

Cherokee Nation Code Annotated

Title 10: Children

Chapter 51: Delinquent, Dependent and Neglected Children

Article I: Dependent and Delinquent Children

§ 1109. Questioning of children—Counsel—Appointment of guardian ad litem—Court appointed special advocates—Immunity—Confidentiality

Cite as: 10 CNCA § 1109

A. No information gained by questioning a child nor any evidence subsequently obtained as a result of such information shall be admissible into evidence against the child unless the questioning about any alleged offense by any law enforcement officer or investigative agency, or employee of the Court, or the Department of Human Services or Cherokee Nation is done in the presence of the parents, guardian, attorney, or legal custodian of the child. No such questioning shall commence until the child and his parents, or guardian, or other legal custodian have been fully advised of the constitutional and legal rights of the child, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the Court if the parties are without sufficient financial means.

B. If the parents, guardian, or other legal custodian of the child requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the Court if a petition has been filed alleging that the child is a deprived child, a child in need of supervision, or a child in need of treatment, or if termination of parental rights is a possible remedy, provided that the Court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parents, guardian or other legal custodian. If the child is not otherwise represented by counsel, whenever a delinquent child petition is filed pursuant to the provisions of 10 CNCA § 1103, and the parents, guardian, other legal custodian of the child are found to be without sufficient financial means the Court shall appoint a separate attorney for the child. In all other cases the prosecuting attorney shall protect the interest of the child. In the event the prosecuting attorney has a conflict or appearance of conflict the Court may appoint a separate attorney for the child.

C. Whenever a petition is filed alleging that a child is a deprived child the Court may appoint a guardian ad litem for the child at any time subsequent to the filing of the petition and shall appoint a guardian ad litem upon the request of the child, his attorney, or the prosecuting attorney.

1. The guardian ad litem shall not be a prosecuting attorney, an employee of the office of the prosecuting attorney, an employee of the Court, or an employee of any public agency having duties or responsibilities towards the child.

2. The guardian ad litem may be a Court-appointed special advocate.

D. For the purpose of this section and 21 CNCA § 846, a "Court-appointed special advocate" or "CASA" means a responsible adult, other than an attorney for the parties, who has volunteered to be available for appointment by the Court to serve as an officer of the Court and represent any child wherein a juvenile petition has been filed, based on the availability of volunteers, until discharged by the Court. It shall be the duty and responsibility of the Court-appointed special advocate to advocate for the best interests of the child and to assist the child in obtaining a permanent, safe, homelike placement.

The Court-appointed special advocate shall be given access to the Court file and access to all records and reports relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to this section or 21 CNCA § 846.

A Court-appointed special advocate shall serve without compensation and shall have such other qualifications and duties and responsibilities as may be prescribed by rule by the Court. Any person participating in a judicial proceeding as a Court-appointed special advocate shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed. Any person serving in positions of management of a CASA organization, including members of the Board of Directors acting in good faith, shall be immune from any civil liability or any vicarious liability for the negligence of any CASA organization advocates, managers, or directors.

All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the State of Oklahoma, Cherokee Nation or United States in connection with the performance of their official duties. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the Department of Human Services, or Cherokee Nation, any other public officer or employee, or any Court-appointed special advocate (CASA), to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

E. The prosecuting attorney shall prepare and prosecute any case or proceeding within the purview of 10 CNCA § 1101.