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Lawyers v. GALs — what is best for a child in dependency court?

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Is there a discernible difference between a guardian ad litem who investigates the situation of children caught up in dependency court and advocates for the child's "best interest" and an attorney who would represent the child's own wishes?

Would those attorneys wind up wasting valuable court time because a child wanted a tattoo and his or her parents or guardians objected? Or would the attorney cut through red tape, speed up services, and lessen the time before a child is reunited with parents or adopted by new parents?

Would paying for such attorneys come at the expense of the court system or the Guardian ad Litem Program?

Those were some of the questions debated in the Bar's Legislation Committee December 10 when examining a recommended Bar legislative position from the Legal Needs of Children Committee. It called for state funding for lawyers to represent some children in dependency courts, as long as the funding did not come at the expense of the guardian program or the courts. The legislation would provide that all children in dependency proceedings would have the right to an attorney, either paid or pro bono.

The committee concluded its discussion by recommending the proposal on a 5-1 vote (which was ratified by the full board the next day by a 42-3 margin), but not before more than two hours of testimony and debate. Fifteen people — ranging from judges to a former foster child — spoke to the committee about the legislative position.

Theresa Flury, director of the state Guardian ad Litem Program, said her opposition is not based on a concern that a new child advocacy office would leech funds from her agency, but if it would be an effective use of resources. Dependency cases aren't like delinquency cases where the child has a right to an attorney. Rather, Flury said, in these cases a child has been removed from his or her parents and "the state's role [and her office's charge] is to do what's in the best interest of the child. . . . There are times many of these children need a traditional attorney-client relationship, but not every one."

In those cases, she added, it's usually the guardian ad litem or attorney ad litem who makes that recommendation to the court.

U.S. 11th Circuit Judge Rosemary Barkett argued the issue revolves around due process and there is a distinguishable difference between what GALs and lawyers do.

"We have to understand that juvenile dependency process occurs in a court of law. There is no lawyer who could or should object to due process in a court of law," she said. "Every real party at interest — and surely a child — is entitled to representation.

"This is when the state takes custody of a child's life. That child has a right to representation. . . . They are not an addition that does not matter; they are the central voice that should be heard."

Ninth Circuit Judge Daniel Dawson, representing the Florida Council of Juvenile and Family Court Judges, said that organization opposed the recommendation of the children's committee, saying judges already have the discretionary authority to appoint a lawyer for a juvenile. He said if the Bar is successful in getting a bill passed, there will be neither enough money to hire attorneys or enough pro bono volunteers to make it workable.

"We believe the judges are in the best position, with the best information — and a fully-funded guardian ad litem system — to make these decisions," said Dawson, who also questioned whether giving lawyers to young children would result in "litigation when a child wants a tattoo against the parents' wishes."

The proposed bill requires that a child in a dependency case be in court for all proceedings. Dawson said that removes discretion from the judge and adds needless complications because children don't need to be present when the court considers minor matters.

"We are not against appointing attorneys for kids," Dawson said. "We do not think this bill is the appropriate avenue for it."

Fifteenth Circuit Juvenile Judge Ron Alvarez — who works with a county funded program that has provided attorneys for foster children since 2001 — disagreed. The program, Alvarez said, has dramatically reduced the time children spend in foster care before they are returned to their parents or adopted.

"It has made our courtrooms in Palm Beach County much more effective, productive, and efficient," Alvarez said. "I would not go back to the days when I did not have the opportunity to appoint a lawyer for a child. . . . It's an evidence-based program. It has proved itself. It works."

Alvarez did agree with Dawson that the provision requiring the child to attend every hearing should be changed. But he disagreed that "tattoo" litigation would be a problem. "We do not have such garbage issues in my courtroom," he said. Flury said the Palm Beach County system typically has caseloads of about 35 children per lawyer, while GAL attorneys have in the neighborhood of 200. Expanding the Palm Beach County program statewide would cost \$130 million, she said, and the state doesn't have the money.

Dawson said guardians could do most of the work accomplished by the Palm Beach County program and at a substantial savings.

Kim Foster, a former foster child who spent 10 years in the state system, told of being taken away from her mother (her father was a substance abuser) when her mom was hospitalized due to schizophrenia.

"Scared, confused, and angry," is how Foster described the experience. She said she was put on anti-depressants, and when she tried to explain she was just sad about being taken away from her mother, no one listened, so she began acting out. The state responded by putting her on psychotropic medications and eventually in a secured residential treatment facility, where Foster said she was abused.

When Foster was appointed a lawyer, she called it a milestone.

"That was the first I was heard," she said. "Now I didn't feel alone; now I didn't feel like no one listened."

Her lawyer counseled her to improve her behavior in order to get out of the locked facility, a change which Foster undertook. The lawyer then got her released to normal foster care with a reduction in her medications.

But when she was 18 and about to "age out" of the foster care system, the state "experts" recommended she be committed to an adult mental health institution, Foster said. At the same time she became pregnant, and while researching her medications, she found they could harm her fetus. Her lawyer successfully petitioned to have all medications discontinued. Foster said she immediately improved, left state care, and in the eight years since has successfully gone on with her life.

She now chairs the Florida Youth SHINE project for Florida's Children First. Foster argued that lawyers for children in foster care are essential because "the system doesn't really value the child."

Committee and board member Gwynne Young said Foster's attorney was not a blind advocate but a true counselor, which included telling Foster how her own actions could help her cause.

"Lawyers make the system function for the benefit of the child," she said. "I'm persuaded to support this because you can't deny the statistics that show . . . having lawyers significantly reduced the time in [foster] care."

Howard Talenfeld, chair of the Legal Needs of Children Committee, firmly believes the recommendations, if approved by the Legislature, will reduce the time children spend in foster care.

"Foster care is like being in the ocean," he said. "The longer children are there, the better the chance they'll drown."

Bar President Jesse Diner said the committee and the Bar shouldn't worry about the

funding problems of providing attorneys for some children in dependency courts, as long as any funding solution doesn't affect the courts or the guardian ad litem system.

"We are not here to decide whether there is funding in the Legislature," he told the committee. "Let's tee it up for the Legislature and see what kind of traction it will get. In one sense, people don't like change, but change has to happen."