

People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

- Because of the real differences between the disabilities and legal incapacities of mentally disabled persons and minors, there is no constitutional requirement to treat these categories of persons exactly the same way. There is no equal protection violation.
- Irrespective of statutory authorization, it is proper for a court to appoint a GAL for a litigant when the court is reasonably convinced that the party is not mentally competent to effectively participate in the proceeding. C.R.C.P. 17(c) states that "[t]he court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person." Rule 17 does not contain a definition of an "incompetent person." This term encompasses the statutory definitions of "mentally ill" and "gravely disabled," as well as those who are mentally impaired to the degree of being incapable of effectively participating in a termination proceeding and thus need the assistance of a fiduciary representative.
- When the adult parent is already represented by an attorney, the appointment of a GAL pursuant to C.R.C.P. 17(c) is discretionary.
- In a termination proceeding, it is the lawyer's duty to provide the parent with legal advice on decisions such as whether to contest a termination motion and whether to present particular defenses but is the parent's role/responsibility to make those decisions.
- If the parent is mentally impaired so as to be incapable of understanding the nature and significance of the proceeding or incapable of making those critical decisions that are the parent's right to make, then a court would clearly abuse its discretion in not appointing a GAL to act for and in the interest of the parent. A court would also abuse its discretion in not appointing a GAL in those situations in which it is clear that the parent lacks the intellectual capacity to communicate with counsel or is mentally or emotionally incapable of weighing the advice of counsel on the particular course to pursue in her own interest. If, however, the evidence shows that a parent, although mentally disabled to some degree, understands the nature and significance of the proceeding, is able to make decisions in her own behalf, and has the ability to communicate with and act on the advice of counsel, then a court might well conclude, and properly so, that a GAL could provide little, if any, service to the parent that would not be forthcoming from counsel.