

Legal NEWSLETTER

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This publication is not intended to provide legal advice, but rather insight and awareness into legal issues that we feel could be useful to our clients and friends. Actual resolution of legal issues depends upon many factors, including variations of facts and state and federal laws.



ATTORNEY DAVY ANNOUNCES HER RETIREMENT

Congratulations to Attorney Nadine Davy on her retirement from Anderson O'Brien, LLP!

Nadine received her Bachelor of Arts degree from UW-Platteville, graduating with honors. She is a 1983 graduate of the University of Wisconsin Law School.

Before coming to Anderson O'Brien, Nadine was an Assistant District Attorney for Winnebago County for two years. Nadine started at our firm in 1986. She was the first female attorney at the firm! Just seven years later in 1993, she would become the first female partner in the firm. Nadine served as a co-managing partner from 2010 to 2020.

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ANDERSON O'BRIEN LLP

WHAT IS A GUARDIAN AD LITEM?

By Attorney Jason Sausser

A Guardian ad litem (GAL) is an attorney who is appointed by the Court to represent the best interests of a minor child. If the parties are represented by counsel, the attorneys often give their recommendation to the Court about who they think would be a good fit as GAL. The GAL is required to have had specific training and/or extensive experience in order to qualify. The Wisconsin State Bar has regular basic trainings for GALs with other more advanced trainings for things such as investigating domestic violence. Some Wisconsin counties keep attorneys on contract throughout the year to serve as GALs in cases.



An important distinction to make is that the GAL does not represent the minor child. Only the minor child's "best interests." The main difference here is that a GAL is not bound to do what the minor child asks them to do. By contract, an advocate attorney is more bound to do what their client asks them to. See Wis. Stat. § 767.407(4) for more information on this. Instead, the wishes of the minor child are one of the factors that a GAL takes into account when making their recommendation to the Court.

When a GAL is appointed, the parties may be ordered to pay a deposit toward the GAL's fees. It is typical for both parties to be responsible for paying one-half of the fees. Different counties require different down payments and allow GALs to charge different rates. Once the GAL is appointed and any required deposits are paid, they will begin their investigation. They mostly focus on custody and placement issues. They will likely want to speak with any lawyers on the case, both parties individually, the minor child and other people who have relevant information (i.e., teachers, day care providers, relatives, medical and other treatment providers, or child welfare agencies). The GAL may see a need for further professionals to get involved

and conduct investigations such as custody studies or psychological evaluations. Additionally, GALs are required by law to investigate and report to the Court if there is any evidence of domestic abuse.

The GAL will prepare an official report to the Court which outlines their recommendation, taking into consideration any and all evidence of the issues that they believe would be used at a potential trial.

They will include a proposed placement schedule that is in the best interests of the child. The GAL may participate in any depositions or contested hearings which involve custody and placement. They can cross-examine the parties' witnesses and even call their own witnesses to introduce evidence to the Court.

If a GAL has been appointed to your case, you will want to cooperate with their investigation. If you have an attorney, you will want your attorney to communicate regularly with the GAL to make sure they have everything they need to determine what is in the best interest of the minor child.◊

Lawyers where you live.

STEPPING DOWN AS A PERSONAL REPRESENTATIVE

By Attorney Amy Eddy

There are a number of factors to consider before agreeing to take on the responsibility of serving as Personal Representative of someone's estate. If a friend or family member has asked you to serve in any of these roles, it is important for you to think carefully about your ability to take on the responsibilities of the role and whether you are prepared for the legal obligations expected of you. As an attorney who practices in the estate settlement area, I have helped numerous Personal Representatives successfully handle estate administrations. The job of Personal Representative, however, can be somewhat daunting to someone who has never had the experience of serving, and should not be taken lightly.

A Personal Representative (also called "Executor") is the person appointed to administer the estate of someone who has passed away. The Personal Representative is responsible for gathering and safeguarding the assets of the deceased, ensuring that all debts and expenses of administration are paid, and distributing the deceased person's assets to the beneficiaries named in the deceased person's Will. In addition, the Personal Representative is responsible to report to the Court during the various stages of administration of the estate.

