

Guardian ad Litem

It is common in a Massachusetts divorce or custody case for the court to appoint a Guardian Ad Litem, commonly referred to as a GAL. The following information pertains to GALs, their responsibility, and when a Massachusetts Probate AND Family Court Judge might appoint a GAL to a specific case.

In Massachusetts, a GAL is appointed by the court to serve as an impartial investigator and reporter for matters pertaining to the care and custody of minor children. Attorney Collins is a court-certified GAL and is regularly appointed as a GAL by the Court or by agreement between parties.

In some cases, parents are in conflict with one another and are unable to agree on custody or a parenting plan. Perhaps one or both parents have issues involving substance abuse, mental illness, or have a history of violence and/or criminal activity that impede their ability to appropriately and safely parent minor children.

Other cases involve allegations of child abuse. Sometimes, both parents seek full custody of the children or one parent seeks to remove the children from the Commonwealth. The determination of what is in the best interests of minor children is often difficult, with conflicting information being presented by both sides.

To help the Judge make a custody decision, a Guardian Ad Litem (GAL) may be appointed to investigate and/or evaluate the case and report back to the court. The statutory authority that allows a Judge to appoint a GAL is found in Mass. Gen. Laws. c. 215, Sec. 56A and G.L. c. 208, Sec. 16.

GALs cannot give legal advice. The role of the GAL is one of fact finder and reporter to the court. The GAL will gather and report factual data that is relevant to the issue before the court.

The Judge's appointment will control the scope of the GAL's investigation and may include a request for the GAL to make recommendations to the court. It's important to note that the Judge is not required to adopt the GAL's recommendations. The Judge can consider all the evidence presented after a trial.

What qualifications are required?

A GAL is often an attorney who has experience with custody cases in the Probate and Family Courts. Attorneys who are appointed as GALs should have regularly practiced in the Probate and Family Courts for at least three (3) years prior to their appointment.

Some GALs are mental health professionals who have experience and expertise in custody cases. In certain instances, the court may appoint a mental health professional who has experience in a particular area, such as sexual abuse or domestic violence.

Massachusetts requires that GAL's attend mandatory training prior to receiving court appointments. It's important to remember that the GAL does not represent either parent or the child.

Who pays for the GAL investigation?

The court will determine whether one or both of the parties are responsible for payment of the GAL. Many GALs request a retainer that is a sum of money paid ahead of time and held in a client trust account.

As the GAL earns their fee, the fee is withdrawn from the clients trust account. The GAL generally sends periodic bills to the parties detailing the work that has been done on the case.

How much will the GAL cost?

It is hard to predict the exact cost of a GAL investigation due to the variety of circumstances involved in each matter. The court will allot a specific amount of time for the GAL to spend on the investigation and set a date when their report is due.

The GAL bills on an hourly basis. If your case goes to trial and your lawyer conducts a deposition of the GAL and/or calls the GAL as a witness at the trial, the GAL is entitled to payment for their time and preparation. It's common for GAL Investigations to cost between \$5,000 and \$7500. In complex cases, the cost could be greater.

What if I can't afford a GAL?

In a limited amount of cases, if neither party has the resources to pay for an investigation, the court may appoint a GAL paid by the Commonwealth of Massachusetts.

However, the current economic climate has negatively impacted the court's budget, limiting the amount of state-paid GAL cases. In some circumstances, the Judge may order the Probation Department to conduct a limited investigation.

Now that a GAL has been appointed, what's next?

Most GALs start their investigation by reviewing their specific appointment and the court pleadings in the case. Both parties generally sign waivers to grant the GAL access to various records pertaining to the parents and the children. The GAL usually gathers background information on each parent and the children. This information could include:

- a) The exact nature and scope of the case, including the history of court involvement;
- b) The parenting and family history;
- c) The developmental status and parenting needs of the children.

Who does the GAL interview?

The GAL will usually interview parents, the children, and certain “collaterals” who have information pertaining to the family. For example, the children’s teachers, DCF social worker, pediatrician, or day care providers are typically contacted.

The GAL may also talk to extended family members or neighbors. The children may also be interviewed in the GAL’s office or in the child’s home. GALs often like to see the children interact with each parent.

However, more weight is typically placed on information obtained from professional collaterals such as teachers or doctors. The GAL will usually not spend a considerable amount of time speaking with friends of the parties, as they are not always neutral reporters of information.

Remember: a GAL investigation is not an opportunity to wage a negative campaign against the other parent. The purpose is to gather and report relevant information that pertains to the court’s custody determination.

Can the GAL speak to my child’s therapist?

The short answer: NO! The GAL is not allowed to interview the child’s therapist because the child has a privilege of confidentiality that cannot be waived by the parents. The child as a minor is not legally capable of waiving their privilege.

In cases where it may be helpful to speak to a child’s therapist, the court may appoint a second Guardian Ad Litem for the limited purpose of investigating whether or not it’s appropriate to waive the child’s psychotherapy privilege.

Lamb Warning

Prior to any interview (even with children), the GAL will explain their role and the purpose of the investigation. Any information disclosed in the interview is not confidential. There can be no “off the record” conversations with a GAL.

The landmark case in Massachusetts that requires this “warning” to everyone who is interviewed is Commonwealth v. Lamb, 1 Mass.App.Ct. 530 (1973).

What other information does the GAL obtain?

A Massachusetts GAL often gathers records and information from a variety of sources including, but not limited to:

- a) The children’s school records, including grades, progress reports, parental involvement, absentee/tardy records, and disciplinary issues;
- b) Pediatric/Medical records;
- c) Day care providers;
- d) The Department of Children and Families (DCF);
- e) Alcohol and drug abuse program records;
- f) Criminal Offender records (CORI and CARI);
- g) Domestic Violence Records;

- h) Police reports;
- i) Driver history records from the Registry of Motor Vehicles;
- j) Medical, health, and hospital records and the parent's psychotherapist records.

The facts and allegations in the case will determine exactly what information the GAL will request. Records may help substantiate or refute allegations made against one of the parents.

GAL Report

After the GAL has completed the investigation, a comprehensive report is drafted and filed with the court. The report is impounded, which means that members of the public will not have access to it.

The report will detail what the GAL was asked to investigate, how the GAL conducted the investigation, and report the factual data compiled from review of records and interviews. The GAL will generally list everyone interviewed and a clear and concise synopsis of the interview. If the court requested recommendations, the GAL will list the recommendations at the end of the report.