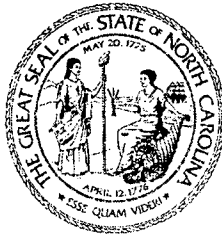


2010

**HOUSE SELECT
COMMITTEE ON CIVIL
CUSTODY GUARDIANS**

MINUTES



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON
CIVIL CUSTODY GAURDIANS
2009-2010 SESSION**

Co-Chairs

**Representative Darren Jackson
Representative Grier Martin**

MEMBERS

**Representative J. Farmer-Butterfield
Representative Pat Hurley
Representative Verla Insko
Representative Sarah Stevens
Representative Jane Whilden**

STAFF

**Tim Hovis
Lisa Wilks
Bryce Ball
Brad Krehely
Kelly Quick
Denise Thomas**

Committee Assistants

**Sylvia Hammons
Angela McMillan**

A detailed illustration of a clipboard with a checklist. The clipboard has a silver clip at the top. The checklist has four items, each with a checkbox. The first checkbox is checked with a black mark. A black pen is resting diagonally across the bottom right of the clipboard. The entire illustration is rendered in a high-contrast, black and white style with a grainy texture.

[illegible]

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS
2010-2011 SESSION



Representative D. Jackson
Co-Chair



Representative G. Martin
Co-Chair



Rep. J. Farmer-Butterfield
Member



Rep. Pat Hurley
Member



Rep. Verla Insko
Member



Rep. Sarah Stevens
Member



Rep. Jane Whilden
Member

HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS
MEMBERSHIP LIST for 2010-2011

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Office of Speaker Joe Hackney
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

Revised 1/19/10

TO THE HONORABLE MEMBERS OF THE
NORTH CAROLINA HOUSE OF REPRESENTATIVES

Section 1. The House Select Committee on Civil Custody Guardians (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Section 2. The Committee consists of the 7 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. Vacancies of the Committee are filled by the Speaker of the House of Representatives, and the Speaker may dissolve the Committee at any time.

Representative Martin	Co-Chair
Representative Jackson	Co-Chair
Representative Farmer-Butterfield	
Representative Hurley	
Representative Insko	
Representative Stevens	
Representative Whilden	

Section 3. The Committee may study the feasibility and desirability of creating a statewide Civil Custody Guardian Program. Specifically, the Committee may:

- (1) Review and evaluate other states' statutes and practices and North Carolina pilot programs that establish guardians or child conservators to help the courts, families, and especially children with issues involving custody and visitation.
- (2) Recommend standards for appointment and service as custody guardians, including:
 - a. Qualification and certification of guardians.

HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

- b. Responsibilities of guardians.
 - c. Compensation of guardians.
 - d. Appointment and retention procedures for guardians.
 - e. Any other factor involving the appointment of guardians.
- (3) Consider whether the standards for a custody guardian program should be statutory or through administrative rules.
 - (4) Consider the impact of any recommendation upon services currently provided in North Carolina.
 - (5) Evaluate the likely impact of a best practices recommendation on children, families, courts, attorneys, and the administration of justice.
 - (6) Consider other relevant issues it deems appropriate.

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Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

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HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

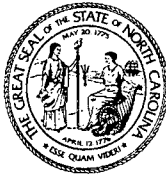
a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before February 1, 2011, by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates on February 1, 2011, or upon the filing of its final report, whichever occurs first.

Effective this the 17th day of November, 2009.



Joe Hackney
Speaker

Revised 1/19/10 to add Representative Verla Insko



MINUTES

HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

Representative Grier Martin, Co-Chair

Representative Darren Jackson, Co-Chair

Thursday, February 4, 2010

The House Select Committee on Civil Custody Guardians met on Thursday, February 4, 2010 in Room 1228 of the Legislative Building at 10: 00 AM. The following members were present: Co-Chair Darren Jackson, Co-Chair Grier Martin, Representatives Jean Farmer-Butterfield, Pat Hurley, Verla Insko, Sara Stevens, Jane Whilden; Staff Counselor was in attendance. A Visitor Registration list is attached and made a part of these minutes.

Co-Chair Grier Martin called the meeting to order, he recognized Co-Chair Darren Jackson, Sergeant-at-Arms, Staff and visitors.

Since this was the inaugural meeting for the Civil Custody Guardians Committee the Chair discussed the ground rules and Tim Hovis, Research Staff, was called upon to give a review of the Committee Charge. In his discussion he indicated that Section 3 gives the actual charge to the committee of what it should study. It is largely taken from the final version of proposed bill, HB1275. Attached is a copy of handouts for review.

The Chair requested that the committee members introduce themselves.

Once introductions were made he then recognized Cheryl Daniels Howell, Albert Coates Professor of Public Law and Government, UNC School of Government, to give an explanation of Civil Custody Guardians. Ms. Daniels presented a power point presentation to the Committee. She provided a legal context for the discussions the committee will be having, clarified some of the terms regarding the law in this area, while also speaking to what's going on in North Carolina right now in the area of guardianship. Attached is a copy of handout #3 for review.

Discussion followed.

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House Select Committee on Civil Custody Guardians
Page 2
February 8, 2010

The Chair then called The Honorable Beth Keever, Chief District Court Judge, to discuss A Judge's Perspective on Civil Custody Guardians. Judge Keever discussed: "Civil Custody Guardians-A view from the Bench". Judge Keever discussed qualifications and certification of guardians, responsibilities and compensation of guardians, appointment and retention procedures for guardians as well as other pertinent information regarding guardianship. She also handed out information pertaining to a view from the Bench on this subject. Attached is a copy of the handout # 4 for review.

Discussion followed.

The next item of business on the Agenda was a presentation by Jay Bryan, an Attorney, on Civil Custody Guardians in Orange County and other Legislative Considerations. On behalf of the Center for Cooperative Parenting, Jay Bryan, is a practicing attorney who is concentrated on family law, child custody, equitable distribution, child support, juvenile delinquency and abuse and neglect. He has been a certified as a mediator for Superior Court Civil Actions and for Mediation of Equitable Distribution and other Family Court Actions. Attorney Bryan discussed the benefits of the Civil Custody Guardian as he handed out information pertaining to these benefits. Attached is a copy of the handout #5 for review.

Discussion followed.

The final presentation was given by Kimberly Bryan, Attorney and member of the Family Law Section of the North Carolina Bar Association. Attorney Kimberly Bryan discussed Opposition to Proposed HB 1275 "Civil Custody Guardians". Her discussion included: Guardian or Expert, Rationale, Existing law and procedure, Rule 706: Court Appointed Experts, Disclosure of Expert Opinion, GALs and Referees, Case Law as set out in Frye vs. United States, Model Standards, Qualifications, Transparency, Helping Children and Families, Ethical Considerations, Compensation, Uniformity, as well as Immunity issues. She also handed out information pertaining to her discussion. Attached is a copy of the handout #6 for review.

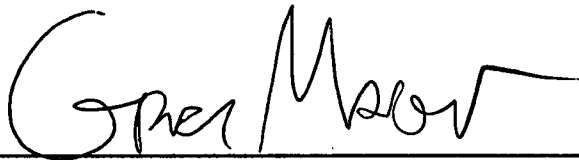
A lengthy discussion followed.

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House Select Committee on Civil Custody Guardians
Page 3
February 8, 2010

Co-Chair Grier Martin explained that the reason for this initial meeting was for discussion only; that this meeting was not intended to introduce legislation. He stated that due to time sensitivity that he would discuss items regarding the next meeting; he then motioned that the meeting be adjourned.

There being no further business, the Chair adjourned the meeting at 12:05 PM.

Respectfully Submitted,



Representative Grier Martin,
Co-Chair



Representative Darren Jackson,
Co-Chair



Angela McMillan
Committee Assistant



AGENDA
HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

Representative Grier Martin, Co-Chair

Representative Darren Jackson, Co-Chair

Thursday, February 4, 2010
10:00 am-12:00 pm
Room 1228, Legislative Building
Raleigh, NC

1. Welcome and Introductions

2. Review of Committee Charge

3. Explanation of Civil Custody Guardians

Cheryl Daniels Howell, Albert Coates Professor of Public Law and Government, UNC School of Government

4. A Judge's Perspective on Civil Custody Guardians

The Honorable Beth Keever, Chief District Court Judge

5. Civil Custody Guardians in Orange County and Legislative Considerations

Jay Bryan, Attorney

6. A Perspective from the North Carolina Bar Association

Kimberly Bryan, Attorney and member of the Family Law Section of the North Carolina Bar Association

7. Committee Discussion

8. Adjourn

(Leftover)
Handouts
2-4-2010 Comm
mtg.
gsm

Tim
Hovis
#2



Office of Speaker Joe Hackney
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

Revised 1/19/10

TO THE HONORABLE MEMBERS OF THE
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HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

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HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

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Effective this the 17th day of November, 2009.



Joe Hackney
Speaker

Revised 1/19/10 to add Representative Verla Insko

Local Rules
Governing
Custody Mediation, and
the Appointment of Guardians ad Litem (GALs) and
Parent Coordinators (PCs)

A. General Rules

If Local Rules are inconsistent with current legislation, statutory authority shall prevail.

- A.1 The information required by NCGS § 50A-209 shall be included in a verified pleading (use AOC form) or attached to all initial pleadings for custody or visitation.
- A.2 The parties to all cases involving issues of child custody or visitation, including motions to modify existing orders, shall participate in mediation prior to a trial on the issues of child custody or visitation unless the Court waives mediation. For good cause, on the written motion of either party or on the Court's own motion, the Court may waive custody mediation as provided in NCGS § 50-13.1.
- A.3 At the time a pleading involving custody or visitation is filed, the filing party shall either file a motion to waive custody mediation or shall obtain from the clerk a date for mediation orientation and shall schedule such mediation and provide written notice of the date, time, and place of such mediation to the opposing party.
- A.4 Unless custody mediation is waived, the parties shall participate in a group orientation and at least one mediation session. The custody mediation program shall operate in accordance with NCGS § 50-13.1, preserving the confidentiality of the mediation process.
- A.5 The Custody Mediation Office shall notify the District Court clerk of the outcome of all mediation proceedings.
 - 1. Cases that are resolved through mediation shall have parenting agreements drafted by the mediator (if parties have attorneys, mediators must first send proposed agreement to attorneys for review) and signed by the parties. Upon review and acceptance of the agreement by the Court, an Order will be executed adopting the parenting agreement as an enforceable Order of the Court.
 - 2. Private custody mediation orders shall be prepared by counsel of record or the mediator and presented to the Court signed by the parties.

- A.6 At the next civil Calendar Call following the failure or waiver of mediation, ~~unless there has been a waiver of an appointment conference, the attorneys of record will report to the Court the need for an appointment conference to be scheduled.~~ *
- A.7 At the appointment conference, the parties shall be present and the Judge may:
- a. review the issues in the case and determine whether any issues can be resolved before trial;
 - b. identify other pending cases involving the family;
 - c. appoint a Guardian Ad Litem (GAL) for the child(ren) as appropriate [as set forth in B.3 below];
 - d. schedule hearings on any unresolved motions;
 - e. provide information regarding intervention services;
 - f. establish discovery deadlines and set a trial date;
 - g. address any issues regarding any minor child's presence and/or testimony in court; and
 - h. no custody hearing will be scheduled at Calendar Call without written reason why the appointment conference has not been held.
- A.8 Parties may AT ANY TIME file motions for custody evaluations, child abuse evaluations, appointment of GALs or PCs, substance abuse assessments, or regarding discovery. Motions shall not be scheduled for hearing and all discovery deadlines shall be suspended until after custody mediation is completed or waived.

B. Guardian Ad Litem (GAL)

B.1 Definitions of a GAL

A GAL may be appointed by the Court to represent the child's best interest as Guardian ad Litem pursuant to Rule 17(b)(3) of the North Carolina Rules of Civil Procedure.

GAL Program: A registry of GALs and qualifications, including training certification, shall be maintained by the District Court. GALs represent the best interests of minor children in contested custody and visitation proceedings. The GAL acts as investigator and facilitator of services in an attempt to resolve conflicts outside of the courtroom and to promote effective co-parenting focused on the best interests of the children. The GAL may make recommendations to the parties and to the Court regarding any issues affecting the child(ren)'s welfare.

B.2 Education and Training of a GAL

GALs shall be chosen from a list maintained by the District Court. To be included on the list, a GAL must provide documentation of the following:

- a. Education: Masters or Ph.D. degree in psychology, law, social work, counseling, medicine or related degrees and relevant training or experience.
- b. Training and experience:
 - (1) no less than five years of related post degree experience;
 - (2) have participated in Judicial District 15B's combined Civil District GAL and Parent Coordinator training which consists of 24 hours of training in topics of developmental stages of children, dynamics of high conflict families, stages and effects of divorce, problem solving techniques and legal issues;
 - (3) participate in an ongoing seminar which will provide continuing education, group discussion, and peer review and support on a monthly basis;
 - (4) no individual who within the previous 3 years has been a participant in custody litigation may seek approval as a GAL.

B.3 Appointment Process/ Conference of a GAL

- a. If mediation is waived or does not result in a parenting agreement, the Court shall, in its discretion, appoint a GAL at the appointment conference, or sooner upon agreement of the parties, if the Court finds that:
 - (1) the parties' conflict represents a "high conflict" case in which the child(ren)'s welfare is at risk as a result of the parties' conflict, or
 - (2) that it is in the best interests of the child(ren) to appoint GAL.
- b. Every effort should be made to enter such order upon consent of the parties.
- c. If the parties have agreed upon a custody evaluation or one has been ordered, the appointment of a GAL may be pursuant to specific identified responsibilities.
- d. If the Judge determines that a GAL should be appointed to represent the child(ren) the Judge shall prepare an Order of Appointment.
- e. The Judge may make the appointment contingent upon the parties' payment of services provided by the GAL, which may be allocated between parties in proportion to the party's income or divided equally, whichever the Judge determines to be fair and equitable. **The GAL shall not begin their duties, or be required to continue their services, until the fee has been paid by both parties.** The fees may include the cost of consultation with an experienced mental health professional.

- f. The GAL shall be entitled to reasonable compensation for services rendered and to a reasonable retainer. Either party or the GAL may request a hearing in the event of a fee dispute.

B.4 Scope of GAL Authority

The GAL shall function as a guardian pursuant to Rule 17, NC Rules of Civil Procedure, and shall be subject to all applicable rules of court. The GAL may file a motion requesting appointment of an expert. The expert's fees shall be paid by the parties. The GAL may, at any time, request a "court review" of the case upon proper notice to the parties. There shall be no ex parte communications between the GAL and the presiding Judge.

B.5 GAL Contact with Parents/Attorneys

The GAL may contact or meet with a parent individually without the consent of the parent's attorney. While the GAL shall not operate as a Parent Coordinator, the GAL may report to the parents what he/she believes to be in the child(ren)'s best interest and make suggestions to reduce conflict. A GAL may communicate with one attorney without the express consent of the other attorney.

B.6 Communicating with Court-Appointed Experts by a GAL

Any communication between the GAL and a court expert appointed pursuant to B.4, must be simultaneously communicated to the parents' attorneys, including any written information or documents that the child's GAL might provide to said expert.

B.7 Recommendations and Written Reports by a GAL

The GAL shall submit a written report to the attorneys within 90 days, unless good cause is shown for additional time, as well as, to any custody evaluator involved in the case, which shall be admissible at hearing. At various points in the case, the GAL may make recommendations to parents and their attorneys concerning the child/ren's best interest, and they may inform the court of their position and recommendations at trial.

Any written report or recommendation should be submitted to the parents' attorneys two (2) weeks before trial. The GAL shall disclose all sources of information reported. No report will be submitted to the judge pretrial without the consent of the parents' attorneys. The report is admissible at trial without authentication or presence of the GAL.

B.8 GAL Testimony

The GAL may testify at trial provided however, absent consent of GAL to appear and testify, the party seeking to subpoena the GAL must obtain court approval prior to issuance of a subpoena. The court may, in its discretion, require prepayment of a GAL as a condition of his/her attendance under subpoena.

