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SUMMARY

- **Guardian Ad Litem's often exceed their role and, as a result, seek excessive compensation**
- **Guardian Ad Litem's role in a case is extremely limited**
- **Avoid problems by delineating duties early and try to agree on fees**
- **Evidentiary hearing allows party to preserve error in the event of unreasonable fee award**
- **13th Court of Appeals recently looked at this issue in 2011 WL 227669**

NEWS:

- We are in the process of scheduling our next luncheon seminar. The seminar will offer adjusters continuing education credit by the Texas Department of Insurance.

VLRH Newsletter

Volume 2, Issue 2

February 2011



Limiting Guardian Ad Litem's Role & Fees

Last June we looked at the differences between an attorney ad litem and a guardian ad litem. In this issue we will address the guardian ad litem's role and the ad litem's fees. We also reference a recent 13th Court of Appeals case dealing with these issues (where the attorney contesting the ad litem's fees was none other than our very own Tamara Rodriguez).

As we explained previously, a guardian ad litem "will be appointed when a party's next friend or guardian appears to have an interest adverse to the party because of the division of settlement proceeds." In such cases the ad litem's role is very limited.

Unfortunately, ad litem's often exceed their role by performing prohibited activities. Specifically they impermissibly supervise or supplant "the next friend [and] undertake to represent the party while serving as guardian ad litem."

Comment 3 to Rule 173 provides that a guardian ad litem may not be compensated for unnecessary expenses or services rendered outside the scope of their duties. Ad litem's, however, are often unaware of the scope of their duties. When it is pointed out to ad litem's that they performed impermissible work on the case, their response usually goes something like this, "But Juuuuudge, I did the work..."

One way to prevent these issues from arising is to outline the ad litem's duties .

right from the start. Set out the ad litem's role in your motion to appoint an ad litem (that way you can point to such language should a dispute arise later). You may also try getting the guardian ad litem to agree on a fee upfront. This is easier said than done, as the ad litem will not want to agree to a fee before knowing the extent of the work involved. If all else fails, you can always try negotiating the ad litem's fee before the friendly suit, but after the ad litem has performed his work.

If an agreed fee cannot be reached, then the only remaining alternative is to have an evidentiary hearing on the matter. However, when it comes to evidentiary hearings, most local courts will award the ad litem's requested fee, though it may be unreasonable. When that happens, the only thing left to do is appeal the award, which in most cases is cost prohibitive.

Tamara Rodriguez, however, recently handled a healthcare liability claim where the ad litem was requesting \$80,000.00 in legal fees. Though the evidentiary hearing uncovered gross billing abnormalities, the Court awarded \$31,724.00 in fees (plus other fees in the event of an appeal) to a lawyer with limited experience. The Court of Appeals found that the trial court had abused its discretion, and that the ad litem was entitled to \$5,000.00, no more. The opinion makes for an interesting read, and is available upon request.

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