonably related to correcting the conditions that necessitate foster care.”
- Tenn. Code Ann. 37-2-403, 404
- Tenn. R. Juv. Pro. 401



Other “stages”
where a child is
entitled to
representation

Annual Permanency Hearings

- Required within 12 months of foster care, and at least annually thereafter
- Child(ren) MUST be present
- Reviews action steps for DCS, children, placement, parents, others
- Assesses compliance for parties: “in Substantial Compliance” or “not in Substantial Compliance.”
- **Court can modify disposition based on compliance**
- Tenn. Code Ann. 37-2-409
- Tenn. R. Juv. Pro. 404



Other “stages”
where a child is
entitled to
representation

Foster Care Review Board

- Required within 90 days of foster care, and at least every 6 months thereafter
- Child(ren) MUST be present
- Advising Board OR local juvenile judge
- Assesses for safety, well-being, permanency
- Children’s statements are NOT admissible in delinquency or unruly proceedings
- Deliberate outside of all parties
- Parties/counsel get 10 days written notice
- Tenn. Code Ann. 37-2-406
- Tenn. R. Juv. Pro. 403



Other “stages”
where a child is
entitled to
representation

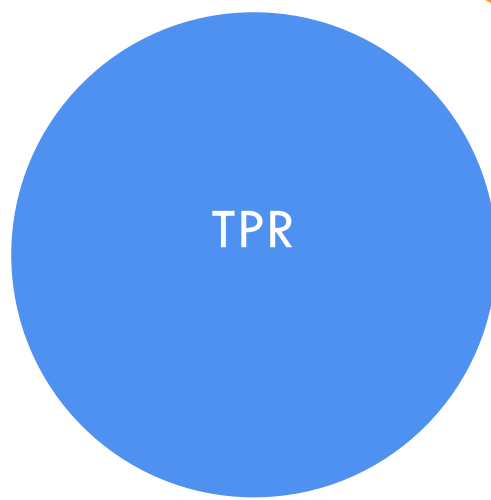
Foster Care Review Board

- Can Make a **DIRECT REFERRAL** to court:
 - (A) Where conditions persist that constitute a deterrent to reaching the permanency goals in a given case and such conditions indirectly and chronically compromise the health, safety or welfare of the child, such direct referral case shall be heard by the judge or magistrate within thirty (30) calendar days; or
 - (B) Where issues in a particular case constitute a risk of harm and directly compromise the health, safety or welfare of the child, such direct referral case shall be heard by the judge or magistrate within seventy-two (72) hours, excluding non-judicial days.
- Tenn. Code Ann. 37-2-406

Termination of Parental Rights



TPR

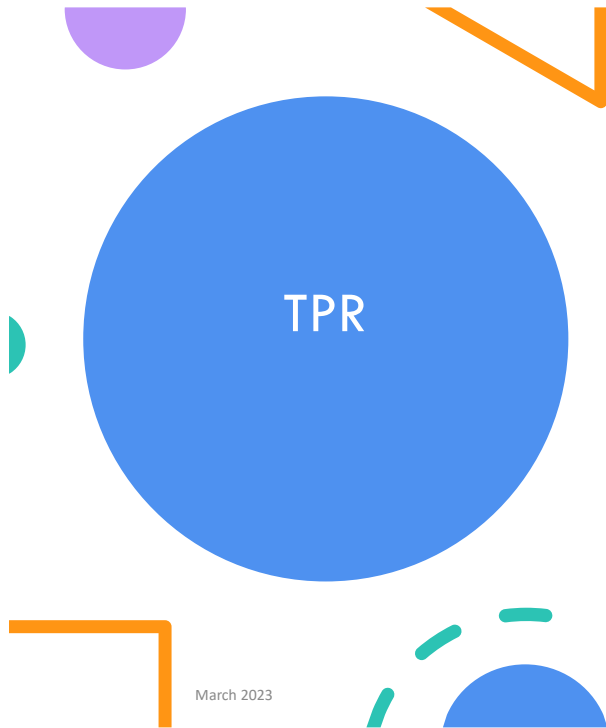


- Terminates parental rights
- Can be filed by
 - Prospective adoptive parents
 - (look at adoption petition rules)
 - GAL
 - DCS
- Intervening party if granted
 - Tenn. Code Ann. 36-1-113(b)
- Clear and Convincing Standard
 - Tenn. Code Ann. 37-1-113(c)
- Petition must be verified and contain certain information
 - Tenn. Code Ann. 36-1-113(d)
- Venue can be SO many places
 - Tenn. Code Ann. 36-1-114