B.9 The Child(ren) as Witness

The Court ordinarily discourages parents from requiring the minor child(ren) to testify. If testimony is to be elicited at the court proceedings, then the GAL may advocate using an alternative procedure such as an in-chambers interview, closed circuit television or one-way mirror with an audio connection.

The GAL may request an in-chambers interview with only the child(ren), the Judge, and the GAL being present. The judge may exclude parents from the interview, although parents' attorneys have the right to be present. If the parents' attorneys consent to an in-chambers interview that excludes attorneys as well as parents, they may submit questions for the Judge to ask the children.

C. Parent Coordinator Appointments

C.1 The role of a Parent Coordinator is:

- a. assist parents in implementing a Custody/Visitation Order on an ongoing basis;
- b. reduce conflict between parents;
- c. facilitate both parents' relationships with the child(ren);
- d. provide attorneys and any party with written summaries of developments in the case;
- e. act to resolve any minor issues that may or may not be specifically governed by the court order over which the parents reach an impasse, until further orders are entered;
- f. empower the parents to successfully resolve conflicts over their child(ren) on their own; and
- g. **not** to deal directly with financial issues and will refer financial issues to the attorneys.

C.2 Parent Coordinators shall be chosen from a list maintained by the District Court. To be included on the list, a Parent Coordinator must provide documentation of the following:

- a. Education: Masters or Ph.D. degree in psychology, law, social work, counseling, medicine or related degrees and relevant training or

Cheryl #3 Howell
Presented

2/3/2010

Civil Custody Guardians

Cheryl Howell
School of Government
February 4, 2010

HB 1275

Civil Custody Guardian Program

- › Court can appoint "civil custody guardian" in action for custody/visitation
- › Can be attorney, mental health professional or other
- › Role
 - Investigate, report and make recommendations to the court; confer with counsel for parties
 - Interview parties, child and witnesses
 - Obtain documentary evidence
- › Costs assessed to parties?

Present Law

- › Court can appoint Guardian ad Litem in child custody case pursuant to Rule 17(b)(3), North Carolina Rules of Civil Procedure
 - *Van Every v. McGuire*, 125 NC App 578 (1997)
- › Rule 17(b)(3) authorizes court to appoint GAL in any civil case for a minor or incompetent "when it is deemed by the court in which the action is pending expedient to have the infant, insane or incompetent person so represented."

"Guardian" vs "Guardian ad Litem"

• GUARDIANS

- *G.S. Chapter 35A*
- Guardian of the Estate
- Guardian of the Person
- Court cannot name guardian for children with parents

• *Juvenile Disposition*

- GS 7B-600
- Court placement of juvenile with guardian

Caretakers

• GUARDIAN AD LITEMS

• *G.S. Chapter 7B Juvenile Abuse and Neglect Proceedings*

- Children must have GAL
- Minor parents must have GAL

• *General Civil Proceedings*

- Rule 17, Rules of Civil Procedure: Incompetent parties must have GAL
- Civil Child Custody Cases

Representatives during legal proceedings

2 Types of Guardian ad Litem

• Chapter 7B Juvenile Proceedings

- GAL 'represents' the juvenile: GS 7B-601
- GAL is not a lawyer
- Attorney advocates appointed as legal counsel for GAL
- GAL program administered by Administrative Office of the Courts

Paid by the State

• Rule 17 Civil GAL

- 'Represents' incompetent parties
- May be a lawyer or not
- Party also may have legal counsel
- *Van Every v. McGuire*, 125 NC App 578 (1997)
- Court may appoint GAL for child in civil custody case

Paid by Parties

Van Every v. McGuire

- Rule 17 GAL authorized by trial court to:
 - Receive and review documents
 - Investigate and determine facts, present facts to court
 - Represent child's interests in court hearings
 - Collect and present reports and evaluations concerning the child to the court
- Rule 17 GAL is to "insure that child's interests are adequately investigated and presented to the court"
 - *West v. Marko*, 141 NC App 688 (2001)

Mecklenburg County Local Rule

- GAL Attorney and Custody Advocate Program
- Both represent best interest of child
- Appointed when "necessary in light of particular circumstances of the case"
- "Team acts as investigators and facilitators of services in an attempt to resolve conflicts outside the courtroom and promote effective co-parenting"
- Court uses Council for Children's Rights
 - Volunteers and sliding scale fee

Parenting Coordinators GS 50-91, et. seq

- Appointed when court finds:
 - Case is high-conflict
 - Best interest of child requires coordinator
 - Parties have ability to pay for service
- Role is to help parents implement court-ordered parenting plan
 - Facilitate cooperation
 - Make decisions pending court intervention

CIVIL CUSTODY GUARDIANS

A VIEW FROM THE BENCH

A. ELIZABETH KEEVER
CHIEF DISTRICT COURT JUDGE
CUMBERLAND COUNTY
CHAIR, CHIEF JUSTICE'S FAMILY COURT
ADVISORY COMMITTEE

FEBRUARY 4, 2010

In preparation for this hearing, I have surveyed the Chief District Court Judges in the 42 District Court Districts. Most do not have a formalized custody guardian program. All recognize the ability to appoint a GAL pursuant to case law under Rule 17 of the Rules of Civil Procedure. The Chiefs agree that this is done in a very small number of cases and should continue to be done in the discretion of the Judge. In most districts, this is only done in high conflict cases or in cases where there is a significant conflict in the evidence. All the judges agree that this is not a service that should be paid for with state funds but one for which the parties should be responsible. Some judges have suggested that it should be more appropriately titled a custody investigator than a custody guardian.

1. Qualifications and certification of guardians

Most judges are using attorneys as GALs in custody cases. Some are using mental health professionals. A few have been able to use GALs trained by the AOC Juvenile Guardian ad litem program on a volunteer basis.

Generally, we do not recommend the use of juvenile GALs because most districts do not have a sufficient number of GALs to cover all of the juvenile cases.

2. Responsibilities of guardians

The primary responsibility of the guardian is to investigate and present information about the best interest of the child. Unlike the GAL Attorney Advocate in juvenile court, the

guardian does not represent the child and does not present evidence or question witnesses.

The guardian needs to be able to talk with the child outside the presence of the parents or attorneys and to interview the parents, teachers, medical providers and other persons with knowledge of the circumstances of the child.

The guardian should have the right and authority, as do juvenile guardians, "to obtain any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case" (7B-601(c)).

There is no consensus on whether a guardian should make a recommendation as to the ultimate decision on who should have primary custody or how secondary custody or visitation should be established.

There is consensus that the responsibilities should be established on a case by case basis and that the order of appointment should set out what those responsibilities are.

There is also consensus that the guardian should prepare a written report which the attorneys should receive prior to trial.

3. Compensation of guardians

Guardians should be paid by the parties. The Court may elect to direct an unequal division of the costs between the parties.

Generally, the parties are required to pay a portion of the fees prior to the guardian beginning work on the case.

One of the reasons that judges sometimes order the appointment of a guardian in custody cases is because the parties cannot afford the cost of a full custody evaluation.

4. Appointment and retention procedures for guardians

Guardians are appointed by the court in each individual case.

Most judges release the guardian from the case upon the entry of a final order. Unlike Parenting Coordinators, guardians do not continue in the cases indefinitely.

5. Other

Guardians should not be subject to civil liability for their work in these cases. See 7B-1204.

**PRESENTATION TO HOUSE SELECT COMMITTEE ON CIVIL
CUSTODY GUARDIANS ON FEBRUARY 4, 2010 BY JAY BRYAN**

Thank you, Co-Chairs Martin and Jackson and other members of the Committee for inviting me to speak to you on the topic of Civil Custody Guardians. On behalf of the Center for Cooperative Parenting, I also want to thank Representative Verla Insko for her tireless support and championing of legislation to authorize the use of Civil Custody Guardians state-wide.

By way of background, I have been practicing law for thirty-two years. A significant portion of my practice is concentrated in family law – child custody, equitable distribution, child support, juvenile delinquency and abuse and neglect. I have been a certified guardian ad litem in civil custody matters and a parent coordinator since 2001. I am certified as a mediator for Superior Court Civil Actions and for Mediation of Equitable Distribution and Other Family Court Actions. (My CV is at your place)

1) In Judicial District 15B, which covers Orange and Chatham Counties, District Court Judges began to appoint guardians ad litem, hereinafter referred to as “civil custody guardians,” in the 1990s. My first case involved a child whose father had murdered her mother at a daycare. From prison he made a request to have visitation with her. After interviewing him, visiting with his daughter and her maternal grandmother at their home on the coast of North Carolina, and talking with the child’s therapist, I recommended against visitation.

In the late 1990s, because of the perceived effectiveness of the role of civil custody guardians in reducing extended custody trials and conflict that placed children in the middle of their parents, a group of lawyers and professionals, led by Chief Judge Joseph Buckner, Judge Charles Anderson, co-chairs, Dr. Helen Brantley and Carol Holcomb, Judge Page Vernon, and Gretchen Aylsworth, then Executive Director of the Volunteer Guardian ad Litem program, codified local rules to govern the appointment of civil custody guardians. This group wanted to establish the Rules to avoid challenges to the civil custody guardian’s legal authority.

Under our Local Rules, (a copy of which is located at your place), Civil Custody Guardians (CCG) may be appointed in contested civil district court cases

involving custody and visitation disputes. They are appointed **before** an original custody order or a modification of a custody order is submitted to the court. Under our rules, CCG's are required to have a Masters degree or PhD in law, psychology and other fields, five years of experience in their field, 24 hours of training, and on-going peer review and seminars.

CCG's investigate the needs of the child in a custody dispute and make recommendations to the judge regarding what is in the child's best interest. They interview persons involved in the child's life and gather information and records from many sources to formulate a neutral and balanced picture of a child's needs in the family.

CCG's provide written reports to the judge and may be questioned by the court and the litigants. Custody orders are formulated after the CCG investigation and report is complete. CCG's are compensated by the parties in the contested custody or visitation case.

The professionals in our area, including Dr. Helen Brantley, a PhD psychologist who is director of the University of North Carolina Forensic Psychiatry Service and leader of hundreds of custody evaluations, and other researchers, have concluded that extended conflict around visitation and custody is highly detrimental to the long term physical and mental health of children.

Based on the experience of our local judges, mental health professionals and attorneys, District 15B has determined that the benefits of the Civil Custody Guardian are as follows (a copy of this list of benefits is at your place):

1. The parties, the child and other potential witnesses are able to share their stories with the civil custody guardian. In neutral, summary fashion, each side's perspective is summarized in the civil custody guardian's report.
2. The reporting of each parent's perspective reduces the need for a trial in which witnesses come to court and convey the same information to the court, subject to extended and time-consuming cross-examination in furtherance of conflict.

3. The child's perspective is reported and available to the court without the necessity of the child's being called by either side as a witness. The report can prevent the child's being put through the excruciating experience of being placed in the middle between two conflicting parents.
4. As an officer of the Court, the civil custody guardian's perspective and training produce conclusions and recommendations that are neutral and based on the best interest of the child.
5. The civil custody guardian's recommendations can provide the following:
 - i. assist the court in its understanding of each parent's and child's situation and lead to a much more informed decision than could be reached through a long trial that is often parent focused rather than child focused; or
 - ii. result in agreements being reached by the parents before the matter gets to trial that address the issues between them and in the best interest of the child; and
 - iii. in general result in less or no court hearings that affect the minor child.
6. Agreements reached by parents through the work of the civil custody guardian can lead to better shared parenting by the parents in the future.
7. Time in litigation is reduced. Research shows that litigation and delays in court heightens conflict between parents and is detrimental to children's development.
- ⑧ 8. The cost of a civil custody guardian is significantly less than the expenses related to litigation or a custody evaluation.
9. The process is front loaded, utilizing the civil custody guardian early and expeditiously, allowing early rather than late resolution of family

conflicts that avoids prolonged confusion and distress for the affected children.

10. In those instances when the civil guardian recommendations do not fully resolve the conflict, parties' trial preparation and court proceedings are routinely refined and more clearly focused, reducing the parties' expenses and the allocation of court resources.
11. The civil custody guardian is well received and extensively utilized by all stakeholders: attorneys, judges, and parents. Attorneys practicing primarily in other districts highly regard the option of utilizing the civil custody guardian resources developed in District 15B.
12. Mental health counselors, therapists, and social workers involved in child therapy with families in divorce, some of whom had begun to decline patients whose parents were in litigation, are enthusiastic and appreciative that the civil custody guardian process operates to avoid their being subpoenaed to court with the resulting disruption of their practices and their therapeutic relationship with a child when they are forced to become a witness at trial.
13. The process is advisory, much like the services of a referee under Rule 53 of the Rules of Civil Procedure, and is never binding on the parties or the court. It provides parents an early and neutral third party evaluation of their children's circumstances, broadening their understanding of the situation, their options, and how a child's best interest might be served.

Here is a brief example of how a CCG can be important:

The unmarried parents of a 6 year old child separate. The father is somewhat involved in his upbringing but generally kept away by the protective mother. Both have extended family in the area.

Mother moves out of state without telling the father and remarries. Father files an emergency custody order and the matter comes back to North Carolina for hearing. The Judge appoints a CCG.

Everyone on mother's side report that the child is doing fine. Father's side think the mother is a good mother and have no other information because the child and mother live in another state. The CCG calls the school and guidance counselor and **only then** learns that the child is doing poorly – he cries a lot, he is depressed, he has no friends, information that the mother did not share with the CCG. The CCG gets his report cards and they show that his grades have dropped dramatically. She also talks with the child through **Skype** and with neutral questions learns firsthand how bad he feels.

What was in the 6 year old's best interest in this case, as the CCG recommended and the Court ordered, was to return him to N.C. for a year and be reconnected with his father.

*He emphasized
Cries*

→ Were it not for the CCG, the true facts about the CHILD'S situation would not have been brought to light. The CCG had the authority to speak to the school officials and also to the child directly and determine what is really going on. CCG's go to children's homes to see how they live and how they interact with their parents, and can learn much that way because kids can be very honest.

How did this Study Commission bill that led to the formation of this Committee come to fruition?

In 2002, the Center for Cooperative Parenting, Inc., of which I am president, was formed to provide educational and support services to parents and children who are experiencing high conflict in separation, divorce, or co-parenting. With the help of then Majority Leader, Joe Hackney, we spearheaded the passage of the parent coordination legislation – N.C.G.S. 50-90 et. al. - that allows for the appointment of trained persons to work with parents to reduce conflict and to effectively co-parent their children after a custody order is entered. (A copy of our Brochure is at your place).

The Center is responsible for the training and supervision of all Civil Custody Guardians and Parenting Coordinators for District 15B. Members of our Board

have sponsored eight, three-day trainings for Parent Coordinators in Atlantic City, Greensboro, Charlotte and Chapel Hill. Co-sponsors have included the N.C. Bar Association and Justice Initiative, Inc. in Charlotte, the North Carolina Psychological Association and the UNC-G Conflict Resolution Program.

As part of these trainings, we discuss the continuum of services for parents and children that includes the role of CCG. In other parts of the State, we found a great deal of interest in the CCG role among lawyers and mental health professionals and some local rules in places like Mecklenburg County. Since CCG's are not the focus of our training, we do not offer extensive advice about how to use them. If we were to do trainings for guardians ad litem, much of it would be similar to the trainings we do for parent coordinators.

This positive feedback from across the state, along with our own experience, led the Board to consider advocating for legislation that would create standards for the discretionary use of CCG's through North Carolina. In addition, a staff person working for Dr. Brantley completed a fifty (50) state survey of Appointment Laws in Divorce Cases and found that forty-nine (49) states have laws that allow for the appointment of a person to serve in a civil custody guardian or other capacity on behalf of the best interests of children. We were struck by the knowledge that so many other states have found the role important to address family court issues in the best interest of children.

→ ^{LIZ} Ms. Wilks has a copy of the statutes for these states. Georgia's and Maine's statutes are most like the one that the Center proposed initially, while Iowa, Montana, and Wisconsin among others share important similarities.