Importantly, being named in a person's Will is only a nomination, not an actual appointment. Before serving, a person nominated as Personal Representative must first be appointed by the Court before they can officially serve in that capacity.

What factors should you consider when deciding whether or not to accept the nomination?

Do you have the skills necessary to serve? A Personal Representative must be well-organized, detail-oriented, and have the ability to take on the



responsibility of handling the financial assets that belong to the estate.

Do you have the time necessary to serve? Consider how close you live to the decedent. The estate will be handled in the county where the deceased passes away, and there will likely be financial institutions, agents, accountants and legal professionals that you will need to meet with in the decedent's county of residence. There may be multiple beneficiaries that require your time and patience to explain the process and timelines.

Are you comfortable with the responsibility of acting as a fiduciary? A fiduciary's duty is the obligation to act in someone else's interest rather than your own. While that may seem like a common-sense approach to handling the estate of someone who has died, the most common disputes in probate administrations involve accusations that a personal representative has breached their duty to administer the estate in the best interest of the beneficiaries.

What if you decide not to serve? If you consider all of the factors and decide you do not want to take on the role as Personal Representative, the next steps depend on timing.

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Nadine started as a general litigation attorney. She soon discovered her niche was family law. For more than 30 years she assisted her clients in navigating divorce, custody and placement disputes, child support and other family law matters. She also assisted couples as a divorce mediator, guiding them through the complexities of divorce and helping them reach agreements on disputed issues. In addition to family law, her areas of practice over the past 37 years included personal injury, insurance defense and general legal problem solving of nearly all varieties.

Nadine is a member of the Family Practice Sections of both the State Bar of Wisconsin and the American Bar Association. She was named a Wisconsin Super Lawyer four years in a row. Her community involvement included the Community Partners Steering Committee (Committee member and Chair), the Endowment Committee of St. Stephen's Church, the Saint Michael's Foundation (Board member), the Women's Fund of Portage County (Board member and Chair), the Woodland Girl Scout Council (Board member and Chair), the Stevens Point Area YMCA (Board member and Chair) and the American Cancer Society (Board member). She also served as a Portage County Business Council Ambassador and was a participant of the Portage County Leadership Institute and Chair of the PLIC Curriculum Committee. In 2017, she was awarded the Quality of Leadership Award by the Saint Michael's Foundation, an award given by the Foundation in recognition of a leader who has made a significant contribution to enhancing the quality of life for citizens in Portage County and the surrounding region.

During her career, Nadine and her husband Tim raised three successful children, Sarah, Samuel, and Molly. While building her career Nadine rarely missed a school event, soccer tournament, swim meet, or dance recital. In her well-deserved retirement, Nadine is looking forward to traveling with Tim and spending more time with their children and seven grandchildren (and another one on the way).◊

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Before Death Occurs

If someone asks you to serve as Personal Representative or notifies you that they have already named you in their Last Will and Testament, you can still decline the role. Simply advise them that while you are honored to be considered, you are unable to accept. If the Will has already been prepared, they will need to notify their attorney that an amendment, or Codicil, will need to be prepared to change the provisions regarding the nominated Personal Representative.

After Death but Before Appointment

If you are nominated in the Will, but have not yet been formally appointed, you can notify the beneficiaries and heirs that you do not intend to serve. You should then file a Declination to Serve with the probate court. Most Wills provide for an alternate Personal Representative to serve in the event the first nominated Personal Representative is unwilling or unable to serve.

Resignation After Acceptance

If you have already been formally appointed as the executor by the probate court, but wish to resign, you must file a formal resignation with the probate court. The Court may require a hearing to accept the resignation and notice will need to be given to the heirs and beneficiaries before a new Personal Representative can be appointed. You may continue to have ongoing responsibility to protect the estate until the new Personal Representative is issued letters of authority to act on behalf of the estate.

Relinquishing the responsibility to act as Personal Representative should not be taken lightly. If you have already been appointed by the Court, it is important to seek legal advice about best practices for discontinuing your responsibilities while protecting the estate and the rights of the heirs and beneficiaries. Please reach out to one of our experienced estate planning attorneys to help with this process.◊



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