

ATTORNEY AD LITEMS

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ATTORNEY AD LITEMS

What is an Attorney Ad Litem?

Texas Family Law defines an Attorney Ad Litem as “an attorney who provides legal services to a person, including a child, and who owes to the person the duties of undivided loyalty, confidentiality, and competent representation.” (Texas Family Code Annotated §107.001(2)) A court must appoint an Attorney Ad Litem to represent any child involved in a court case brought by CPS to terminate the parent-child relationship or to make CPS the conservator (“person” in charge of child). (§107.012).

In other words, if you are a foster youth, your Attorney Ad Litem is YOUR attorney. He or she is appointed to represent you and your interests – there are other people, like your caseworker or CASA who will try to determine what is in your “best interests,” but the role of the Attorney Ad Litem should be to tell the court what YOU want and think about your case.

Once CPS is named a Permanent Managing Conservator of a child, the law does not require that you have an Attorney Ad Litem. But some counties and some judges keep Attorney Ad Litem representing children as long as they remain in foster care. As long as an attorney is appointed to represent a child, they are that child's lawyer.

What is an Attorney Ad Litem Supposed to do?

According to Texas Family Code (see §107.003), an Attorney Ad Litem's basic responsibilities are to:

- Interview the child in a reasonable time after appointed by the court.
- Interview people with significant knowledge of the child's history and condition.
- Interview the parties of the suit (for example, the child's parents, or anyone who may be named conservator of the child).
- Seek to find out the child's objectives (goals) of representation – this means the lawyer must try to find out what the child wants – and consider how to best express those goals to the court.
- Investigate the facts of the case.
- Obtain and review records relating to the child.
- Participate in the litigation (hearings, trials, and everything that goes with them).
- Be trained or have experience in child advocacy.

In other words, an Attorney Ad Litem should participate in all your court hearings and trials the same as any lawyer would for any client. Your attorney should be prepared and familiar with your case and your wishes.

Texas Family Code §107.004 gives even more duties to the Attorney Ad Litem. The Attorney Ad Litem must advise their client, the child, appropriately. For example, this may involve the attorney advising the child what is likely to occur, or what a likely outcome of a hearing will be. The Attorney Ad Litem **MUST** follow the child's instructions in expressing the child's wishes to the court. The Attorney Ad Litem must also meet with the child (or a guardian if the child is under four years old) before each court hearing.

The comments to the laws, published with the laws, make the purpose of the laws regarding an Attorney Ad Litem quite clear. The comments direct lawyers to give their child clients "the same duties of undivided loyalty, confidentiality, and competent representation...as is due an adult client." That means your Attorney Ad Litem should treat you as well as and the same as they would treat any other client.

What Should I Tell my Attorney Ad Litem?

You should be honest and open with your Attorney Ad Litem about what you want. You are protected by the same rules of confidentiality that protect all clients of attorneys—what you say to your lawyer remains private between you and your lawyer unless you give permission for your lawyer to tell someone else. For example, that means that if you tell your attorney that you do not feel safe remaining in your home with your parents, your parents can't ask your lawyer what you said to him or her. Your lawyer will use the information you give to express to the court what you want. If your lawyer believes, based on information you give, that you or someone else will be seriously harmed or a child has been abused or neglected, the lawyer must report this, just like your caseworkers, teachers, and other adults are required to do.

Part of your Attorney Ad Litem's job is to advise you. This means, for example, to let you know if the judge is not likely to give you your first choice outcome in your case. Or, your lawyer may advise you of several possible alternative outcomes for your case. Therefore, it's important to be sure you give your Attorney Ad Litem a lot of information. Maybe it is not your first choice to remain in foster care, but you should let your Attorney Ad Litem know why, and what your wishes are if the judge most likely will not return you to your home or relatives. That way, your lawyer can express to the court your greatest wishes, and your back-up wishes as well.

Can I Attend Court Hearings?

YES!!! Children have the right, by law, to attend court hearings that affect them. The Texas Family Code explicitly states that unless the court excuses the child's attendance, the child shall attend placement review hearings and permanency hearings. (See § 263.501(f) and § 263.302). Further, the child may "express to the court the child's views on the medical care being provided to the child." (see § 266.007(c)). The Texas Foster Youth Justice Project has more information about attending court hearings in the [Legal Resources](#) section.

What is the difference between an Attorney Ad Litem and a Guardian Ad Litem or CASA?

