

## Survey of Family Law Cases 2004-2013

### 2007 Family Law Survey

# GUARDIANS, SPECIAL ADVOCATES AND CHILD REPRESENTATIVES

Wife's first attorney filed a motion for appointment of a guardian ad litem before permanent orders, based upon his belief that Wife was unable to make decisions in her best interests, in In re the Marriage of Sorensen, 166 P.3d 254 (Colo. App. 2007). Wife objected, and her first attorney withdrew. Wife's second attorney filed a motion to strike the appointment motion. The court, without a hearing, determined that the appointment motion was "withdrawn." At permanent orders, the court incorporated into the final decree, a partial written separation agreement and an oral agreement. Wife's second attorney was to draft the orders, but did not. Wife retained third attorney, who filed a motion for a new trial because wife's mental illness prevented a fair trial.

First, the written separation agreement incorporated into the decree was a final, appealable order, despite the fact that Wife's second attorney never drafted an order incorporating the oral agreement of the parties.

Pursuant to C.R.C.P. 17(c), a court should appoint a guardian ad litem when reasonably convinced that a party is not mentally competent to understand and participate in the proceeding. The court held, in accordance with People in the Interests of M.M., 726 P.2d 1108 (Colo. 1986), that it is an abuse of discretion to not appoint a guardian ad litem when a spouse (1) is mentally impaired so as to be incapable of understanding the nature and significance of the proceeding; (2) is incapable of making critical decisions; (3) lacks intellectual capacity to communicate with counsel; or (4) is mentally or emotionally incapable of weighing the advice of counsel to pursue her own interests.

The court held that whenever a substantial question of mental competence of a spouse in a domestic case exists, the trial court should conduct a hearing to determine whether the spouse is competent, or requires a guardian ad litem. This case is remanded to determine whether Wife needs a guardian ad litem. If a guardian is unnecessary, the judgment is affirmed. If a guardian is necessary, the permanent orders will be vacated and a new permanent orders hearing will be conducted.