At your place is a five (5) page spreadsheet that shows when in each state such a person is appointed, their role, who is appointed, and other facts about immunity, fees and qualifications. You will note that in most states:

1. The appointment is generally in the discretion of the court
2. A Guardian ad Litem or a hybrid GAL/attorney is appointed
3. Immunity is granted to the role in most states
4. The parties pay the person's fees

5. A number of States require qualifications for non-attorneys but not for attorneys. Our experience is that attorneys especially need and should be required to receive training in advanced issues like alienation, substance abuse, mental health, relocation, stepparents, and other issues because they do not normally receive this training in law school.

In October 2008, with Representative Insko's referral, members of the Center's Board met with Ms. Wilks. Using the Parent Coordination stature as structure, and with our input based on our local rules, Ms. Wilks wrote a very specific first draft of a bill to establish the use of CCG's in North Carolina. (A copy is at your place).

At the Center's request, a version of this initial bill was reviewed by the North Carolina Bar Association's Family Law Section. This group expressed concerns about the bill as written.

These concerns included making the rules mandatory for all judicial districts versus allowing each district to tailor its own rules; interviewing parents without involvement of their attorneys; introducing into evidence reports that contain hearsay; undermining the adversarial system in favor of a more therapeutic model of dealing with families; creating more complication in the resolution of such cases; requiring the role when parents are already financially strapped; and somehow preventing attorneys from being appointed as attorney advocates for children.

The Board of the Center for Cooperative Parenting believes generally that there should be uniformity of rules, as there are for parent coordinators, so that the court system has assurance of quality and intent. Second, because of the use of mediation, custody evaluations, and parent coordinators, the trend in our State Courts' response to issues of custody and visitation is a more therapeutic court model. Third, the appointment of a CCG or the submittal of a report to the court does not do away with the Court's ongoing jurisdiction over custody and visitation matters or with the right of parents to have their day in court.

We do not believe this role interferes with any court's desire to appoint an-attorney advocate for a child. It is also our experience that if parents are not able to pay for CCG's, they are not appointed.

After considering the concerns of the Family Section, the Center revised the bill by removing most of the specific standards and substituting the idea that the Conference of Chief District Court Judges would prescribe statewide advisory guidelines for the appointment of CCG's and develop further criteria for determining when a civil custody guardian may be appointed. We suggested in our redraft that the advisory guidelines might address a number of areas, including qualifications, responsibilities, compensation, appearance at trial, etc.

At the time this revised bill was to be considered by the House's Judiciary I, close to the cross-over deadline, representatives of the Children's Law Center of Central North Carolina, which oversees the use of *pro bono* guardians ad litem in high conflict custody cases in Forsyth County, contacted Representative Insko's office with some concerns. They had received a copy of the very first draft of the legislation and, as I recall, were concerned that the qualifications section, as written, would prevent the guardians they use, many of whom are lawyers who have been in practice for one to two years, from participating.

Because of the concerns raised by the Center, at Representative Insko's suggestion, and with the help of Center Board members and Judge Charles Anderson, I rewrote the bill into a Study Commission bill. My draft was eventually revised by Bill Gilkeson of Bill Drafting into the one that was finally passed.

In summary, the Center's Board and I ask that you develop legislation that will authorize the use of Civil Custody Guardians in North Carolina, along with reasonable, uniform standards for their qualifications, responsibilities, compensation, appointment, retention and other aspects as you see fit.

We believe that these standards should be statutory, rather than administrative, in the same manner as the standards for Parent Coordinators are statutory. The CCG role can only augment and enhance the effort of our court system's trend to keep children from being in the middle of their parents' conflict and help them live physically and mentally healthy lives.

Furthermore, we believe that training in high conflict advanced issues such as alienation, relocation, mental health, substance abuse and other areas should be

required and is crucial for all civil custody guardians but particularly for lawyers who are not normally exposed to such issues in law school or in mental health.

Other members of the Center's Board, which includes both lawyers and therapists, will be glad to speak before the Committee if you wish.

Thank you very much for allowing me to share my thoughts with you.

other
Speakers
can
come

**EXCERPT FROM PRESENTATION MADE BY JAY BRYAN ON
FEBRUARY 4, 2010 TO THE HOUSE COMMITTEE ON CIVIL CUSTODY
GUARDIANS**

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Web Site for Center for Cooperative Parenting, Inc.:

<http://centerforcooperativeparenting.org/>

Appointment Laws in Divorce Cases
Updated, January, 2007

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
AL AL Rule of Civil Procedure 17	Discretionary	GAL	Atty	No	Parties	No
AK <i>Stat Def</i> A.S. 25.24.310 (2004)	Discretionary	Atty (Preference) ----- GAL	Atty or Gov't Atty ----- Atty or Gov't Atty	Yes	Parties or State	No
AZ A.R.S. 25-321 AZ Rule of Fam L Procedure 10	Discretionary	Atty- Ch Atty BI Court Advisor	Atty	No	Parties	Yes
AR A.C.A. 9-13-101 Sup Ct Admin Order 15-4 & 5	Discretionary	Atty "Atty Ad Litem" (BI)	Atty	No	Parties or State	Yes
CA <i>Stat Def</i> Cal Fam C 3150, 3151 (2001)	Discretionary	Hybrid	Atty or Gov't Atty	Yes	Parties or County	No
CO C.R.S.A. 14-10-116 (2000)	Discretionary	Atty, "Legal representative" (BI) ----- GAL "Special advocate"	Atty ----- Atty or other Professional	Yes	Parties or State	No
CT CGSA 46b-54 ----- CGSA 45a-132	Discretionary	Atty (interest of child) ----- GAL	Atty ----- Atty or other Professional	Yes-Case Law Yes-other Profes-sional	Parties	No
DE <i>Stat Def</i> 13 DelC 701, 721 29 DelC. 9007	Discretionary	Atty (Ch Atty) ----- GAL BI Atty or CASA	Atty ----- Atty or other Professional	Yes	Parties or State	Yes
D.C. D.C. Code 1981 s 16-918	Discretionary	GAL	Atty	No	Parties	No

#5
Jay Boyer

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON*	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
FL FSA s 61.401 <i>Stat Def</i> FSA 61.402 & 403	GAL Required if abuse	Atty (atty or advocate) ----- GAL	Atty ----- Atty or "citizen certified by GAL program"	Yes	Parties	No Yes for citizen
GA** Superior Court Rule 24.9	Discretionary	GAL	Any trained person	No	Parties	Yes
HI <i>Stat Def</i> HRS 571-46(8)	Discretionary	GAL	Atty (in practice also custody evaluators who are social workers or psychologists)	Yes	Parties	No
ID IC § 32-704	Discretionary	Atty	Atty	No	Parties or County	No
IL <i>Stat Def</i> 750 ILCS 5/506 (2006)	Discretionary	Hybrid or GAL or Atty	Atty or Gov't Atty	Yes	Parties	Yes by County
IN <i>Stat Def</i> IN ST § 31-15-6-1 & IN ST § 31-17-6-1	Discretionary	GAL	Atty or CASA trained	Yes	Parties	Atty- No
IA I.C.A. § 598.12	Discretionary	Atty GAL	Atty	No	Parties or County	No
KS <i>Stat Rule 100</i> Ad Order No. 100	Discretionary	GAL	Atty	Yes	Parties or County	Yes
KY <i>Stat Def</i> Ky code 403.090	Discretionary	GAL (friend of court)	Atty	No	Parties or County	Yes by County
LA LSA-RS 9:345 (2001)	Required if Abuse	Atty	Atty	Yes	Parties or Pro Bono Atty	No
ME 19-A M.R.S. § 1507 (2000) <i>Stat Rules</i>	Discretionary	GAL	Atty or other Professional	Yes	Parties	Yes
MD MD Family § 1-202	Discretionary	Atty ----- GAL (case law)	Atty ----- Atty	No	Parties	No
MA MGLA 215 § 56A	Discretionary	GAL	Atty or "disinterested person" (case law)	Yes	Parties or State	No
MN MSA § 518.165 <i>Stat Def</i> Sct Rule 901 et	Required if Abuse	GAL	Sct Rule 902 has qualifications, can be lawyer or non-lawyer	No	Parties or State	Yes

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
MS 93-11-65(4)	Required if Abuse	GAL	Atty or other professional	No	Parties or County	Atty=No Other=Yes
MO Mo St 452.423 <i>Stat Def</i>	Required if Abuse	GAL	Atty or CASA	Yes	Parties or State	Yes
MT MT ST 40-4-205 <i>Stat Def</i>	Discretionary	GAL	Atty or other	No	Parties or Fees Waived	No (pending)
NE RRS Neb §42-358	Discretionary	Atty (protect interest) Investigate & call witness ----- GAL (case law)	Atty ----- Atty	Yes	Parties or County	No
NV No Statute	Discretionary	GAL	Atty or other professional	Yes	Parties or County	No
NH RSA 461-A:16 <i>SCJ Rules</i>	Discretionary	GAL	Atty "except in extraordinary circumstances"	Yes	Parties or State	Yes
NJ NJ § 9:2-4 SCJ Rule 5:8A & B	Discretionary	Atty (Best Interest) ----- GAL	Atty ----- Atty, SW, mental health	Yes	Parties	No
NM NM §40-4-8 <i>Stat Def</i>	Discretionary	GAL	Atty	No	Parties	No
NY* NY CLS Fam Ct §249 <i>App Div 3rd Dept Rule 835.2</i>	Discretionary	Atty (Law Guardian) ----- GAL	Atty ----- Atty or Gov't Atty	Yes	Parties or Indigent Fund or Gov't	Yes
NC** NC St Rules Civ Proc. § 1A-1, Rule 17	Discretionary	GAL	Does not specify (except if abuse, use atty)	No	Parties	No
ND ND Code § 14-09-06.4 <i>Stat Def</i> SCJ Rule 8.7	Discretionary	GAL	Atty	Yes	Parties or County	Yes
OH <i>Stat Rules</i>	Discretionary	GAL or Atty for Child (12/05 Recommendation)	Atty or other	Yes	Parties	Yes by County
OK 43 OKL. St. Ann. § 107.3	Discretionary	GAL	Atty	Yes	Parties	No
OR OR ST § 107.425	Required if Minor Requests	Atty	Atty	No	Parties	No
PA <i>Stat Rules</i> Pa Rule CP 1915.11	Discretionary	Atty (in practice Atty, GAL or Hybrid)	Atty	Yes	No Statute	No

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
RI RI St S 15-5-16.2(c)	Discretionary	Atty ----- GAL	Atty ----- Does not specify	No ----- Quasi	Parties	No
SC SC Code § 20-7-1545 (eff 1/15/03) <i>Stat Def</i>	Discretionary	GAL	Atty or Layperson	No	Parties	Yes
SD** SD Codified L § 25-4-45.4	Discretionary	Atty (Best Interest)	Atty	Yes	Parties	No
TN TN Code 36-4-132	Discretionary	GAL	Does not specify (atty by practice)	Yes	Parties Or Fees Waived	Yes
TX TX Fam Code 107, 107.021	Required if in best interest	Atty (Atty Ad Litem (Ch Atty) & Amicus Atty (BI Atty)) ----- GAL	Atty ----- Atty or other Adult	Yes	Parties	Atty- Yes Other- Yes
UT UT ST §30-3-11.2 UT ST §78-7-45	Discretionary ----- Discretionary	Atty (Ch Atty) ----- Atty GAL (BI Atty)	Atty ----- Atty or Gov't Atty	Yes	Parties ----- State or Pro Bono	No ----- Yes
VT 15-1-3-§594 ----- 15-1-3-A-§ 669 <i>Fam Ct Rule 7</i>	Required if Minor is Witness ----- Discretionary	Atty ----- GAL	Atty ----- Atty	No	Parties	No

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON*	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
VA* VA CODE § 16.1-266	Required if Abuse	GAL or Atty for Child	Atty	No	Parties	Yes
WA RCWA § 26.12.175 26.09.220 Stat Def	Discretionary	GAL	Atty or other	Yes	Parties or County or Pro Bono	Yes
WV code § 48-11-302(b) ----- code § 48-11-302(a) W. Va Trial Ct Rule 21.01	Required if abuse alleged unless certain conditions present	Atty (Ch Atty) ----- GAL	Atty ----- does not specify	Yes	Parties	No
WI Wis. Stat § 767.407 Stat Def	Required if contested unless certain conditions present	GAL	Atty	Yes	Parties or County	Yes
WY** Wy stat 14-3-211	Required if Abuse	Hybrid (BI)	Atty	Yes	Parties	No

CODE:

- *Role of Appointed Person
 GAL = Guardian ad Litem – reports to the court what is in the “best interests” of the child.
 Atty = Typical attorney tasks but “client” varies between Child and “Best Interests”
 Hybrid = Child representative has elements of both the GAL (best interest) role and the attorney role (advocate for the child).
 **Jurisdictions without a specific statute relating to appointment of attorneys and/or GALs in their domestic relations code. These jurisdictions use the child protection or general defense of infant’s statutes to appoint attorneys and/or GALs.
 Stat Def= Jurisdictions having a definition of the roles and responsibilities of the attorney and/or GAL in the statute
 Stat Rule= Jurisdictions having specific codes or rules related to the duties, responsibilities, and obligations of an attorney or GAL for minor.
- Discretionary = Appointment within judge’s complete discretion.
- Required = Appointment required in all cases; also allows discretionary appointment if the factors for mandatory appointment are not met.
- Abuse = Child abuse or neglect alleged or shown (standards vary by state).
- Atty = Private or legal service or pro bono attorney.
- Other Professional = Psychologists, social workers, or CASAs.
- Gov’t Atty = Attorney employed by a state or county office.

? Kimberly Bryan
#6

In Opposition to Proposed HB 1275 "Civil Custody Guardians"

Expert testimony has played a significant role in child custody cases, usually in the form of child custody evaluations and assessments.

Child custody evaluations are customarily performed by mental health professionals with specialized experience and training to assess the fit between a child's developmental, social, physical & emotional needs with the parent's relative ability to meet those needs.

This proposed Bill is, in the view of the Family Law Council, intending to replace a formal forensic custody assessment or evaluation with something else.

Guardian or Expert?

This Bill provides that a C C G can be appointed "*in actions for custody and visitation...*" which indicates it applies only in Chapter 50 child custody actions, and not to any other actions which involve a minor child, such as juvenile law or domestic violence.

This Bill goes on to say, "*the Court may...appoint an individual to serve the court...*" The language *to serve the Court* makes the C C G the Court's expert, not a "guardian." Guardian ad litem, appointed per Rule 17 or Chapter 35, serve the interest of the minor or incompetent, not the Court.

GAL are appointed to stand in place of minor children in all civil actions... The role of the GAL is to defend on behalf of the minor child, and to protect the interest of the minor at every stage of the proceeding. In re Papathanassiou (February 2009 COA).

The title of this proposed Bill is even confusing: "Civil Custody Guardians." A person acting in the capacity as this Bill provides is not a "guardian" if he or she is "serving the Court." The court is the client, not the child.

→ Rationale.

The recommendations of a person tasked with assessing a family exert considerable influence. Many Courts give significant weight to the opinions of such persons and many do so without much of a challenge to the evaluator's recommendations.

Given the critical importance of these evaluations, it is essential that they be performed with regard for scientific methods, knowledge of behavioral science research, ethical standards and professional practice guidelines and be without bias, preconceived opinions and devoid of political agenda. These evaluations must be transparent and open to challenge.

That said, not every child custody case needs the input of an evaluator. In many cases, a Judge is the most effective person to shift through the competing issues

to make an effective child custody determination. Practically speaking, Judges are overworked and overburdened. If it is the intention of this proposed Bill to offer a judicial delegation of duty to a third party, the Family Law Council is in opposition.

Existing Law and Procedure.

The position of the Family Law Council is that all the tools necessary to get reliable, relevant information about child custody issues in front of the Court currently exist.

Rule 706: Court Appointed Experts. For instance, Rule 706 of the North Carolina Rules of Evidence specifically provides for the appointment of an expert. Rule 706 specifically permits much of the same authority as is provided to a C C G; but, importantly, also specifically provides for the necessary due process of disclosure, deposition and cross-examination, which, thus far, is lacking in this proposed Bill.