A Guardian Ad Litem, who is often a Court Appointed Special Advocate (CASA) is supposed to represent your best interests – this is different from your attorney who only represents what you want. While you can tell your Guardian Ad Litem what you want, they can make recommendations to the Court to do things that you don't want if they decide it is the best thing for you.

While an Attorney Ad Litem is required to be an attorney, a Guardian Ad Litem is not required to be an attorney.

Sometimes the same attorney is appointed to be both your Attorney Ad Litem and Guardian Ad Litem. If you want something that this attorney, serving in both roles, thinks is not in your best interest, the law requires that they withdraw as your Guardian Ad Litem. (Texas Family Code §107.0125 (b)) If your Attorney Ad Litem is the same person as your Guardian Ad Litem and they don't want to do what you request, tell them they have to stop serving as your Guardian Ad Litem

What if I'm Having Problems with my Attorney Ad Litem?

Sometimes foster youth report these common problems with their Attorney Ad Litem. Here are some suggestions to help, followed by some steps to take if you cannot resolve your issues.

- *My attorney is recommending things to the court that I don't want.*
 - Your attorney is YOUR attorney, and must represent you and your interests to the court. This is one reason why it is so important for you to attend your court hearings—so you can make sure your attorney is following your instructions. Make sure you have been clear about your wishes. It helps to write down what you say to

your attorney, and share it with others too, such as your caseworker, guardians, or CASA.

- *My attorney is not telling the court or others what I've told my attorney to say.*
 - Again, your attorney is YOUR attorney. If you are clear about what you want to your attorney and other interested parties, such as your caseworker, guardians, or CASA, it should help you hold your attorney accountable. Keep a list in your notebook of what you tell these people. Also, hopefully the judge will want to hear from you directly, another reason to attend your hearings.
- *I don't know who my attorney is or how to reach my attorney.*
 - Unfortunately, this happens too often. Again, it is important for you to speak up, and advocate for what you want. You are required in certain parts of your CPS case to have an attorney appointed to represent you, and that attorney is required by law to prepare for and attend your hearings and represent your interests. Ask everyone you can for information about who your Attorney Ad Litem is and how you can get in contact with them.
- *I never see my attorney or I don't get my calls or emails returned.*
 - Be persistent. Lawyers are very busy, and you don't want to be rude by, for instance, calling every 10 minutes. However, client communication is part of a lawyer's job. Your calls should be returned in a reasonable time frame. Since your attorney is required to prepare for your hearings, and it is your right to attend your hearings, you should see your attorney in person at each hearing. If possible, you should also meet or speak with your attorney before each hearing to prepare. Keep calling and asking for help, from your caseworker, CASA, and other trusted adults, until your lawyer does his or her job representing you. Write down in a notebook all the times you try to talk to your attorney, the date and time you try to do it, and what happens. This can help you show the attorney has not been responsive.
- *My attorney told me the judge won't agree to what I want, so there is no point in asking for it.*
 - Part of your lawyer's job is to advise you. Therefore, if your lawyer does not think the judge will agree to something you want, your lawyer should tell you. However, it is also your lawyer's job to tell the judge what you want, even if the judge is unlikely to agree, and you can remind your lawyer of this. Since your lawyer may help you decide what outcomes are reasonable and likely in your case, it is a good idea to tell your lawyer what you truly want, but also give your thoughts on other options, so your lawyer can represent all your opinions to the court. Again, you should record your instructions and conversations in a notebook.

I've Tried Everything, but I'm Still Having Problems with my Attorney Ad Litem

If your lawyer refuses to do his or her job in representing you, inform him or her that you will file a grievance. This is an official complaint and notice to the court that an attorney is not doing their job. The state of Texas wants what is best for you, and pays for you to have a lawyer, so

the state made laws to make sure that lawyers do their jobs. (See Texas Family Code § 107.0045).

You can file a grievance by calling the State Bar of Texas (the organization that monitors lawyers in Texas) Grievance Hotline at 1-800-932-1900. Be prepared to support yourself, and give details about the steps you took to contact or instruct your Attorney Ad Litem, and how you feel you have not been represented.

If you don't have an Attorney Ad Litem or if your Attorney Ad Litem has refused to assist you, you can also call the Texas Foster Youth Justice Project at 1-877-313-3688 for assistance, representation and guidance. You can also e-mail us at info@texasfosteryouth.org and check out our legal resources at our web site texasfosteryouth.org.

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