

# Defining the Roles of GAL, FOC and Parenting Coordinator in Custody Cases

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When cases have complex issues involving children, Kentucky family court judges have the authority to appoint individuals to assist in reaching decisions on certain matters. Sometimes the court cannot, on its own, ascertain the full picture of a family's situation and needs the assistance of a third party. In these situations, a court is likely to appoint an attorney to aid in representing the best interests of a child or to evaluate the specific circumstances of a particular family and to report back to the court. These reports and testimony are designed to assist the court in reaching its ultimate decision in the case. These appointees play crucial roles in the judicial process, providing information and support to help judges make informed decisions regarding the best interests of children.

These appointments serve multiple purposes, from representation to investigations to providing specific knowledge and aiding communication between parties. There are a variety of circumstances in which a judge might deem it appropriate to make particular appointments for Guardians Ad Litem (GALs), Friends of Court (FOCs) or Parenting Coordinators to assist in complex cases or protect the interests of vulnerable parties.

## Guardian Ad Litem (GAL)

GALs serve to assist litigants or infants in actions where the individual is unable to either represent themselves or is unable to afford representation. KRS § 387.305(2) states that "A guardian ad litem must be a regular, practicing attorney of the court." A seminal 2014 Kentucky Supreme Court case

affirmed the role of a GAL to act in the best interest of children in custody cases, dependency neglect abuse actions and in termination of parental rights cases. *Morgan v. Getter*, 441 S.W.3d 94 (Ky. 2014). Since that time, a host of both published and unpublished Kentucky cases have been decided clarifying the role of the GAL in various types of actions. See *Grambel v. Croushore ex rel Villarreal*, 638 S.W.3d 452 (Ky.App. 2021); *Smith v. Doe*, 627 S.W.3d 903 (Ky. 2021); *Herrell v. Miller*, No. 2022-CA-1199-ME (Ky.App. June 23, 2023).

A GAL is an appointed attorney who acts as the counsel for the children or an individual unable to represent themselves. Kentucky law provides several provisions that allow judges to appoint GALs including in the following situations:

- Emergency and Interpersonal protective order petitions, *Smith v. Doe*, 627 S.W.3d 903 (Ky. 2021), citing CR 17.03;
- For incarcerated individuals, Ky. R. Civ P. 17.04;
- Guardianship, KRS § 387.600;
- Custody matters, KRS § 403.290; and
- Dependency Neglect Abuse actions, KRS Chapter 620; and
- Termination of Parental Rights actions, KRS Chapter 625.

As a child's attorney, a GAL makes arguments on behalf of

their client in the child's best interests, whether or not the arguments represent the child's wishes. A GAL cannot testify in an effort to avoid conflicts by being an attorney and witness simultaneously and in an effort to adhere to the clear role of an attorney acting on behalf of, and in the best interest of, the child. In cases where testimony is warranted to assist the court, a Friend of Court or Parenting Coordinator is typically also involved in the action.

## Friend of Court

Judges can appoint a Friend of the Court (FOC) in matters involving child custody and visitation. See KRS 403.300 and FCRPP 6. The role of the FOC is to assist the court in resolving disputes related to the welfare of children by providing recommendations and information that can aid in making informed decisions in the best interest of the child. The FOC may conduct investigations, gather information and report findings back to the court. The FOC is an attorney acting as a witness and offers a report outlining their investigative findings and testifies at substantive hearings as necessary. See KRS § 403.300.

Kentucky courts have addressed the role of FOCs in several recent published and unpublished cases beginning with, and following, *Morgan* mentioned above, which compared the role of a GAL and FOC. See *Morgan v. Getter*, 441 S.W.3d 94 (Ky. 2014). See also *Greene v. Boyd*, 603 S.W.3d 231 (Ky. 2020); *Adair v. Emberton*, 694 S.W.3d 52 (Ky.App. 2024);

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*T.R.C. v. J.T.M.*, No. 2024-CA-0660-ME (Ky. App. Nov. 22, 2024); *Bentley v. Etherton*, No. 2023-CA-0560-MR (Ky. App. Oct. 18, 2024). These cases highlight the significant role FOCs play in Kentucky custody proceedings, including their ability to investigate, report and offer opinions to the court.

An important distinguishing factor between the attorney's role as GAL and the role of a FOC is the fact that a GAL acts as an attorney and cannot testify, while the FOC is an attorney who investigates for the purpose of reporting back to the court and is a witness who provides a report outlining their findings and will likely be called to testify.

### Parenting Coordinator

There are times where a case has so much conflict involving children, some judges find it helpful to appoint a Parenting Coordinator to provide an alternative to extensive litigation. Jefferson Family Court Rule 705 provides a framework for such appointments. A Parenting Coordinator's primary task is to assist parents in making and implementing joint decisions that are in the best interests of their minor children. The goal of this process is to reduce conflict and provide an alternative to expensive and contentious court disputes. According to Kentucky law, the Parenting Coordinator shall have either:

- a. a minimum of a master's degree in psychology or social work, or forty (40) hours of training in mediations; and either five (5) years' experience in mediation or five (5) years' experience in family therapy; or
- b. a minimum of five (5) years practicing family law as an attorney with concentration of at least fifty percent (50%) of his/her practice in family law or have forty (40) hours of training

in mediation and either five (5) years' experience in mediation or five (5) years negotiating conflict and achieving parenting plans.

KY JFRP Rule 705 (F).

Though an attorney is most often appointed in the role in Kentucky, a Parenting Coordinator does not have confidentiality and can testify in court. The most effective manner in which to proceed with a Parenting Coordinator is with an agreement which outlines the roles and duties of the position as well as the fact that there is no expectation of confidentiality. There may be times when the parties disagree with the recommendations and court action is taken. The parties should be aware that the Parenting Coordinator may be called to testify and in many cases the courts will find credibility with them, particularly since the Parenting Coordinator was appointed by the court.

When the parties agree pursuant to a parenting coordination agreement, the Parenting Coordinator is able to make decisions for families that can be beneficial and assist them in moving beyond conflicts. In cases where such agreements exist, though the Parenting Coordinator cannot determine custodial decisions or primary residence decisions, they can make a variety of other decisions such as:

1. Revising the parenting schedule or conditions (other than a court-ordered requirement of supervision), telephone or any other type of contact;
2. Recommending orders regarding exchange and/or transportation of the child, including specifying time and place of exchange;
3. Changing education, daycare and/or extracurricular activities for the child;

4. Requiring a parent to submit or produce a child to submit to a substance abuse screen, psychological or custody evaluation, and provide release for reports or results;

5. Recommending more specific orders to facilitate implementation;

6. Changing the times for religious observances and training by the child; and

7. Addressing other issues raised by the parties.

KY JFRP Rule 705 (B) and (C).

Though the courts are free to appoint attorneys to fill the above-mentioned roles as necessary, the appointees do not have the authority to make decisions in place of the court. In such times where the parties disagree with the recommendations of any of the appointed individuals discussed above, the parties can motion the court for a decision by their judge. The judges are the ultimate decision authority and the roles of the GAL, FOC and Parenting Coordinator are used to guide the courts when it cannot feasibly and reasonably decide certain matters without their involvement.

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