March 2023

So you want to be a GAL?

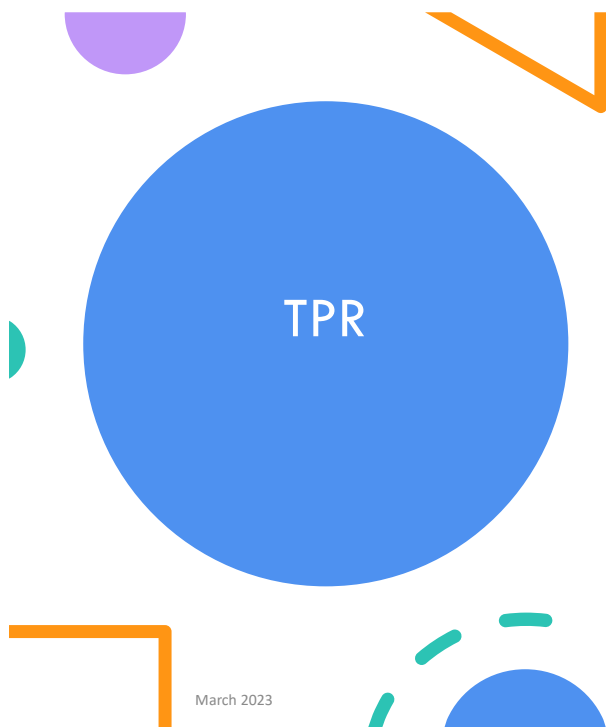
58



- 14-ish grounds for termination
 - Tenn. Code Ann. 36-1-113(g)
- THEN after ground is found, best interest test
 - Tenn. Code Ann. 36-1-113(i)
- Appointed pursuant to Tenn. S. Ct. R. 40, but Best Interest is TCA 36-1-113(i)
 - Tenn. Code Ann. 36-1-113(d)
- Filing suspends all other custody proceedings except Title IV-E or other federally required hearings in Juvenile court: PPR, APH, etc.
 - Tenn. Code Ann. 36-1-116(f)(2)
 - Tenn. Code Ann. 37-1-103(c)
- GALs are necessary in contested TPRs
 - Tenn. S. Ct. R. 13 sect. 1 (d)(2)(D)

So you want to be a GAL?

59



Given the important function served by the **guardian ad litem**, his or her involvement may well have altered the outcome of this case and therefore, we do not deem the failure to appoint a **guardian ad litem** to be harmless error.

[*In re Adoption of D.P.E.*, 2006 Tenn. App. LEXIS 551, 2006 WL 2417578, at *3.](#)

See also *In Re Aliyah C*, 604 SW3d 417

So you want to be a GAL?

60

Everywhere Else



How does a GAL get involved?

Investigate
Communicate
Calculate
Litigate

Thank you for doing
the hard work!

Reach out if I can be
helpful!

- Stacie Odeneal
- 931/762-4012
- Tennesseefarmlaw@gmail.com





Vocabulary Words

- APH: Annual Permanency Hearing
- CFTM: Child and Family Team Meeting
- CPS: Child Protective Services
- DCS: Department of Children's Services
- DN: Dependent and Neglected
- FCRB: Foster Care Review Board
- GAL: Guardian Ad Litem
- IPA: Immediate Protection Agreement
- PPR: Permanency Plan Ratification
- SLO: Stacie Leigh Odeneal
- TPR: Termination of Parental Rights