Disclosure of Expert Opinion. To further safeguard the nature of expert testimony and the rights of litigants, Rules 702, 703, 704 and 705 of the NC Rules of Evidence offer a myriad of protections to ensure, inasmuch as possible, the veracity, reliability, relevance and transparency of the expert's opinion and/or testimony.

GALs and Referees. In addition, Rule 53 of the NC Rules of Civil Procedure authorizes the use of Referees and Rule 17 authorizes the use of GALs.

Case Law. For over 70 years, the standard for admissibility of expert testimony in North Carolina has been governed by the parameters set out in Frye vs. United States. The Frye test permits the admission of evidence when it has achieved "generalized acceptance in the scientific field." Frye is dovetailed by the requirements of Rule 702, which provides that in order for an expert testimony to be admissible, a) the expert must be qualified; b) the opinion must be reliable; c) the testimony must be relevant, and d) must convey specialized information which is helpful to an understanding of the issues.ⁱ

Model Standards. There is already in existence a huge body of research, data, journals, books and resources on child custody evaluation. Guidelines are in place concerning such assessments. For instance, there are two sets of guidelines that are carefully put together, refined over time as the practice matures and society changes. One is from the American Psychological Association entitled "Guidelines for Child Custody Evaluations in Family Law Proceedings," and the other is from the Association of Family and Conciliation Courts entitled "Model Standards of Practice for Child Custody Evaluation."

It would seem that this proposed Bill tasks the Conference of Chief District Court Judges to reinvent the wheel where all the tools needed to provide outside assistance to a Court are already available.

Qualifications.

This proposed Bill provides that a C C G can be an "attorney, a mental health professional or any other individual with appropriate training and qualifications."

The Council has many concerns about the competence of persons who may be designated to “investigate, report and make recommendations” about child custody issues. To be competent, an evaluator in the child custody field needs a solid background in spotting and analyzing:

- family dynamic systems
- attachment theory
- alienation
- reconciliation
- character disorders
- DV
- sexual abuse, physical abuse, emotional abuse
- estrangement
- race, religion
- cultural issues
- gender issues
- sexual orientation
- alcohol & drug use
- addictions
- child developmental stages
- behavioral theory
- mental health issues
- suggestability, loyalty issues
- interviewing techniques
- clinical assessment and testing.

These are all big topics – and this is a VERY small list of the big topics – but each one of these issues are nuanced. It takes something more, *someone* more, than a person with a checklist, a 40-hour course, and a credential to pull all of the variables together in an interrelated, differentially analyzed assessment and to make a neutral report to a Court.

A typical child custody evaluation is an assessment that is comprised of many components, including:

- definition of the scope of the evaluation;
- forensic interview techniques;
- psychological testing with objective & self-report measures;
- direct observation of parent-child interactions;
- interviews with collateral sources & review of relevant records & documents.

These components are included in sub-section (c) of the proposed Bill: interviewing children, interviewing the parties, interviewing other persons, obtaining documents and conferring with counsel. This Bill either permits a child custody evaluation by individuals without the tools necessary to competently undertake the assignment or is unnecessary because the tools already exist – and currently exist in a way that safeguards the parties and the children while providing ample assistance to a Court. For example, not just anyone can appropriately interview a child. It takes training, skill and very specialized experience. Pragmatically speaking, a Judge does

not need to appoint a third person to interview a child to glean his or her wishes when a Judge is just as capable of doing that as a C C G.

There are already in existence comprehensive studies, guidelines, abstracts, books, journals and much research and debate about reliable, relevant, competent child custody assessments. There is a plethora of information on this subject because it is complex, and is both scientific and subjective. This Bill appears to short circuit all that.

Transparency.

This proposed Bill, provides that the C C G “*shall make independent and informed recommendations to the Court in the form of a written report.*”

The requirement that the report be in writing is problematic if it allows ex parte, private, communication between the evaluator and the Court without the report first being subject to examination and deposition with the underlying research, data, opinions and conclusions all subject to review, analysis, critique and challenge.

The phrase “independent” is concerning as it is ill-defined. Independent from what? Independent, meaning unfettered authority? Independent, as in neutral?

A report containing recommendations about a parent, custody placement, time share, restrictions, limitations and any other aspect of a child custody opinion must be transparent and open to complete review and challenge before it is offered to a Court.

Helping Children and Families.

The proponents of this Bill try to make a case that a C C G “helps children,” “helps families” and/or “assists a Judge.” With all due respect, that position is naïve. All the tools to help families, help children and assist Judges are already available without this additional Legislation.

Limited scope assessments, summary evaluations, short evaluations, team evaluations – all can be accomplished under the present system. All the tools are available for gathering the requisite information to assist a Court in making a child custody determination. This is true in all sorts of cases: relocation cases; high-conflict cases; single-issue dispute cases. For instance, I have sought and received Court-appointed evaluators to analyze family situations involving a single issue: whether a child should attend public or private school. On the other hand, I have received Court-appointed experts in a complex case involving a) Mom’s treating therapist; b) Dad’s treating therapist; c) the children’s treating therapist; d) special needs coach; e) forensic expert to provide testimony to the Court while protecting the therapeutic relationship of all treating therapists; f) a therapist to coordinate all the therapists; and g) a PC.

This proposed Bill is more likely to foster a cottage industry of ill-equipped individuals, however well-meaning, who do more harm to families at a time when the family is in enormous stress and conflict.

Ethical Considerations.

A notable absence from the proposed Bill is any mention of ETHICS. The Bill potentially carves out a new sub-specialty of some form of professional practice without any ethical considerations, guidelines or models. If a lawyer is acting as a CCG, for instance, the lawyer really isn't acting in his or her traditional "lawyer" role. The lawyer is a court-appointed evaluator. What ethical standards govern? If a Ph.D psychologist is acting as a CCG, is that individual governed by the APA's Ethical Principles and Code of Conduct for Psychologists? What about "any other individual" who may or may not have a license or a credential with an associated ethical code of conduct. A C C G has *immunity* but no boundaries.

Compensation.

Another practical concern is COMPENSATION. Who pays? AOC? The parties? I read this Bill as implementing a statute that provides for the appointment of a court-appointed expert and leaves the 'compensation' piece to be hammered out at some later time by the Conference of Chief District Court Judges. However, Rule 706 already deals with compensation of expert witnesses.¹

Uniformity?

Among other details to be implemented by the Conference of Chief District Court Judges are "local rules for the appointment of C C G."

This raises some question of uniformity across the State. Is Wake County, for instance, going to implement a set of local rules different from Orange County? Why should that be permitted when there already exists a large body of jurisprudence, rules, ethical guidelines, and an enormous amount of research and data underlying the law, rules and ethical considerations that is uniform?

Immunity.

This proposed Bill makes one thing crystal clear. The C C G has immunity and cannot be sued for acts of ordinary negligence. This provision concerns the Council. It appears suspect and self-serving.

This legislation is simply not needed. The resulting harm that is more likely to occur outweighs any benefit that may arise.

¹ Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation for the taking of property. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs. Rule 706(b).

ⁱ Howerton v. Arai Helmet Ltd. holds that North Carolina is a “Frye” State. Howerton also says: The most recent North Carolina case from this Court to comprehensively address the admissibility of expert testimony under Rule 702 is *State v. Goode*, 341 N.C. 513, 461 S.E.2d 631 (1995), which set forth a three-step inquiry for evaluating the admissibility of expert testimony: (1) Is the expert's proffered method of proof sufficiently reliable as an area for expert testimony? *Id.* at 527-29, 461 S.E.2d at 639-40. (2) Is the witness testifying at trial qualified as an expert in that area of testimony? *Id.* at 529, 461 S.E.2d at 640. (3) Is the expert's testimony relevant? *Id.* at 529, 461 S.E.2d at 641.

In the first step of the *Goode* analysis, the trial court must determine whether the expert's method of proof is sufficiently reliable as an area for expert testimony. *Id.* at 527-29, 461 S.E.2d at 639-40. As discussed in *Goode*, the requirement of reliability is nothing new to the law of scientific and technical evidence in North Carolina and, indeed, pre-dates the federal court's adoption of the *Daubert* standard. *See id.*; *see also State v. Pennington*, 327 N.C. 89, 98, 393 S.E.2d 847, 852 (1990) (“A new scientific method of proof is admissible at trial if the method is sufficiently reliable.”); *Bullard*, 312 N.C. at 149-53, 322 S.E.2d at 381-84, (discussing factors relevant in determining whether scientific methods in their infancy are reliable); *State v. Crowder*, 285 N.C. 42, 53, 203 S.E.2d 38, 46 (1974) (expert testimony based on scientific tests “competent only when shown to be reliable”), *vacated in part on other grounds*, 428 U.S. 903, 49 L. Ed. 2d 1207 (1976).

Under *Goode*, to determine whether an expert's area of testimony is considered sufficiently reliable, “a court may look to testimony by an expert specifically relating to the reliability, may take judicial notice, or may use a combination of the two.” 341 N.C. at 530, 461 S.E.2d at 641. Initially, the trial court should look to precedent for guidance in determining whether the theoretical or technical methodology underlying an expert's opinion is reliable. Although North Carolina does not exclusively adhere to the *Frye* “general acceptance” test, *Pennington*, 327 N.C. at 98, 393 S.E.2d at 852, when specific precedent justifies recognition of an established scientific theory or technique advanced by an expert, the trial court should favor its admissibility, provided the other requirements of admissibility are likewise satisfied. *See, e.g., State v. Williams*, 355 N.C. 501, 553-54, 565 S.E.2d 609, 640 (2002) (recognizing the admissibility of DNA evidence and upholding its use as the basis of an opinion by a properly qualified expert in forensic DNA analysis), *cert. denied*, 537 U.S. 1125, 154 L. Ed. 2d 808 (2003); *Goode*, 341 N.C. at 530-31, 461 S.E.2d at 641-42 (reliability of bloodstain pattern interpretation supported in part by prior appellate acceptance of such technique in North Carolina and other jurisdictions); *State v. Barnes*, 333 N.C. 666, 680, 430 S.E.2d 223, 231 (1993) (recognizing the long-established admissibility of the results of blood group testing for identification purposes), *cert. denied*, 510 U.S. 946, 126 L. Ed. 2d 336 (1993); *Pennington*, 327 N.C. at 100, 393 S.E.2d at 854 (finding persuasive authority in other jurisdictions' acceptance of DNA profiling); *State v. Rogers*, 233 N.C. 390, 397-98, 64 S.E.2d 572, 578 (1951) (recognizing that fingerprint evidence is an established and reliable method of identification), *overruled on other grounds by State v. Silver*, 286 N.C. 709, 213 S.E.2d 247 (1975). *Howerton v. Arai Helmet Ltd.*, 358 N.C. 440, 597 S.E.2d 674 (2004).

Rule 706. Court appointed experts.

(a) Appointment. – The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation. – Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation for the taking of property. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of appointment. – In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' experts of own selection. – Nothing in this rule limits the parties in calling expert witnesses of their own selection. (1983, c. 701, s. 1.)

#7
LISA passed out

DRAFT
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009
FOR REVIEW ONLY

H

D

BILL DRAFT 2009-LUF-1 [v.5] (11/14)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

3/2/2009 3:48:47 PM

Short Title: Establish Civil Custody Guardian Program.

(Public)

Sponsors: Representative Insko.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE CIVIL CUSTODY GUARDIAN PROGRAM.
3 The General Assembly of North Carolina enacts:
4 SECTION 1. Chapter 50 of the General Statutes is amended by adding a
5 new Article to read:

6 "Article 6.

7 "Civil Custody Guardians.

8 "**§ 50-110. Definitions.**

9 The following definitions apply in this Article:

- 10 (1) Civil custody guardian. – An impartial person appointed by the court
11 to make recommendations to the court regarding the best interests of a
12 minor child in a contested custody proceeding and who meets the
13 qualifications under G.S. 50-112.
14 (2) Minor child. – A person who is less than 18 years of age and is not
15 married or legally emancipated.

16 "**§ 50-111. Appointment of civil custody guardian; length of service.**

17 (a) In a contested custody proceeding under Article 1 of this Chapter in which a
18 minor child is involved, the court may appoint a civil custody guardian. The court may
19 appoint the civil custody guardian at the appointment conference, or sooner upon
20 agreement of the parties, if the parties to the proceeding waived mediation or the
21 mediation failed to result in a parenting agreement and the court finds that it is in the
22 best interest of the child to appoint a civil custody guardian.
23 Every effort shall be made to enter the order upon the consent of the parties.

24 (b) In determining whether to appoint a civil custody guardian, the court may
25 consider the following:

- 26 (1) The wishes of the parties.
27 (2) The age of the child.



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- (3) The nature of the proceeding, including the contentiousness of the hearing.
- (4) The financial resources of the parties.
- (5) The extent to which a civil custody guardian may assist in providing information concerning the best interest of the child.
- (6) Whether the family has experienced a history of domestic violence.
- (7) Abuse of the child by one of the parties.
- (8) Any other factors the court deems relevant.

If the court determines that a civil custody guardian should be appointed, the court shall enter an order of appointment.

(c) The order appointing a civil custody guardian shall specify the issues the civil custody guardian is directed to assist the parties in resolving and deciding. The order may also incorporate any agreement made by the parties regarding the role of the civil custody guardian. Notwithstanding the appointment of a civil custody guardian, the court shall retain exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

(d) The parties shall select a civil custody guardian from a list maintained by the district court. If the parties cannot agree on a civil custody guardian, the court shall select a civil custody guardian from the list. The court shall complete and give to the civil custody guardian a referral form listing contact information for the parties and their attorneys, the court's findings in support of the appointment, and any agreement by the parties.

(e) The civil custody guardian is released from the civil custody guardian's duties upon completing responsibilities under G.S. 50-113, submitting a report to the court, and submitting the report to the parties' attorneys or any pro se party.

"§ 50-112. Qualifications of civil custody guardian.

(a) To be eligible to be included on the district court's list of civil custody guardian, a person shall meet all of the following qualifications:

- (1) Hold a masters or doctoral degree in psychology, law, social work, counseling, medicine, or a related subject area.
- (2) Have at least five years of related professional post-degree experience.
- (3) Hold a current license in the civil custody guardian's area of practice, if applicable.
- (4) Participate in 24 hours of training in topics related to the role and responsibilities of the civil custody guardian; methods of performing the investigation; ethical obligations of the civil custody guardian; recognition and assessment of the child's best interests; developmental stages of children; family dynamics and dysfunction; recognition of cultural and economic diversity in families; awareness of biases; the stages and effects of divorce; mediation techniques; domestic violence and substance abuse; and awareness of available services for child welfare, family preservation, medical, mental, health, educational and

1 special needs, including placement, evaluation, and diagnostic
2 treatment services.

3 (b) In order to remain eligible as a civil custody guardian, the person shall also
4 attend civil custody guardian seminars that provide continuing education, group
5 discussion, and peer consultation and support.

6 (c) A person who has been a party in custody litigation within the last three years
7 from the date the appointment is sought may not be appointed as a civil custody
8 guardian.

9 **"§ 50-113. Responsibilities of civil custody guardian.**

10 (a) The civil custody guardian shall represent the best interests of the child and
11 assist the court and the parties in reaching a decision regarding child custody, visitation,
12 or other child-related issues. The responsibilities of the civil custody guardian shall be
13 specified in the court order appointing the civil custody guardian and may include any
14 of the following:

15 (1) Investigating issues related to child custody or visitation.

16 (2) Interviewing the child, if the child is age appropriate, parties and
17 collaterals, teachers, health care providers, and others as deemed
18 necessary.

19 (3) Reviewing school, medical or health, local department of social
20 services records or any other relevant records.

21 (4) Visiting the home of the child or the prospective home.

22 (5) Assisting in mediating between the parties what is in the best interest
23 of the minor child.

24 (6) Making recommendations to the court.

25 (7) Requesting a review of the case.

26 (8) Scheduling a joint or separate, final summary conference with the
27 parties' attorneys or other party, if the party is acting pro se.

