

**Fact Pattern-
Primary Players**

- Decedent **DONNA**
- Husband/Ex of Decedent **HARRY**
- Adult Son **ANDY**
- Adult Daughter **DEBRA**
- Minor Daughter **MARY**
- Second Spouse of Decedent **SUE**

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**Fact Pattern-
Secondary Players**

- Child of Decedent but not Spouse
(spouse's step child) **SANDRA-DEE**
- Child of Spouse but not Decedent
(decedent's step child) **SHANE-SCOTT**
- Brother of Decedent **BOB**

General Assumption

Donna died domiciled in Massachusetts on
January 2, 2012 and it is now March 1, 2012.

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GAL

When a spouse, heir at law or devisee is
an IP, PP or a minor and is not
represented by a guardian or conservator
who is not the petitioner a GAL shall be
appointed unless the court allows a
Motion to Waive a GAL.

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GAL

If a spouse, heir at law or devisee is an IP, PP or a minor and is otherwise represented by a guardian or conservator (other than the petitioner) no GAL is necessary.

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PARENTAL REPRESENTATION & GAL

- If there is no conflict of interest and no guardian or conservator has been appointed, a parent may represent a minor child in a formal proceeding.
- There can be no Parental Representation and/or GAL appointment in an informal proceeding. If either is involved, a formal proceeding must be filed.

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VIRTUAL REPRESENTATION & GAL

- Virtual Representation (VR) is a process by which someone to whom notice has been given binds an unborn or unascertained person with a substantially identical interest.

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**VIRTUAL REPRESENTATION
& GAL**

- VR eliminates the need for a GAL for unborn and unascertained persons who have substantially identical interests to one who has received notice in a formal proceeding.
- There can be no VR and/or GAL appointment in an informal proceeding. If either is involved, a formal proceeding must be filed.

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**GALs
Fact Pattern 1**

Donna dies survived by her spouse Harry and their 3 children: Andy, Debra and Mary, a minor. Donna's estate is left entirely to Harry. Harry seeks appointment as the PR of Donna's estate by filing a Petition for Formal Appointment and Determination of Testacy. Andy and Debra have assented to the Petition and Harry has published the citation.

May the Court allow the Petition based on the notice Harry has made?

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**GALs
Answer to Fact Pattern 1**

Yes.

While Mary is a minor, there is no question of GAL for Mary in this scenario. Andy, Debra and Mary are the children of both Harry and Donna and are not Donna's heirs at law. Only Harry is Donna's heir at law.

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GALs
Fact Pattern 2

CHANGE FACT PATTERN 1:

Donna's will leaves half of her estate to Harry and half to her surviving children.

May the Court allow the Petition based on the notice Harry has made?

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GALs
Answer to Fact Pattern 2

No. The Court may NOT allow the Petition based on just the notice Harry has made.

Harry has filed a Formal Petition. Mary is a minor and devisee so a GAL is necessary. Harry may ask the Court waive a GAL.

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GALs
Fact Pattern 3

CHANGE FACT PATTERN 1:

Harry is under a guardianship and Andy is his guardian. Debra is nominated as the alternate PR in Donna's will. Debra files a Petition for Formal Probate of Will and Appointment of PR. She publishes the citation and mails a copy of the notice to Andy and Harry.

May the Court allow the Petition based on the notice Debra has made?

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GALs
Answer to Fact Pattern 3

Yes.
While Harry is an incompetent spouse, Andy is his guardian and is not the petitioner. No GAL is necessary because there is actual representation.

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GALs
Fact Pattern 4

CHANGE FACT PATTERN 2:
Harry is under a guardianship and Andy is his guardian. Andy is nominated as the alternate PR in Donna's will. Andy files an Informal Petition for Probate of Will and Appointment of PR. He provides notice to Debra and Mary prior to filing.

May a Magistrate allow the Informal Petition based on the notice Andy has made?

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GALs
Answer to Fact Pattern 4

No.
An Informal Petition may not be filed because:
Harry is not the only devisee and Andy has a conflict of interest as petitioner and guardian AND Mary is a minor and devisee. A Formal Petition must be filed to resolve the issue of a GAL.

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GALs
Fact Pattern 5

Donna dies survived by her second spouse, Sue, and her child from her first marriage, Mary, who is a minor. Donna's will leaves her entire estate to Sue. Sue seeks appointment as the PR of Donna's estate by filing a Petition for Formal Appointment and Determination of Testacy. Sue has published the citation and mailed a copy to Harry, Mary's father with whom Mary does not live, and to Mary.

May the Court allow the Petition based on the notice Sue has made?

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GALs
Answer to Fact Pattern 5

No, but...

Sue can request the Court waive the GAL based on Harry's parental representation of Mary.

A parent may represent a minor child as long as there is no conflict of interest. Harry has no conflict as he is not an interested person in Donna's estate. Parental Representation may apply and a GAL may be waived if the Court is satisfied with Harry's representation of Mary's interest.

If Harry were not alive and Mary has a guardian or conservator other than Sue, no GAL would be required.

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