The Role of Lay Advocates, Guardians Ad Litem and Court Appointed Special Advocates (CASA) in Tribal Courts

A.J. (Tony) Brandenburg
August 21, 2015
TCAP Tribal Court Conference
Protecting Indian Children
judgeajb@sbcglobal.net
(760) 525-4569
Role of Lay Advocate in Tribal Court

We are here to serve and protect the best interest of Indian children.
Our goal: clarify and distinguish between

- Various child services and protective agencies and to better understand their roles in protecting Indian Children;
- It has been found most individuals very often confuse the various services, as to what they are supposed to do and how they interface with each other and the court;
Types of Advocacy

- Lay Advocate (lay attorney)
- Guardian ad Litem (GAL)
- Court Appointed Special Advocate (CASA)
General definition of “Advocate” (all types of advocates): to support and argue for a cause.
“Every day in the United States, 1,900 children become the victim of neglect or abuse; 4 will die.” (National CASA Association)

However, nearly 700,000 children per year become the victim of abuse and or neglect.
The role of Tribal Court Advocates in protecting (representing) children in Tribal court:
You are the VOICE OF THE CHILD.

- A person who is an ADVOCATE (lay attorney) is essentially an attorney representing THE INTEREST OF THE CHILD
- Protects the interest of the child
- Hired and paid for by child’s family, tribe or other agency
- Can be court assigned/appointed
Advocates should possess

- Knowledge of applicable tribal, state and federal laws, administrative procedures, orders, policies and case law;
- Knowledge of legal research methodology and evidentiary procedures and interviewing skills;
- Knowledge of legal process, rules of evidence and procedure;
- Ability to draft motions briefs and other legal documents in support of their client’s position;
- Strict conformance with professional and ethical standards.
Definition of Advocate (Lay Attorney)

- A person who argues for or support of a cause or policy
- A person who argues for the cause of another person in a court of law
- One that pleads the cause of another before a judicial court
- One who supports or promotes the interest of his or her client

NOT YOUR PERSONAL OPINION
• There is a lot of CONFUSION with regard to the various types of advocates and their role in Indian Country

• Issue: there are several different categories of “advocates”
Here, we are discussing Tribal advocates as essentially attorneys with the same duties and responsibilities as attorneys. You are the VOICE OF THE CHILD.
GUARDIAN AD LITEM / LAW GUARDIAN

Latin, meaning “in the suit” (legal proceedings)
GUARDIAN AD LITEM / LAW GUARDIAN

- GALS are adult volunteers who are legally responsible for protecting the well being and best interest of their wards (minors in our cases)
- Created/appointed by court order for the duration of the legal action/proceeding
- Court appointed to protect ones rights, not hired as with lay counsel, although lay counsel can be appointed
- Not generally paid as with lay counsel
GUARDIAN AD LITEM / LAW GUARDIAN

- May be appointed in other proceedings involving children (as well as adults)
  - Divorce
  - Child neglect or abuse
  - Paternity
  - Contested inheritance
Your role as GAL

- Not limited to children’s cases
- “to represent children in contested cases”
- “to represent infants, the unborn or other incompetent persons in legal actions”
GAL Role

- Some courts require a training course (up to 30 hours)
- Don’t need to be an attorney
- Monitor and keep track of court orders and ensure agency requirements are being followed
- *To help the court determine and create a permanent plan in accordance with state, tribal and federal law to see that all appropriate services are provided.*
- Often, this means assisting in providing a family unification plan.
What are the child’s rights?

- Rule 17(c) of Federal Rules of Civil procedure addresses the rights of minors and other incompetent persons.
<table>
<thead>
<tr>
<th><strong>Lay Attorney (Advocate)</strong></th>
<th><strong>Guardian ad Litem</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Represents the wishes of the child</td>
<td>Makes recommendations regarding the child’s welfare to the court</td>
</tr>
<tr>
<td>Family’s obligation to hire</td>
<td>Court appointed (see sample form)</td>
</tr>
<tr>
<td>Often courts have a list of licensed advocates / lay attorneys</td>
<td>Volunteers</td>
</tr>
<tr>
<td>Should know relevant tribal laws, rules of evidence and procedure</td>
<td>Some courts have training courses available</td>
</tr>
<tr>
<td></td>
<td>Most often appointed in cases of neglect or abuse</td>
</tr>
</tbody>
</table>
Guardians ad Litem and 17 (c) Rules of Fed. Civ. Procedure

- A (legal) action must be brought in the name of the real party in interest;
- Can sue or defend on behalf of minor (etc.);
- Without a representative, a minor is incompetent;
- Courts (tribal) differ – one for each child (one for all children);
- Key is the GAL’s objectivity [the facts of the case]
GAL Duties and Responsibilities

- Meet with and interview, observe child, parents, foster parents, etc. If none available, psychologist, CPS, etc.
- Ascertain child’s wishes
- Review all pleadings and other relevant documents
- Review educational records
- Interview school personnel, healthcare workers
- Obtain copies of all relevant records of case
Continued:

- Make a recommendation to the court in what they feel is best for the child’s welfare.
- Thus, they give testimony either or both, oral or written, to the court with regard to custody, visitation, etc.
- The court has the final say
“Protect the child from harm and do what’s best for him/her and the family.”

- It is a temporary position AND some courts require an order terminating the ad litem status once the case is complete or the child reaches the age of majority.

- Look to your court rules (if they have any)
Court Appointed Special Advocate (CASA)
CASA

- Specially appointed (by the court) individuals who stay with the children until they are placed in permanent homes or returned to their own, if possible.
- Often the only constant adult presence in child’s life
- Volunteers
- Does the CASA participate in a reunification plan?
- CASAs offer the court critical information the court needs to ensure the rights and needs of the child are attended to.
- 76,000 CASA Volunteers nationwide
- 251,000 children received CASA aide (in what year) *
- 400,000 go without CASA representation *

*Figures based on national data not restricted to Indian country. National CASA Association
• The US Dept. of Justice supports CASA with the Office of Juvenile Justice and Delinquency Probation.

• N. CASA (National)

• Started in Indian Country in 1994 to “assist in the development and enhancement of Tribal Court Programs that provide volunteer advocacy for abused and neglected Indian children.”

• Key – they are there to assist Native children in receiving culturally sensitive representation
CASA
- Court appointed Volunteer
- Offer recommendations regarding the welfare of the child and placement in a safe environment
- The environment should, in all cases where possible, be Tribal
- Write reports for the court

GAL
- Court appointed Volunteer
- Offer advocacy in re the child’s welfare
- Report directly to the judge
Resources

- National CASA Association
  
  http://www.casaforchildren.org/site/c.mtJSJ7MPlsE/b.5301295/k.BE9A/Home.htm

- Voices for Children
  
  https://www.speakupnow.org/child-abuse-statistics-resources/

- Florida Guardian Ad Litem Program
  
  http://www.guardianadlitem.org

- Tribal Court Clearinghouse
  
  http://www.tribal-institute.org/lists/tribal_law.htm

- Redbird, 287 F.3d @ 715