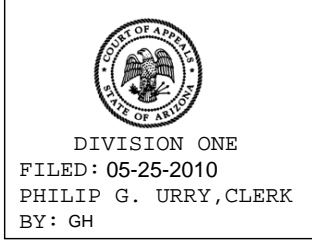


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



TERREA L. ARNWINE,) No. 1 CA-SA 10-0088
)
Petitioner,) DEPARTMENT D
)
v.) Maricopa County
) Superior Court
)
THE HONORABLE BRIAN ISHIKAWA,) No. JV552658
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for) **DECISION ORDER**
the County of MARICOPA,)
)
Respondent Judge,)
)
STATE OF ARIZONA,)
)
Real Party in Interest.)
_____)

The court, Presiding Judge Michael J. Brown and Judges Jon W. Thompson and Sheldon H. Weisberg participating, has considered the special action filed by Petitioner Terrea L. Arnwine. For the following reasons, we accept jurisdiction and grant relief.

The juvenile court appointed Petitioner as guardian ad litem ("GAL") in a juvenile delinquency matter on March 17, 2010, "to investigate whether there are any dependency matters." On March 25, after receiving recommendations from the probation officer, prosecutor, counsel for the juvenile, and

Petitioner, the court ordered the child detained. The following day, the probation officer submitted a "Request to the Court and Order Report" recommending that a new GAL be appointed in the case based in part on her allegation that "[t]here have been many problems with [Petitioner] on past cases in which she has shown little regard for boundaries with clients and has been problematic to deal with in her tone and attitude." The probation officer further alleged that Petitioner had failed to conduct proper investigation of the juvenile's home and was therefore not acting in the juvenile's best interests. The juvenile court, without explanation, issued a minute entry on April 8, ordering that a new GAL be appointed in place of Petitioner. In this special action, Petitioner challenges the court's order removing her as GAL without notice or hearing.

We may accept special action jurisdiction when the case presents a pure question of law for which there is no "equally plain, speedy, and adequate remedy by appeal." See Ariz. R.P. Spec. Act. 1(a); see also *State ex rel. Pennartz v. Olcavage*, 200 Ariz. 582, 585, ¶ 8, 30 P.3d 649, 652 (App. 2001). Here, the order removing Petitioner is not appealable; therefore, in the exercise of our discretion we accept jurisdiction. *State v. Superior Court*, 179 Ariz. 343, 344, 878 P.2d 1381, 1382 (App. 1994).

Petitioner does not contend that the juvenile court has clear authority to remove a GAL from a particular case; instead, she asserts that the court's power to remove is not absolute and that it must conduct a hearing prior to deciding whether removal is justified. In support, Petitioner directs our attention to the standard for removal of an attorney in a criminal case. *See, e.g., State v. Paris-Sheldon*, 214 Ariz. 500, 504, ¶ 8, 154 P.3d 1046, 1050 (App. 2007) ("A trial court abuses its discretion if it fails to inquire into the basis for the defendant's dissatisfaction with counsel or fails to conduct a hearing on the defendant's complaint after being presented with specific factual allegations in support of the request for new counsel."). In that setting, requests for change of counsel typically come from a disgruntled client, in contrast to the request for removal here that was submitted by a probation officer. But regardless of who submits the request for removal of an attorney, the decision to remove should be made only after the court considers the attorney's position regarding the matter. *See id.; People v. Cole*, 95 P.3d 811, 832 (Cal. 2004) (recognizing that a trial court may remove court-appointed counsel to prevent impairment of court proceedings and when counsel, without good cause, is not prepared for trial); *Watson v. Black*, 239 S.E.2d 664, 668 (W.Va. 1977) (concluding that

whenever there is a conflict of interest or any other cause of dissatisfaction by a defendant with his court-appointed attorney, the trial court must hold a hearing and dispose of the issue on the record).

Additionally, general considerations of due process lend support to the concept that a juvenile court must provide an attorney with the right to defend accusations brought against him or her prior to removal from a case. See *McLeod v. Chilton*, 132 Ariz. 9, 18-19, 643 P.2d 712, 721-22 (App. 1981) (in the employment context, recognizing that a liberty interest arises where action against an individual imposes a "stigma or reputational harm" that prevents further opportunities or results in damage to the individual's standing in the community). Given Petitioner's financial interest, as well as the possible damage to her professional reputation and standing in the community, Petitioner was improperly denied the right to have an opportunity to rebut the allegations raised by the probation officer.

Finally, we find support for our conclusion in the holding of *Zukerman v. Piper Pools, Inc.*, 556 A.2d 775, 786 (N.J. Super. App. Div. 1989). In that case, the Superior Court of New Jersey considered whether a GAL was properly removed by the trial court. Reversing, the court noted as follows:

We do not hold that a court may not inquire into the actions of the guardian *ad litem*, or may not remove such guardian for sufficient cause. However, any such removal must be for good cause and based on clear and convincing evidence of misconduct or inability to serve the best interests of the ward, or incapacity of the guardian *ad litem*.

Id. Here, there is no indication the juvenile court determined, prior to removal, that Petitioner had committed misconduct or that she was unable to serve the best interests of the juvenile. Thus, we find that the juvenile court abused its discretion in failing to conduct a hearing in order to provide Petitioner an opportunity to respond to the probation officer's allegations before removing her as the GAL. Accordingly,

IT IS ORDERED accepting jurisdiction of this special action petition.

IT IS ORDERED vacating the juvenile court's order removing Petitioner as GAL.

IT IS FURTHER ORDERED that Petitioner shall serve as GAL in this delinquency proceeding until her obligations have ceased, subject to removal for good cause by the juvenile court following notice and hearing.

IT IS FURTHER ORDERED that the clerk of the court provide a copy of this Decision Order to the Honorable Brian Ishikawa, a Judge of the Superior Court, and to each party appearing herein.

/s/

MICHAEL J. BROWN, Presiding Judge