28 (9) Any other responsibilities the court deems appropriate, including the
29 ability to request the appointment of an expert, which expert's fees
30 shall be paid by the parties.

31 (b) The civil custody guardian shall not provide counseling, including acting as
32 an attorney, therapist, parenting coordinator, or visitation supervisor, to the parties or
33 the minor child. The civil custody guardian shall refer financial issues to the parties'
34 attorneys.

35 **"§ 50-114. Fees.**

36 (a) The civil custody guardian shall be entitled to reasonable compensation from
37 the parties for services rendered. The fee shall be shared equally by the parties unless
38 otherwise directed by the court. The civil custody guardian may request a hearing in the
39 event of a fee dispute.

40 (b) The court may make the appointment of a civil custody guardian contingent
41 upon the parties' payment of a specific fee to the civil custody guardian. The civil
42 custody guardian shall not begin any duties until the fee has been paid.

43 **"§ 50-115. Meetings and communications.**

(a) Meetings between the civil custody guardian and the parties may be informal and ex parte. Communications between the parties and the civil custody guardian are not confidential. The civil custody guardian may contact or meet with a parent individually without the consent of the parent's attorney and may communicate with one attorney without the express consent of the other attorney. During various points in the case, the civil custody guardian may make recommendations to the parties and their attorneys concerning the child's best interest. The civil custody guardian and the court shall not engage in any ex parte communications.

(b) If upon the civil custody guardian's request an expert is appointed, any communication between the civil custody guardian and the court-appointed expert shall be simultaneously communicated to the parties' attorneys, including any written information or documents that the civil custody guardian may provide to the expert.

"§ 50-116. Reports.

(a) The civil custody guardian shall submit a written report to the attorneys for the parties no later than two weeks before trial. Unless ordered by the court, the civil custody guardian shall not release the report to the minor child or persons other than the parties or their attorneys. The report shall include issues the civil custody guardian investigated and any findings and recommendations concerning the child's best interest. The civil custody guardian shall disclose all sources of information reported.

(b) Notwithstanding any confidential information provided to the civil custody guardian during the course of the appointment, the parties shall retain the right to petition the court to determine whether the confidential information and records reviewed by the civil custody guardian should be released to the court or to the parties.

"§ 50-117. Appearance at trial; civil custody guardian testimony.

The civil custody guardian may testify at trial. However, absent consent from the civil custody guardian to appear and testify at trial, the party seeking to subpoena the civil custody guardian shall obtain court approval before the subpoena is issued. The court may require prepayment of the civil custody guardian as a condition of the civil custody guardian's appearance at trial pursuant to the subpoena.

"§ 50-118. Modification or termination of civil custody guardian appointment.

(a) For good cause shown, the court may terminate or modify the civil custody guardian appointment upon motion of either party at the request of the civil custody guardian, upon the agreement of the parties and the civil custody guardian, or by the court on its own motion. Good cause includes any of the following:

- (1) Lack of reasonable progress over a significant period of time despite the best efforts of the parties and the civil custody guardian.
- (2) A determination that the parties no longer need the assistance of a civil custody guardian.
- (3) Impairment on the part of a party that significantly interferes with the party's participation in the process.
- (4) The civil custody guardian is unable or unwilling to continue to serve.

(b) If the parties agreed to the appointment of the civil custody guardian under G.S. 50-111(a), the court may terminate or modify the appointment according to that agreement or according to a subsequent agreement by the parties.

1 **"§ 50-119. Civil custody guardian immunity.**

2 A civil custody guardian shall not be liable for damages for acts or omissions of
3 ordinary negligence arising out of that person's duties and responsibilities as a civil
4 custody guardian. This section does not apply to actions arising out of the operation of a
5 motor vehicle."

6 **SECTION 2.** This act is effective when it becomes law, and applies to
7 contested custody proceedings initiated on or after that date.

CIVIL CUSTODY GUARDIANS

A VIEW FROM THE BENCH

**A. ELIZABETH KEEVER
CHIEF DISTRICT COURT JUDGE
CUMBERLAND COUNTY
CHAIR, CHIEF JUSTICE'S FAMILY COURT
ADVISORY COMMITTEE**

FEBRUARY 4, 2010

In preparation for this hearing, I have surveyed the Chief District Court Judges in the 42 District Court Districts. Most do not have a formalized custody guardian program. All recognize the ability to appoint a GAL pursuant to case law under Rule 17 of the Rules of Civil Procedure. The Chiefs agree that this is done in a very small number of cases and should continue to be done in the discretion of the Judge. In most districts, this is only done in high conflict cases or in cases where there is a significant conflict in the evidence. All the judges agree that this is not a service that should be paid for with state funds but one for which the parties should be responsible. Some judges have suggested that it should be more appropriately titled a custody investigator than a custody guardian.

1. Qualifications and certification of guardians

Most judges are using attorneys as GALs in custody cases. Some are using mental health professionals. A few have been able to use GALs trained by the AOC Juvenile Guardian ad litem program on a volunteer basis.

Generally, we do not recommend the use of juvenile GALs because most districts do not have a sufficient number of GALs to cover all of the juvenile cases.

2. Responsibilities of guardians

The primary responsibility of the guardian is to investigate and present information about the best interest of the child. Unlike the GAL Attorney Advocate in juvenile court, the

guardian does not represent the child and does not present evidence or question witnesses.

The guardian needs to be able to talk with the child outside the presence of the parents or attorneys and to interview the parents, teachers, medical providers and other persons with knowledge of the circumstances of the child.

The guardian should have the right and authority, as do juvenile guardians, "to obtain any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case" (7B-601(c)).

There is no consensus on whether a guardian should make a recommendation as to the ultimate decision on who should have primary custody or how secondary custody or visitation should be established.

There is consensus that the responsibilities should be established on a case by case basis and that the order of appointment should set out what those responsibilities are.

There is also consensus that the guardian should prepare a written report which the attorneys should receive prior to trial.

3. Compensation of guardians

Guardians should be paid by the parties. The Court may elect to direct an unequal division of the costs between the parties.

Generally, the parties are required to pay a portion of the fees prior to the guardian beginning work on the case.

One of the reasons that judges sometimes order the appointment of a guardian in custody cases is because the parties cannot afford the cost of a full custody evaluation.

4. Appointment and retention procedures for guardians

Guardians are appointed by the court in each individual case.

Most judges release the guardian from the case upon the entry of a final order. Unlike Parenting Coordinators, guardians do not continue in the cases indefinitely.

5. Other

Guardians should not be subject to civil liability for their work in these cases. See 7B-1204.

Civil Custody Guardians

Cheryl Howell
School of Government
February 4, 2010

HB 1275

Civil Custody Guardian Program

- Court can appoint "civil custody guardian" in action for custody/visitation
- Can be attorney, mental health professional or other
- Role
 - Investigate, report and make recommendations to the court; confer with counsel for parties
 - Interview parties, child and witnesses
 - Obtain documentary evidence
- Costs assessed to parties?

Present Law

- Court can appoint Guardian ad Litem in child custody case pursuant to Rule 17(b)(3), North Carolina Rules of Civil Procedure
 - *Van Every v. McGuire*, 125 NC App 578 (1997)
- Rule 17(b)(3) authorizes court to appoint GAL in any civil case for a minor or incompetent "when it is deemed by the court in which the action is pending expedient to have the infant, insane or incompetent person so represented."

"Guardian" vs "Guardian ad Litem"

GUARDIANS

- *G.S. Chapter 35A*
 - Guardian of the Estate
 - Guardian of the Person
 - Court cannot name guardian for children with parents
- *Juvenile Disposition*
 - GS 7B-600
 - Court placement of juvenile with guardian

Caretakers

GUARDIAN AD LITEMS

- *G.S. Chapter 7B Juvenile Abuse and Neglect Proceedings*
 - Children must have GAL
 - Minor parents must have GAL
- *General Civil Proceedings*
 - Rule 17, Rules of Civil Procedure: Incompetent parties must have GAL
 - Civil Child Custody Cases

Representatives during legal proceedings

2 Types of Guardian ad Litem

Chapter 7B Juvenile Proceedings

- GAL 'represents' the juvenile: GS 7B-601
- GAL is not a lawyer
- Attorney advocates appointed as legal counsel for GAL
- GAL program administered by Administrative Office of the Courts

"Paid by the State"

Rule 17 Civil GAL

- 'Represents' incompetent parties
- May be a lawyer or not
- Party also may have legal counsel
- *Van Every v. McGuire*, 125 NC App 578 (1997)
 - Court may appoint GAL for child in civil custody case

"Paid by Parties"

Van Every v. McGuire

- Rule 17 GAL authorized by trial court to:
 - Receive and review documents
 - Investigate and determine facts, present facts to court
 - Represent child's interests in court hearings
 - Collect and present reports and evaluations concerning the child to the court
- Rule 17 GAL is to "insure that child's interests are adequately investigated and presented to the court"
 - *West v. Marko*, 141 NC App 688 (2001)

Mecklenburg County Local Rule

- › GAL Attorney and Custody Advocate Program
- › Both represent best interest of child
- › Appointed when "necessary in light of particular circumstances of the case"
- › "Team acts as investigators and facilitators of services in an attempt to resolve conflicts outside the courtroom and promote effective co-parenting"
- › Court uses Council for Children's Rights
 - Volunteers and sliding scale fee

Parenting Coordinators GS 50-91, et. seq

- › Appointed when court finds:
 - Case is high-conflict
 - Best Interest of child requires coordinator
 - Parties have ability to pay for service
- › Role is to help parents implement court-ordered parenting plan
 - Facilitate cooperation
 - Make decisions pending court intervention

Rule 706. Court appointed experts.

(a) Appointment. – The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation. – Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation for the taking of property. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of appointment. – In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' experts of own selection. – Nothing in this rule limits the parties in calling expert witnesses of their own selection. (1983, c. 701, s. 1.)

In Opposition to Proposed HB 1275 "Civil Custody Guardians"

Expert testimony has played a significant role in child custody cases, usually in the form of child custody evaluations and assessments.

Child custody evaluations are customarily performed by mental health professionals with specialized experience and training to assess the fit between a child's developmental, social, physical & emotional needs with the parent's relative ability to meet those needs.

This proposed Bill is, in the view of the Family Law Council, intending to replace a formal forensic custody assessment or evaluation with something else.

Guardian or Expert?

This Bill provides that a C C G can be appointed "*in actions for custody and visitation...*" which indicates it applies only in Chapter 50 child custody actions, and not to any other actions which involve a minor child, such as juvenile law or domestic violence.

This Bill goes on to say, "*the Court may...appoint an individual to serve the court...*" The language *to serve the Court* makes the C C G the Court's expert, not a "guardian." Guardian ad litem, appointed per Rule 17 or Chapter 35, serve the interest of the minor or incompetent, not the Court.

GAL are appointed to stand in place of minor children in all civil actions... . The role of the GAL is to defend on behalf of the minor child, and to protect the interest of the minor at every stage of the proceeding. In re Papathanassiou (February 2009 COA).

The title of this proposed Bill is even confusing: "*Civil Custody Guardians.*" A person acting in the capacity as this Bill provides is not a "guardian" if he or she is "serving the Court." The court is the client, not the child.

Rationale.

The recommendations of a person tasked with assessing a family exert considerable influence. Many Courts give significant weight to the opinions of such persons and many do so without much of a challenge to the evaluator's recommendations.

Given the critical importance of these evaluations, it is essential that they be performed with regard for scientific methods, knowledge of behavioral science research, ethical standards and professional practice guidelines and be without bias, preconceived opinions and devoid of political agenda. These evaluations must be transparent and open to challenge.

That said, not every child custody case needs the input of an evaluator. In many cases, a Judge is the most effective person to shift through the competing issues

to make an effective child custody determination. Practically speaking, Judges are overworked and overburdened. If it is the intention of this proposed Bill to offer a judicial delegation of duty to a third party, the Family Law Council is in opposition.

Existing Law and Procedure.

The position of the Family Law Council is that all the tools necessary to get reliable, relevant information about child custody issues in front of the Court currently exist.

Rule 706: Court Appointed Experts. For instance, Rule 706 of the North Carolina Rules of Evidence specifically provides for the appointment of an expert. Rule 706 specifically permits much of the same authority as is provided to a C C G; but, importantly, also specifically provides for the necessary due process of disclosure, deposition and cross-examination, which, thus far, is lacking in this proposed Bill.

Disclosure of Expert Opinion. To further safeguard the nature of expert testimony and the rights of litigants, Rules 702, 703, 704 and 705 of the NC Rules of Evidence offer a myriad of protections to ensure, inasmuch as possible, the veracity, reliability, relevance and transparency of the expert's opinion and/or testimony.

GALs and Referees. In addition, Rule 53 of the NC Rules of Civil Procedure authorizes the use of Referees and Rule 17 authorizes the use of GALs.

Case Law. For over 70 years, the standard for admissibility of expert testimony in North Carolina has been governed by the parameters set out in Frye vs. United States. The Frye test permits the admission of evidence when it has achieved "generalized acceptance in the scientific field." Frye is dovetailed by the requirements of Rule 702, which provides that in order for an expert testimony to be admissible, a) the expert must be qualified; b) the opinion must be reliable; c) the testimony must be relevant, and d) must convey specialized information which is helpful to an understanding of the issues.ⁱ

Model Standards. There is already in existence a huge body of research, data, journals, books and resources on child custody evaluation. Guidelines are in place concerning such assessments. For instance, there are two sets of guidelines that are carefully put together, refined over time as the practice matures and society changes. One is from the American Psychological Association entitled "Guidelines for Child Custody Evaluations in Family Law Proceedings," and the other is from the Association of Family and Conciliation Courts entitled "Model Standards of Practice for Child Custody Evaluation."

It would seem that this proposed Bill tasks the Conference of Chief District Court Judges to reinvent the wheel where all the tools needed to provide outside assistance to a Court are already available.

Qualifications.

This proposed Bill provides that a C C G can be an "attorney, a mental health professional or any other individual with appropriate training and qualifications."

The Council has many concerns about the competence of persons who may be designated to “investigate, report and make recommendations” about child custody issues. To be competent, an evaluator in the child custody field needs a solid background in spotting and analyzing:

- family dynamic systems
- attachment theory
- alienation
- reconciliation
- character disorders
- DV
- sexual abuse, physical abuse, emotional abuse
- estrangement
- race, religion
- cultural issues
- gender issues
- sexual orientation
- alcohol & drug use
- addictions
- child developmental stages
- behavioral theory
- mental health issues
- suggestability, loyalty issues
- interviewing techniques
- clinical assessment and testing.

These are all big topics – and this is a VERY small list of the big topics – but each one of these issues are nuanced. It takes something more, *someone* more, than a person with a checklist, a 40-hour course, and a credential to pull all of the variables together in an interrelated, differentially analyzed assessment and to make a neutral report to a Court.

A typical child custody evaluation is an assessment that is comprised of many components, including:

- definition of the scope of the evaluation;
- forensic interview techniques;
- psychological testing with objective & self-report measures;
- direct observation of parent-child interactions;
- interviews with collateral sources & review of relevant records & documents.

These components are included in sub-section (c) of the proposed Bill: interviewing children, interviewing the parties, interviewing other persons, obtaining documents and conferring with counsel. This Bill either permits a child custody evaluation by individuals without the tools necessary to competently undertake the assignment or is unnecessary because the tools already exist – and currently exist in a way that safeguards the parties and the children while providing ample assistance to a Court. For example, not just anyone can appropriately interview a child. It takes training, skill and very specialized experience. Pragmatically speaking, a Judge does

not need to appoint a third person to interview a child to glean his or her wishes when a Judge is just as capable of doing that as a C C G.

There are already in existence comprehensive studies, guidelines, abstracts, books, journals and much research and debate about reliable, relevant, competent child custody assessments. There is a plethora of information on this subject because it is complex, and is both scientific and subjective. This Bill appears to short circuit all that.

Transparency.

This proposed Bill, provides that the C C G “*shall make independent and informed recommendations to the Court in the form of a written report.*”

The requirement that the report be in writing is problematic if it allows ex parte, private, communication between the evaluator and the Court without the report first being subject to examination and deposition with the underlying research, data, opinions and conclusions all subject to review, analysis, critique and challenge.

