

Attorney ad Litem Roles and Responsibilities

Presenter: Judge Robert Falkenberg
Child Protection Court of South Texas

Scenario One

- Attorney Tony Stark represents Peter Parker. Peter is 16 YOA and lives with Aunt May, a widow, who has managing conservatorship after Peter's parents died in a plane crash. Aunt May has developed dementia. CPS has filed to remove Peter due to Aunt May's inability to care for him. Peter told Attorney Stark that he wants to stay with her. Aunt May told her court-appointed attorney ad litem, Wanda Maximoff, that she does not want to lose Peter to CPS.

Attorney ad litem

- An attorney ad litem is an attorney appointed to provide legal services to a person (such as a parent, a child, or an incapacitated person).

Attorney ad litem

- An attorney ad litem has an attorney-client relationship with the person she is appointed to represent and owes that person the duties of her undivided loyalty, confidentiality, and competent representation. An attorney ad litem is an advocate for the person she is appointed to represent and will express the person's wishes to the court or jury.

Distinction

- An attorney ad litem IS NOT a guardian ad litem
- But an attorney may be appointed in the “dual role”
- That attorney may use substituted judgment TFC 107.008
- If a GAL is appointed, AAL “shall consult” with GAL re: whether child can “meaningfully formulate” child’s objectives of representation

Questions

- What does Tony Stark do:
 - If he's appointed in the dual role?
 - If he's appointed as AAL only?
 - What if the Guardian ad Litem disagrees?
- How does Wanda Maximoff handle the situation if there is credible evidence of Aunt May's dementia?

Scenario Two

- At the end of a long mediation with retired Judge Nick Fury, Attorney Wanda Maximoff finds herself at odds with the Guardian ad Litem, Carol Danvers, who believes Aunt May's rights should be terminated. Aunt May, despite her dementia, has enough lucid intervals to assert that she will not relinquish. Peter maintains that he wants to live with Aunt May and can take care of her and himself. It appears as if the entire mediation may crumble. Attorney Tony Stark sits at the end of the table watching the events unfold.

Some Authority

107.003 Powers and Duties
of Attorney ad Litem for
Child and Amicus

107.004 Additional Duties
of Attorney ad Litem for
Child

107.008 Substituted
Judgment

107.013 Mandatory
Appointment of Attorney
ad Litem for Parent

107.0131 Powers and
Duties of Attorney ad Litem
for Parent

Law School 101

Key Words

“Shall”

“May”

“Is entitled to”

What are the Roles of an Attorney ad Litem?

For a
child?

For a
parent?

What are the
Duties of an
Attorney ad
Litem?

For a
child?

For a
parent?

Ethical Considerations

Communicating with
represented parties

Confidentiality of
information

Diminished capacity

Attorney as witness

Conflict of interest

Diligent
representation

Questions

- What tool(s) does Tony Stark have at his disposal?
- What MUST Tony Stark do?
- What MAY he do?
- Can Wanda Maximoff challenge Tony Stark's appointment?
- If Aunt May had refused counsel, could Tony Stark have requested one for her? Could the Court have appointed one? If so, how?

Considerations within Remote Framework

Visiting clients

Children attending
court or meeting
with Judge

Interviewing
parties to the suit

THANK YOU

QUESTIONS OR COMMENTS?

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