The phrase “independent” is concerning as it is ill-defined. Independent from what? Independent, meaning unfettered authority? Independent, as in neutral?

A report containing recommendations about a parent, custody placement, time share, restrictions, limitations and any other aspect of a child custody opinion must be transparent and open to complete review and challenge before it is offered to a Court.

Helping Children and Families.

The proponents of this Bill try to make a case that a C C G “helps children,” “helps families” and/or “assists a Judge.” With all due respect, that position is naïve. All the tools to help families, help children and assist Judges are already available without this additional Legislation.

Limited scope assessments, summary evaluations, short evaluations, team evaluations – all can be accomplished under the present system. All the tools are available for gathering the requisite information to assist a Court in making a child custody determination. This is true in all sorts of cases: relocation cases; high-conflict cases; single-issue dispute cases. For instance, I have sought and received Court-appointed evaluators to analyze family situations involving a single issue: whether a child should attend public or private school. On the other hand, I have received Court-appointed experts in a complex case involving a) Mom’s treating therapist; b) Dad’s treating therapist; c) the children’s treating therapist; d) special needs coach; e) forensic expert to provide testimony to the Court while protecting the therapeutic relationship of all treating therapists; f) a therapist to coordinate all the therapists; and g) a PC.

This proposed Bill is more likely to foster a cottage industry of ill-equipped individuals, however well-meaning, who do more harm to families at a time when the family is in enormous stress and conflict.

Ethical Considerations.

A notable absence from the proposed Bill is any mention of ETHICS. The Bill potentially carves out a new sub-specialty of some form of professional practice without any ethical considerations, guidelines or models. If a lawyer is acting as a CCG, for instance, the lawyer really isn't acting in his or her traditional "lawyer" role. The lawyer is a court-appointed evaluator. What ethical standards govern? If a Ph.D psychologist is acting as a CCG, is that individual governed by the APA's Ethical Principles and Code of Conduct for Psychologists? What about "any other individual" who may or may not have a license or a credential with an associated ethical code of conduct. A C C G has *immunity* but no boundaries.

Compensation.

Another practical concern is COMPENSATION. Who pays? AOC? The parties? I read this Bill as implementing a statute that provides for the appointment of a court-appointed expert and leaves the 'compensation' piece to be hammered out at some later time by the Conference of Chief District Court Judges. However, Rule 706 already deals with compensation of expert witnesses.¹

Uniformity?

Among other details to be implemented by the Conference of Chief District Court Judges are "local rules for the appointment of C C G."

This raises some question of uniformity across the State. Is Wake County, for instance, going to implement a set of local rules different from Orange County? Why should that be permitted when there already exists a large body of jurisprudence, rules, ethical guidelines, and an enormous amount of research and data underlying the law, rules and ethical considerations that is uniform?

Immunity.

This proposed Bill makes one thing crystal clear. The C C G has immunity and cannot be sued for acts of ordinary negligence. This provision concerns the Council. It appears suspect and self-serving.

This legislation is simply not needed. The resulting harm that is more likely to occur outweighs any benefit that may arise.

¹ Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation for the taking of property. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs. Rule 706(b).

ⁱ Howerton v. Arai Helmet Ltd. holds that North Carolina is a “Frye” State. Howerton also says: The most recent North Carolina case from this Court to comprehensively address the admissibility of expert testimony under Rule 702 is *State v. Goode*, 341 N.C. 513, 461 S.E.2d 631 (1995), which set forth a three-step inquiry for evaluating the admissibility of expert testimony: (1) Is the expert’s proffered method of proof sufficiently reliable as an area for expert testimony? *Id.* at 527-29, 461 S.E.2d at 639-40. (2) Is the witness testifying at trial qualified as an expert in that area of testimony? *Id.* at 529, 461 S.E.2d at 640. (3) Is the expert’s testimony relevant? *Id.* at 529, 461 S.E.2d at 641.

In the first step of the *Goode* analysis, the trial court must determine whether the expert’s method of proof is sufficiently reliable as an area for expert testimony. *Id.* at 527-29, 461 S.E.2d at 639-40. As discussed in *Goode*, the requirement of reliability is nothing new to the law of scientific and technical evidence in North Carolina and, indeed, pre-dates the federal court’s adoption of the *Daubert* standard. *See id.*; *see also State v. Pennington*, 327 N.C. 89, 98, 393 S.E.2d 847, 852 (1990) (“A new scientific method of proof is admissible at trial if the method is sufficiently reliable.”); *Bullard*, 312 N.C. at 149-53, 322 S.E.2d at 381-84, (discussing factors relevant in determining whether scientific methods in their infancy are reliable); *State v. Crowder*, 285 N.C. 42, 53, 203 S.E.2d 38, 46 (1974) (expert testimony based on scientific tests “competent only when shown to be reliable”), *vacated in part on other grounds*, 428 U.S. 903, 49 L. Ed. 2d 1207 (1976).

Under *Goode*, to determine whether an expert’s area of testimony is considered sufficiently reliable, “a court may look to testimony by an expert specifically relating to the reliability, may take judicial notice, or may use a combination of the two.” 341 N.C. at 530, 461 S.E.2d at 641. Initially, the trial court should look to precedent for guidance in determining whether the theoretical or technical methodology underlying an expert’s opinion is reliable. Although North Carolina does not exclusively adhere to the *Frye* “general acceptance” test, *Pennington*, 327 N.C. at 98, 393 S.E.2d at 852, when specific precedent justifies recognition of an established scientific theory or technique advanced by an expert, the trial court should favor its admissibility, provided the other requirements of admissibility are likewise satisfied. *See, e.g., State v. Williams*, 355 N.C. 501, 553-54, 565 S.E.2d 609, 640 (2002) (recognizing the admissibility of DNA evidence and upholding its use as the basis of an opinion by a properly qualified expert in forensic DNA analysis), *cert. denied*, 537 U.S. 1125, 154 L. Ed. 2d 808 (2003); *Goode*, 341 N.C. at 530-31, 461 S.E.2d at 641-42 (reliability of bloodstain pattern interpretation supported in part by prior appellate acceptance of such technique in North Carolina and other jurisdictions); *State v. Barnes*, 333 N.C. 666, 680, 430 S.E.2d 223, 231 (1993) (recognizing the long-established admissibility of the results of blood group testing for identification purposes), *cert. denied*, 510 U.S. 946, 126 L. Ed. 2d 336 (1993); *Pennington*, 327 N.C. at 100, 393 S.E.2d at 854 (finding persuasive authority in other jurisdictions’ acceptance of DNA profiling); *State v. Rogers*, 233 N.C. 390, 397-98, 64 S.E.2d 572, 578 (1951) (recognizing that fingerprint evidence is an established and reliable method of identification), *overruled on other grounds by State v. Silver*, 286 N.C. 709, 213 S.E.2d 247 (1975). *Howerton v. Arai Helmet Ltd.*, 358 N.C. 440, 597 S.E.2d 674 (2004).

**PRESENTATION TO HOUSE SELECT COMMITTEE ON CIVIL
CUSTODY GUARDIANS ON FEBRUARY 4, 2010 BY JAY BRYAN**

Thank you, Co-Chairs Martin and Jackson and other members of the Committee for inviting me to speak to you on the topic of Civil Custody Guardians. On behalf of the Center for Cooperative Parenting, I also want to thank Representative Verla Insko for her tireless support and championing of legislation to authorize the use of Civil Custody Guardians state-wide.

By way of background, I have been practicing law for thirty-two years. A significant portion of my practice is concentrated in family law – child custody, equitable distribution, child support, juvenile delinquency and abuse and neglect. I have been a certified guardian ad litem in civil custody matters and a parent coordinator since 2001. I am certified as a mediator for Superior Court Civil Actions and for Mediation of Equitable Distribution and Other Family Court Actions. (My CV is at your place)

In Judicial District 15B, which covers Orange and Chatham Counties, District Court Judges began to appoint guardians ad litem, hereinafter referred to as “civil custody guardians,” in the 1990s. My first case involved a child whose father had murdered her mother at a daycare. From prison he made a request to have visitation with her. After interviewing him, visiting with his daughter and her maternal grandmother at their home on the coast of North Carolina, and talking with the child’s therapist, I recommended against visitation.

In the late 1990s, because of the perceived effectiveness of the role of civil custody guardians in reducing extended custody trials and conflict that placed children in the middle of their parents, a group of lawyers and professionals, led by Chief Judge Joseph Buckner, Judge Charles Anderson, co-chairs, Dr. Helen Brantley and Carol Holcomb, Judge Page Vernon, and Gretchen Aylsworth, then Executive Director of the Volunteer Guardian ad Litem program, codified local rules to govern the appointment of civil custody guardians. This group wanted to establish the Rules to avoid challenges to the civil custody guardian’s legal authority.

Under our Local Rules,(a copy of which is located at your place), Civil Custody Guardians (CCG) may be appointed in contested civil district court cases

involving custody and visitation disputes. They are appointed **before** an original custody order or a modification of a custody order is submitted to the court. Under our rules, CCG's are required to have a Masters degree or PhD in law, psychology and other fields, five years of experience in their field, 24 hours of training, and on-going peer review and seminars.

CCG's investigate the needs of the child in a custody dispute and make recommendations to the judge regarding what is in the child's best interest. They interview persons involved in the child's life and gather information and records from many sources to formulate a neutral and balanced picture of a child's needs in the family.

CCG's provide written reports to the judge and may be questioned by the court and the litigants. Custody orders are formulated after the CCG investigation and report is complete. CCG's are compensated by the parties in the contested custody or visitation case.

The professionals in our area, including Dr. Helen Brantley, a PhD psychologist who is director of the University of North Carolina Forensic Psychiatry Service and leader of hundreds of custody evaluations, and other researchers, have concluded that extended conflict around visitation and custody is highly detrimental to the long term physical and mental health of children.

Based on the experience of our local judges, mental health professionals and attorneys, District 15B has determined that the benefits of the Civil Custody Guardian are as follows (a copy of this list of benefits is at your place):

1. The parties, the child and other potential witnesses are able to share their stories with the civil custody guardian. In neutral, summary fashion, each side's perspective is summarized in the civil custody guardian's report.
2. The reporting of each parent's perspective reduces the need for a trial in which witnesses come to court and convey the same information to the court, subject to extended and time-consuming cross-examination in furtherance of conflict.

3. The child's perspective is reported and available to the court without the necessity of the child's being called by either side as a witness. The report can prevent the child's being put through the excruciating experience of being placed in the middle between two conflicting parents.
4. As an officer of the Court, the civil custody guardian's perspective and training produce conclusions and recommendations that are neutral and based on the best interest of the child.
5. The civil custody guardian's recommendations can provide the following:
 - i. assist the court in its understanding of each parent's and child's situation and lead to a much more informed decision than could be reached through a long trial that is often parent focused rather than child focused; or
 - ii. result in agreements being reached by the parents before the matter gets to trial that address the issues between them and in the best interest of the child; and
 - iii. in general result in less or no court hearings that affect the minor child.
6. Agreements reached by parents through the work of the civil custody guardian can lead to better shared parenting by the parents in the future.
7. Time in litigation is reduced. Research shows that litigation and delays in court heightens conflict between parents and is detrimental to children's development.
8. The cost of a civil custody guardian is significantly less than the expenses related to litigation or a custody evaluation.
9. The process is front loaded, utilizing the civil custody guardian early and expeditiously, allowing early rather than late resolution of family

conflicts that avoids prolonged confusion and distress for the affected children.

10. In those instances when the civil guardian recommendations do not fully resolve the conflict, parties' trial preparation and court proceedings are routinely refined and more clearly focused, reducing the parties' expenses and the allocation of court resources.
11. The civil custody guardian is well received and extensively utilized by all stakeholders: attorneys, judges, and parents. Attorneys practicing primarily in other districts highly regard the option of utilizing the civil custody guardian resources developed in District 15B.
12. Mental health counselors, therapists, and social workers involved in child therapy with families in divorce, some of whom had begun to decline patients whose parents were in litigation, are enthusiastic and appreciative that the civil custody guardian process operates to avoid their being subpoenaed to court with the resulting disruption of their practices and their therapeutic relationship with a child when they are forced to become a witness at trial.
13. The process is advisory, much like the services of a referee under Rule 53 of the Rules of Civil Procedure, and is never binding on the parties or the court. It provides parents an early and neutral third party evaluation of their children's circumstances, broadening their understanding of the situation, their options, and how a child's best interest might be served.

Here is a brief example of how a CCG can be important:

The unmarried parents of a 6 year old child separate. The father is somewhat involved in his upbringing but generally kept away by the protective mother. Both have extended family in the area.

Mother moves out of state without telling the father and remarries. Father files an emergency custody order and the matter comes back to North Carolina for hearing. The Judge appoints a CCG.

Everyone on mother's side report that the child is doing fine. Father's side think the mother is a good mother and have no other information because the child and mother live in another state. The CCG calls the school and guidance counselor and **only then** learns that the child is doing poorly – he cries a lot, he is depressed, he has no friends, information that the mother did not share with the CCG. The CCG gets his report cards and they show that his grades have dropped dramatically. She also talks with the child through **Skype** and with neutral questions learns firsthand how bad he feels.

What was in the 6 year old's best interest in this case, as the CCG recommended and the Court ordered, was to return him to N.C. for a year and be reconnected with his father.

Were it not for the CCG, the true facts about the CHILD'S situation would not have been brought to light. The CCG had the authority to speak to the school officials and also to the child directly and determine what is really going on. CCG's go to children's homes to see how they live and how they interact with their parents, and can learn much that way because kids can be very honest.

How did this Study Commission bill that led to the formation of this Committee come to fruition?

In 2002, the Center for Cooperative Parenting, Inc., of which I am president, was formed to provide educational and support services to parents and children who are experiencing high conflict in separation, divorce, or co-parenting. With the help of then Majority Leader, Joe Hackney, we spearheaded the passage of the parent coordination legislation – N.C.G.S. 50-90 et. al. - that allows for the appointment of trained persons to work with parents to reduce conflict and to effectively co-parent their children after a custody order is entered. (A copy of our Brochure is at your place).

The Center is responsible for the training and supervision of all Civil Custody Guardians and Parenting Coordinators for District 15B. Members of our Board

have sponsored eight, three-day trainings for Parent Coordinators in Atlantic City, Greensboro, Charlotte and Chapel Hill. Co-sponsors have included the N.C. Bar Association and Justice Initiative, Inc. in Charlotte, the North Carolina Psychological Association and the UNC-G Conflict Resolution Program.

As part of these trainings, we discuss the continuum of services for parents and children that includes the role of CCG. In other parts of the State, we found a great deal of interest in the CCG role among lawyers and mental health professionals and some local rules in places like Mecklenburg County. Since CCG's are not the focus of our training, we do not offer extensive advice about how to use them. If we were to do trainings for guardians ad litem, much of it would be similar to the trainings we do for parent coordinators.

This positive feedback from across the state, along with our own experience, led the Board to consider advocating for legislation that would create standards for the discretionary use of CCG's through North Carolina. In addition, a staff person working for Dr. Brantley completed a fifty (50) state survey of Appointment Laws in Divorce Cases and found that forty-nine (49) states have laws that allow for the appointment of a person to serve in a civil custody guardian or other capacity on behalf of the best interests of children. We were struck by the knowledge that so many other states have found the role important to address family court issues in the best interest of children.

Ms. Wilks has a copy of the statutes for these states. Georgia's and Maine's statutes are most like the one that the Center proposed initially, while Iowa, Montana, and Wisconsin among others share important similarities.

At your place is a five (5) page spreadsheet that shows when in each state such a person is appointed, their role, who is appointed, and other facts about immunity, fees and qualifications. You will note that in most states:

1. The appointment is generally in the discretion of the court
2. A Guardian ad Litem or a hybrid GAL/attorney is appointed
3. Immunity is granted to the role in most states
4. The parties pay the person's fees

5. A number of States require qualifications for non-attorneys but not for attorneys. Our experience is that attorneys especially need and should be required to receive training in advanced issues like alienation, substance abuse, mental health, relocation, stepparents, and other issues because they do not normally receive this training in law school.

In October 2008, with Representative Insko's referral, members of the Center's Board met with Ms. Wilks. Using the Parent Coordination stature as structure, and with our input based on our local rules, Ms. Wilks wrote a very specific first draft of a bill to establish the use of CCG's in North Carolina. (A copy is at your place).

At the Center's request, a version of this initial bill was reviewed by the North Carolina Bar Association's Family Law Section. This group expressed concerns about the bill as written.

These concerns included making the rules mandatory for all judicial districts versus allowing each district to tailor its own rules; interviewing parents without involvement of their attorneys; introducing into evidence reports that contain hearsay; undermining the adversarial system in favor of a more therapeutic model of dealing with families; creating more complication in the resolution of such cases; requiring the role when parents are already financially strapped; and somehow preventing attorneys from being appointed as attorney advocates for children.

The Board of the Center for Cooperative Parenting believes generally that there should be uniformity of rules, as there are for parent coordinators, so that the court system has assurance of quality and intent. Second, because of the use of mediation, custody evaluations, and parent coordinators, the trend in our State Courts' response to issues of custody and visitation is a more therapeutic court model. Third, the appointment of a CCG or the submittal of a report to the court does not do away with the Court's ongoing jurisdiction over custody and visitation matters or with the right of parents to have their day in court.

We do not believe this role interferes with any court's desire to appoint an attorney advocate for a child. It is also our experience that if parents are not able to pay for CCG's, they are not appointed.

After considering the concerns of the Family Section, the Center revised the bill by removing most of the specific standards and substituting the idea that the Conference of Chief District Court Judges would prescribe statewide advisory guidelines for the appointment of CCG's and develop further criteria for determining when a civil custody guardian may be appointed. We suggested in our redraft that the advisory guidelines might address a number of areas, including qualifications, responsibilities, compensation, appearance at trial, etc.

At the time this revised bill was to be considered by the House's Judiciary I, close to the cross-over deadline, representatives of the Children's Law Center of Central North Carolina, which oversees the use of *pro bono* guardians ad litem in high conflict custody cases in Forsyth County, contacted Representative Insko's office with some concerns. They had received a copy of the very first draft of the legislation and, as I recall, were concerned that the qualifications section, as written, would prevent the guardians they use, many of whom are lawyers who have been in practice for one to two years, from participating.

Because of the concerns raised by the Center, at Representative Insko's suggestion, and with the help of Center Board members and Judge Charles Anderson, I rewrote the bill into a Study Commission bill. My draft was eventually revised by Bill Gilkeson of Bill Drafting into the one that was finally passed.

In summary, the Center's Board and I ask that you develop legislation that will authorize the use of Civil Custody Guardians in North Carolina, along with reasonable, uniform standards for their qualifications, responsibilities, compensation, appointment, retention and other aspects as you see fit.

We believe that these standards should be statutory, rather than administrative, in the same manner as the standards for Parent Coordinators are statutory. The CCG role can only augment and enhance the effort of our court system's trend to keep children from being in the middle of their parents' conflict and help them live physically and mentally healthy lives.

Furthermore, we believe that training in high conflict advanced issues such as alienation, relocation, mental health, substance abuse and other areas should be

required and is crucial for all civil custody guardians but particularly for lawyers who are not normally exposed to such issues in law school or in mental health.

Other members of the Center's Board, which includes both lawyers and therapists, will be glad to speak before the Committee if you wish.

Thank you very much for allowing me to share my thoughts with you.

Appointment Laws in Divorce Cases
Updated, January, 2007

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
AL AL Rule of Civil Procedure 17	Discretionary	GAL	Atty	No	Parties	No
AK <i>Stat Def</i> A.S. 25.24.310 (2004)	Discretionary	Atty (Preference) ----- GAL	Atty or Gov't Atty ----- Atty or Gov't Atty	Yes	Parties or State	No
AZ A.R.S. 25-321 AZ Rule of Fam L Procedure 10	Discretionary	Atty- Ch Atty BI Court Advisor	Atty	No	Parties	Yes
AR A.C.A. 9-13-101 Sup Ct Admin Order 15-4 & 5	Discretionary	Atty "Atty Ad Litem" (BI)	Atty	No	Parties or State	Yes
CA <i>Stat Def</i> Cal Fam C 3150, 3151 (2001)	Discretionary	Hybrid	Atty or Gov't Atty	Yes	Parties or County	No
CO C.R.S.A. 14-10-116 (2000)	Discretionary	Atty, "Legal representative" (BI) ----- GAL "Special advocate"	Atty ----- Atty or other Professional	Yes	Parties or State	No
CT CGSA 46b-54 ----- CGSA 45a-132	Discretionary	Atty (interest of child) ----- GAL	Atty ----- Atty or other Professional	Yes- Case Law Yes- other Profes- sional	Parties	No
DE <i>Stat Def</i> 13 DelC 701, 721 29 Del.C. 9007	Discretionary	Atty (Ch Atty) ----- GAL BI Atty or CASA	Atty ----- Atty or other Professional	Yes	Parties or State	Yes
D.C. D.C. Code 1981 s 16-918	Discretionary	GAL	Atty	No	Parties	No

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
FL FSA s 61.401 <i>Stat Def</i> FSA 61.402 & 403	GAL Required if abuse	Atty (atty or advocate) ----- GAL	Atty ----- Atty or "citizen certified by GAL program"	Yes	Parties	No Yes for citizen
GA** Superior Court Rule 24.9	Discretionary	GAL	Any trained person	No	Parties	Yes
HI <i>Stat Def</i> HRS 571-46(8)	Discretionary	GAL	Atty (in practice also custody evaluators who are social workers or psychologists)	Yes	Parties	No
ID IC § 32-704	Discretionary	Atty	Atty	No	Parties or County	No
IL <i>Stat Def</i> 750 ILCS 5/506 (2006)	Discretionary	Hybrid or GAL or Atty	Atty or Gov't Atty	Yes	Parties	Yes by County
IN <i>Stat Def</i> IN ST § 31-15-6-1 & IN ST § 31-17-6-1	Discretionary	GAL	Atty or CASA trained	Yes	Parties	Atty- No
IA I.C.A. § 598.12	Discretionary	Atty GAL	Atty	No	Parties or County	No
KS <i>Stat Rule 100</i> Ad Order No. 100	Discretionary	GAL	Atty	Yes	Parties or County	Yes
KY <i>Stat Def</i> Ky code 403.090	Discretionary	GAL (friend of court)	Atty	No	Parties or County	Yes by County
LA LSA-RS 9:345 (2001)	Required if Abuse	Atty	Atty	Yes	Parties or Pro Bono Atty	No
ME 19-A M.R.S. §1507 (2000) <i>Stat Rules</i>	Discretionary	GAL	Atty or other Professional	Yes	Parties	Yes
MD MD Family §1-202	Discretionary	Atty ----- GAL (case law)	Atty ----- Atty	No	Parties	No
MA MGLA 215 §56A	Discretionary	GAL	Atty or "disinterested person" (case law)	Yes	Parties or State	No
MN MSA §518.165 <i>Stat Def</i> <i>Stat Rule</i> 901 et	Required if Abuse	GAL	Stat Rule 902 has qualifications, can be lawyer or non-lawyer	No	Parties or State	Yes

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
MS 93-11-65(4)	Required if Abuse	GAL	Atty or other professional	No	Parties or County	Atty=No Other=Yes
MO Mo St 452.423 <i>Stat Def</i>	Required if Abuse	GAL	Atty or CASA	Yes	Parties or State	Yes
MT MT ST 40-4-205 <i>Stat Def</i>	Discretionary	GAL	Atty or other	No	Parties or Fees Waived	No (pending)
NE RRS Neb §42-358	Discretionary	Atty (protect interest) Investigate & call witness ----- GAL (case law)	Atty ----- Atty	Yes	Parties or County	No
NV No Statute	Discretionary	GAL	Atty or other professional	Yes	Parties or County	No
NH RSA 461-A:16 <i>SCt Rules</i>	Discretionary	GAL	Atty "except in extraordinary circumstances"	Yes	Parties or State	Yes
NJ NJ § 9:2-4 SCt Rule 5.8A & B	Discretionary	Atty (Best Interest) ----- GAL	Atty ----- Atty, SW, mental health	Yes	Parties	No
NM NM §40-4-8 <i>Stat Def</i>	Discretionary	GAL	Atty	No	Parties	No
NY* NY CLS Fam Ct §249 <i>App Div 3rd Dept Rule 835.2</i>	Discretionary	Atty (Law Guardian) ----- GAL	Atty ----- Atty or Gov't Atty	Yes	Parties or Indigent Fund or Gov't	Yes
NC** NC St Rules Civ Proc. § 1A-1, Rule 17	Discretionary	GAL	Does not specify (except if abuse, use atty)	No	Parties	No
ND ND Code § 14-09-06.4 <i>Stat Def</i> SCt Rule 8.7	Discretionary	GAL	Atty	Yes	Parties or County	Yes
OH <i>Stat Rules</i>	Discretionary	GAL or Atty for Child (12/05 Recommendation)	Atty or other	Yes	Parties	Yes by County
OK 43 OKL. St. Ann. § 107.3	Discretionary	GAL	Atty	Yes	Parties	No
OR OR ST § 107.425	Required if Minor Requests	Atty	Atty	No	Parties	No
PA Stat Rules Pa Rule CP 1915.11	Discretionary	Atty (in practice Atty, GAL or Hybrid)	Atty	Yes	No Statute	No

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
RI RI St S 15-5-16 2(c)	Discretionary	Atty ----- GAL	Atty ----- Does not specify	No ----- Quasi	Parties	No
SC SC Code § 20-7-1545 (eff 1/15/03) <i>Stat Def</i>	Discretionary	GAL	Atty or Layperson	No	Parties	Yes
SD** SD Codified L § 25-4-45, 4	Discretionary	Atty (Best Interest)	Atty	Yes	Parties	No
TN TN Code 36-4-132	Discretionary	GAL	Does not specify (atty by practice)	Yes	Parties Or Fees Waived	Yes
TX TX Fam Code 107, 107.021	Required if in best interest	Atty (Atty Ad Litem (Ch Atty) & Amicus Atty (BI Atty)) ----- GAL	Atty ----- Atty or other Adult	Yes	Parties	Atty- Yes Other- Yes
UT UT ST §30-3-11.2 UT ST §78-7-45	Discretionary ----- Discretionary	Atty (Ch Atty) ----- Atty GAL (BI Atty)	Atty ----- Atty or Gov't Atty	Yes	Parties ----- State or Pro Bono	No ----- Yes
VT 15-11-3-§594 ----- 15-11-3A-§ 669 <i>Fam Ct Rule 7</i>	Required if Minor is Witness ----- Discretionary	Atty ----- GAL	Atty ----- Atty	No	Parties	No

State	WHEN APPOINTED	ROLE OF APPOINTED PERSON*	WHO IS APPOINTED	IMMUNITY	FEES	QUALIFICATIONS
VA* VA CODE § 16.1-266	Required if Abuse	GAL or Atty for Child	Atty	No	Parties	Yes
WA RCWA § 26.12.175 26.09.220	Discretionary	GAL	Atty or other	Yes	Parties or County or Pro Bono	Yes
Stat Def						
WV code § 48-1-302(b) ----- code § 48-1-302(a) W. Va Trial Ct Rule 21.01	Required if abuse alleged unless certain conditions present	Atty (Ch Atty) ----- GAL	Atty ----- does not specify	Yes	Parties	No
WI Wis. Stat § 767.407 Stat Def	Required if contested unless certain conditions present	GAL	Atty	Yes	Parties or County	Yes
WY** Wy stat 14-3-211	Required if Abuse	Hybrid (BI)	Atty	Yes	Parties	No

CODE:

- * Role of Appointed Person
 GAL = Guardian ad Litem – reports to the court what is in the “best interests” of the child.
 Atty = Typical attorney tasks but “client” varies between Child and “Best Interests”
 Hybrid = Child representative has elements of both the GAL (best interest) role and the attorney role (advocate for the child).
 ** Jurisdictions without a specific statute relating to appointment of attorneys and/or GALs in their domestic relations code. These jurisdictions use the child protection or general defense of infant’s statutes to appoint attorneys and/or GALs.
 Stat Def= Jurisdictions having a definition of the roles and responsibilities of the attorney and/or GAL in the statute
 Stat Rule= Jurisdictions having specific codes or rules related to the duties, responsibilities, and obligations of an attorney or GAL for minor.
- Discretionary = Appointment within judge’s complete discretion.
- Required = Appointment required in all cases; also allows discretionary appointment if the factors for mandatory appointment are not met.
- Abuse = Child abuse or neglect alleged or shown (standards vary by state).
- Atty = Private or legal service or pro bono attorney.
- Other Professional = Psychologists, social workers, or CASAs.
- Gov’t Atty = Attorney employed by a state or county office.

**EXCERPT FROM PRESENTATION MADE BY JAY BRYAN ON
FEBRUARY 4, 2010 TO THE HOUSE COMMITTEE ON CIVIL CUSTODY
GUARDIANS**

Based on the experience of our local judges, mental health professionals and attorneys, District 15B has determined that the benefits of the Civil Custody Guardian are as follows (a copy of this list of benefits is at your place):

1. The parties, the child and other potential witnesses are able to share their stories with the civil custody guardian. In neutral, summary fashion, each side's perspective is summarized in the civil custody guardian's report.
2. The reporting of each parent's perspective reduces the need for a trial in which witnesses come to court and convey the same information to the court, subject to extended and time-consuming cross-examination in furtherance of conflict.
3. The child's perspective is reported and available to the court without the necessity of the child's being called by either side as a witness. The report can prevent the child's being put through the excruciating experience of being placed in the middle between two conflicting parents.
4. As an officer of the Court, the civil custody guardian's perspective and training produce conclusions and recommendations that are neutral and based on the best interest of the child.
5. The civil custody guardian's recommendations can provide the following:
 - i. assist the court in its understanding of each parent's and child's situation and lead to a much more informed decision than could be reached through a long trial that is often parent focused rather than child focused; or

- ii. result in agreements being reached by the parents before the matter gets to trial that address the issues between them and in the best interest of the child; and
 - iii. in general result in less or no court hearings that affect the minor child.
- 6. Agreements reached by parents through the work of the civil custody guardian can lead to better shared parenting by the parents in the future.
- 7. Time in litigation is reduced. Research shows that litigation and delays in court heightens conflict between parents and is detrimental to children's development.
- 8. The cost of a civil custody guardian is significantly less than the expenses related to litigation or a custody evaluation.
- 9. The process is front loaded, utilizing the civil custody guardian early and expeditiously, allowing early rather than late resolution of family conflicts that avoids prolonged confusion and distress for the affected children.
- 10. In those instances when the civil guardian recommendations do not fully resolve the conflict, parties' trial preparation and court proceedings are routinely refined and more clearly focused, reducing the parties' expenses and the allocation of court resources.
- 11. The civil custody guardian is well received and extensively utilized by all stakeholders: attorneys, judges, and parents. Attorneys practicing primarily in other districts highly regard the option of utilizing the civil custody guardian resources developed in District 15B.
- 12. Mental health counselors, therapists, and social workers involved in child therapy with families in divorce, some of whom had begun to decline patients whose parents were in litigation, are enthusiastic and appreciative that the civil custody guardian process operates to avoid

their being subpoenaed to court with the resulting disruption of their practices and their therapeutic relationship with a child when they are forced to become a witness at trial.

13. The process is advisory, much like the services of a referee under Rule 53 of the Rules of Civil Procedure, and is never binding on the parties or the court. It provides parents an early and neutral third party evaluation of their children's circumstances, broadening their understanding of the situation, their options, and how a child's best interest might be served.

Web Site for Center for Cooperative Parenting, Inc.:

<http://centerforcooperativeparenting.org/>

DRAFT
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009
FOR REVIEW ONLY

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D

BILL DRAFT 2009-LUF-1 [v.5] (11/14)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

3/2/2009 3:48:47 PM

Short Title: Establish Civil Custody Guardian Program.

(Public)

Sponsors: Representative Insko.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE CIVIL CUSTODY GUARDIAN PROGRAM.
3 The General Assembly of North Carolina enacts:
4 SECTION 1. Chapter 50 of the General Statutes is amended by adding a
5 new Article to read:

"Article 6.

"Civil Custody Guardians.

8 **"§ 50-110. Definitions.**

9 The following definitions apply in this Article:

- 10 (1) Civil custody guardian. – An impartial person appointed by the court
11 to make recommendations to the court regarding the best interests of a
12 minor child in a contested custody proceeding and who meets the
13 qualifications under G.S. 50-112.
14 (2) Minor child. – A person who is less than 18 years of age and is not
15 married or legally emancipated.

16 **"§ 50-111. Appointment of civil custody guardian; length of service.**

17 (a) In a contested custody proceeding under Article 1 of this Chapter in which a
18 minor child is involved, the court may appoint a civil custody guardian. The court may
19 appoint the civil custody guardian at the **appointment conference**, or sooner upon
20 agreement of the parties, if the parties to the proceeding waived mediation or the
21 mediation failed to result in a parenting agreement and the court finds that it is in the
22 best interest of the child to appoint a civil custody guardian.

23 Every effort shall be made to enter the order upon the consent of the parties.

24 (b) In determining whether to appoint a civil custody guardian, the court may
25 consider the following:

- 26 (1) The wishes of the parties.
27 (2) The age of the child.



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- (3) The nature of the proceeding, including the contentiousness of the hearing.
- (4) The financial resources of the parties.
- (5) The extent to which a civil custody guardian may assist in providing information concerning the best interest of the child.
- (6) Whether the family has experienced a history of domestic violence.
- (7) Abuse of the child by one of the parties.
- (8) Any other factors the court deems relevant.

If the court determines that a civil custody guardian should be appointed, the court shall enter an order of appointment.

(c) The order appointing a civil custody guardian shall specify the issues the civil custody guardian is directed to assist the parties in resolving and deciding. The order may also incorporate any agreement made by the parties regarding the role of the civil custody guardian. Notwithstanding the appointment of a civil custody guardian, the court shall retain exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

(d) The parties shall select a civil custody guardian from a list maintained by the district court. If the parties cannot agree on a civil custody guardian, the court shall select a civil custody guardian from the list. The court shall complete and give to the civil custody guardian a referral form listing contact information for the parties and their attorneys, the court's findings in support of the appointment, and any agreement by the parties.

(e) The civil custody guardian is released from the civil custody guardian's duties upon completing responsibilities under G.S. 50-113, submitting a report to the court, and submitting the report to the parties' attorneys or any pro se party.

"§ 50-112. Qualifications of civil custody guardian.

(a) To be eligible to be included on the district court's list of civil custody guardian, a person shall meet all of the following qualifications:

- (1) Hold a masters or doctoral degree in psychology, law, social work, counseling, medicine, or a related subject area.
- (2) Have at least five years of related professional post-degree experience.
- (3) Hold a current license in the civil custody guardian's area of practice, if applicable.
- (4) Participate in 24 hours of training in topics related to the role and responsibilities of the civil custody guardian; methods of performing the investigation; ethical obligations of the civil custody guardian; recognition and assessment of the child's best interests; developmental stages of children; family dynamics and dysfunction; recognition of cultural and economic diversity in families; awareness of biases; the stages and effects of divorce; mediation techniques; domestic violence and substance abuse; and awareness of available services for child welfare, family preservation, medical, mental, health, educational and

special needs, including placement, evaluation, and diagnostic treatment services.

(b) In order to remain eligible as a civil custody guardian, the person shall also attend civil custody guardian seminars that provide continuing education, group discussion, and peer consultation and support.

(c) A person who has been a party in custody litigation within the last three years from the date the appointment is sought may not be appointed as a civil custody guardian.

"§ 50-113. Responsibilities of civil custody guardian.

(a) The civil custody guardian shall represent the best interests of the child and assist the court and the parties in reaching a decision regarding child custody, visitation, or other child-related issues. The responsibilities of the civil custody guardian shall be specified in the court order appointing the civil custody guardian and may include any of the following:

(1) Investigating issues related to child custody or visitation.

(2) Interviewing the child, if the child is age appropriate, parties and collaterals, teachers, health care providers, and others as deemed necessary.

(3) Reviewing school, medical or health, local department of social services records or any other relevant records.

(4) Visiting the home of the child or the prospective home.

(5) Assisting in mediating between the parties what is in the best interest of the minor child.

(6) Making recommendations to the court.

(7) Requesting a review of the case.

(8) Scheduling a joint or separate, final summary conference with the parties' attorneys or other party, if the party is acting pro se.

(9) Any other responsibilities the court deems appropriate, including the ability to request the appointment of an expert, which expert's fees shall be paid by the parties.

(b) The civil custody guardian shall not provide counseling, including acting as an attorney, therapist, parenting coordinator, or visitation supervisor, to the parties or the minor child. The civil custody guardian shall refer financial issues to the parties' attorneys.

"§ 50-114. Fees.

(a) The civil custody guardian shall be entitled to reasonable compensation from the parties for services rendered. The fee shall be shared equally by the parties unless otherwise directed by the court. The civil custody guardian may request a hearing in the event of a fee dispute.

(b) The court may make the appointment of a civil custody guardian contingent upon the parties' payment of a specific fee to the civil custody guardian. The civil custody guardian shall not begin any duties until the fee has been paid.

"§ 50-115. Meetings and communications.

(a) Meetings between the civil custody guardian and the parties may be informal and ex parte. Communications between the parties and the civil custody guardian are not confidential. The civil custody guardian may contact or meet with a parent individually without the consent of the parent's attorney and may communicate with one attorney without the express consent of the other attorney. During various points in the case, the civil custody guardian may make recommendations to the parties and their attorneys concerning the child's best interest. The civil custody guardian and the court shall not engage in any ex parte communications.

(b) If upon the civil custody guardian's request an expert is appointed, any communication between the civil custody guardian and the court-appointed expert shall be simultaneously communicated to the parties' attorneys, including any written information or documents that the civil custody guardian may provide to the expert.

"§ 50-116. Reports.

(a) The civil custody guardian shall submit a written report to the attorneys for the parties no later than two weeks before trial. Unless ordered by the court, the civil custody guardian shall not release the report to the minor child or persons other than the parties or their attorneys. The report shall include issues the civil custody guardian investigated and any findings and recommendations concerning the child's best interest. The civil custody guardian shall disclose all sources of information reported.

(b) Notwithstanding any confidential information provided to the civil custody guardian during the course of the appointment, the parties shall retain the right to petition the court to determine whether the confidential information and records reviewed by the civil custody guardian should be released to the court or to the parties.

"§ 50-117. Appearance at trial; civil custody guardian testimony.

The civil custody guardian may testify at trial. However, absent consent from the civil custody guardian to appear and testify at trial, the party seeking to subpoena the civil custody guardian shall obtain court approval before the subpoena is issued. The court may require prepayment of the civil custody guardian as a condition of the civil custody guardian's appearance at trial pursuant to the subpoena.

"§ 50-118. Modification or termination of civil custody guardian appointment.

(a) For good cause shown, the court may terminate or modify the civil custody guardian appointment upon motion of either party at the request of the civil custody guardian, upon the agreement of the parties and the civil custody guardian, or by the court on its own motion. Good cause includes any of the following:

- (1) Lack of reasonable progress over a significant period of time despite the best efforts of the parties and the civil custody guardian.
- (2) A determination that the parties no longer need the assistance of a civil custody guardian.
- (3) Impairment on the part of a party that significantly interferes with the party's participation in the process.
- (4) The civil custody guardian is unable or unwilling to continue to serve.

(b) If the parties agreed to the appointment of the civil custody guardian under G.S. 50-111(a), the court may terminate or modify the appointment according to that agreement or according to a subsequent agreement by the parties.

1 **"§ 50-119. Civil custody guardian immunity.**

2 A civil custody guardian shall not be liable for damages for acts or omissions of
3 ordinary negligence arising out of that person's duties and responsibilities as a civil
4 custody guardian. This section does not apply to actions arising out of the operation of a
5 motor vehicle."

6 **SECTION 2.** This act is effective when it becomes law, and applies to
7 contested custody proceedings initiated on or after that date.



MINUTES

HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

Representative Grier Martin, Co-Chair

Representative Darren Jackson, Co-Chair

Monday, March 17, 2010

The House Select Committee on Civil Custody Guardians met on Wednesday, March 17, 2010 in Room 544 of the Legislative Office Building at 11: 00 AM. The following members were present: Co-Chair Darren Jackson, Verla Insko, Sara Stevens, Jane Whilden; Staff Counselor was in attendance. A Visitor Registration list is attached and made a part of these minutes.

Co-Chair Darren Jackson called the meeting to order. He requested that the committee members who were present introduce themselves to the visitors in attendance. Members who were absent from the meeting included: Co-Chair Grier Martin, Rep. Jean Farmer-Butterfield and Rep. Pat Hurley. Co-Chair Jackson then recognized the Sergeant-at-Arms, Staff and visitors.

This was the second scheduled meeting for the House Select Committee on Civil Custody Guardians.

Once introductions were made Chairman Jackson then recognized Suzanne Reynolds, of Forsyth County. Ms. Reynolds is a Professor of Family Law at Wake Forrest University in the School of Law. She began by providing some background information in the field of law which she has been involved in North Carolina. Professor Reynolds has taught the national law of the family at Wake Forrest University for 28 years. She has a national perspective on custody law, the national law of the family, as well as a special interest and expertise in North Carolina custody law. She has focused her research on custody and the process and authored The Three Volume Treatise used by trial court judges and the appellate courts. Because of that she has been named to several task forces such as the North Carolina Administrative Office of the Courts Task force on Domestic Violence with special responsibility for the handling of custody issues and domestic violence.

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House Select Committee on Civil Custody Guardians
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She then introduced her team from Forsyth County. Introduced were staff from The Children's law Center of Central North Carolina: Penny Spry, Executive Director; Amy Coleman, Program Manager; Iris Sunshine, Staff Attorney and Rich McPherson, who was awarded an Albert Schweitzer Fellowship to do some post law school research and he has done it on this topic. Amy, Iris and Rich were her former students at the Wake Forest School of Law. Tim Hovis made copies of some of the research Rich has collected thus far and made it available to the committee. Attached is a copy of handout #1 for review.

She addressed the background for the Custody Guardian et lie tem and provided legal context for the discussion pertaining to Local Perspectives in Forsyth County as they relate to Appointments of Civil Custody Guardians. Cited as the number one issue is cost; how to do these procedures less expensively. Also mentioned is that nationally, seventy percent of the families represent themselves due to cost constraints.

Professor Reynolds continues by saying that the North Carolina experience is unique, in that every state except North Carolina recognized that there would be a Custody Guardian ad litem and they had a statute in place to develop GALs. She also shared experiences that staff at the Children's Law Center have had within Forsyth County, while also speaking to the success that the Children's Law Center is having in Winston Salem, North Carolina in the area of guardianship. Also discussed were qualifications and certification of guardians, responsibilities and compensation of guardians, appointment and retention procedures for guardians as well as other pertinent information regarding guardianship. She handed out information as well as a spreadsheet pertaining to findings of the Children's Law Center on this subject.

Attached is a copy of handout # 1: Considerations- Submitted by the Children's law Center of Central North Carolina for your review.

Also attached is a copy of handout # 2: A spreadsheet compiled by the Children's law Center of Central North Carolina which details national information regarding the role of appointees for your review.

Discussion followed.

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House Select Committee on Civil Custody Guardians
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The Chair then called John Parker, Lead Attorney, for the Custody Advocacy Program on the Council for Children's Rights, in Charlotte, North Carolina. Attorney Parker addressed the legal context for the discussion pertaining to Local Perspectives in his district of Mecklenburg County as they relate to Appointments of Civil Custody Guardians. He spoke to many experiences that the Council for Children's Rights have had in Mecklenburg County, while also speaking to the need for more volunteers within the Charlotte area and throughout North Carolina in the area of guardianship. His discussions included the vast amount of cases that are in need of representation by Civil Custody Guardians, the large number of referrals sent to his office for assistance from the judicial courts compared to the limited resources that are currently available in both manpower and funding. He also discussed other pertinent information regarding guardianship as well as pitfalls of the lack of available guardians. He handed out some information pertaining to the Custody Advocacy Program on the Council for Children's Rights.

Attached is a copy of handout #3: Guidelines for Court Appointed Advocates for Children in Custody and Visitation Cases from the Council for Children Rights Custody Advocacy Program for your review.

Also attached are copies of handouts # 4a: The Guardian Ad Litem in High-Conflict Custody Cases-A Custody Advocacy Model from the CFCR and #4b: a sample Order Appointing Guardians Ad Litem and CFCR Custody Advocate for your review.

Discussion followed.

The next item of business on the Agenda was a discussion by Dr. Helen T. Brantley, Ph.D., Director, Forensic Psychiatry Service, University of North Carolina; and Chair, American Psychological Association, Task Force on Establishing Guidelines for Parenting Coordinators. Dr. Brantley is a practicing Psychiatrist who is involved with the Task Force on Establishing Guidelines for Parenting Coordinators. She presented a Power Point presentation which detailed guidelines for assessments developed by the Association of Family and Conciliation Courts (AFCC) along with recommended procedures and guidelines.

Attached are copies of the handouts #5 a: A Model for Civil Custody Guardians, Helen T. Brantley, Ph. D. #5 b: Guidelines for Brief Focused Assessment, Association of Family and Conciliation Courts for your review.

Discussion followed.

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House Select Committee on Civil Custody Guardians
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The final presentation was given by Deana Fleming, Legal Counsel with the North Carolina Administrative Office of the Courts. Her presentation included a detailed overview of the Guardian ad Litem Program and Training of GALs. Her discussions included Statutory Foundation: Federal Law: The Child Abuse Prevention and Treatment Act 1974 (CAPTA) (P.L. 93-247) (U. S. Code Title 42, Chapter 67) as well as State Law: G.S. § 7B-601. Issues were discussed regarding the appointment, recruitment and training of GAL volunteers, civil liability of volunteers and other relevant information pertaining to North Carolina General Statutes. She also handed out information pertaining to the overview of the Program and training recommendations for GALs.

Attached is a copy of handout #6 for review: The North Carolina Guardian ad Litem (GAL) Program by Deana K. Fleming, J.D.

A lengthy discussion followed.

Chairman Darren Jackson explained that legislative staff would begin to draft a bill for review and discussion at our next meeting in April, 2010.

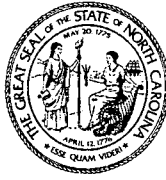
There being no further business, the Chair adjourned the meeting at 12:11 PM.

Respectfully Submitted,

Representative, Darren Jackson
Co-Chair

Representative Grier Martin,
Co-Chair

Angela McMillan
Committee Assistant



AGENDA
HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

Representative Grier Martin, Co-Chair

Representative Darren Jackson, Co-Chair

Wednesday, March 17, 2010
11:00 am-1:00 pm
Room 1228, Legislative Building
Raleigh, NC

Welcome and Introduction

Appointment of Civil Custody Guardians- Local Perspectives
Forsyth County

Suzanne Reynolds,
Professor of Law, Wake Forest University School of Law

Mecklenburg County

John Parker, Lead Attorney, Custody Advocacy Program,
Council for Children's Rights

Standards for Assessment and the Competency and Training of Civil
Custody Guardians

Dr. Helen T. Brantley, Ph.D., Director, Forensic Psychiatry Service, University of
North Carolina; and Chair, American Psychological Association, Task Force on
Establishing Guidelines for Parenting Coordinators

Overview of Guardian ad Litem Program and Training of GALs

Deana Fleming, Legal Counsel, N.C. Administrative Office of the Courts

Committee Discussion

Adjourn



CHILDREN'S
LAW CENTER
of Central North Carolina

All Children Deserve To Have Their Say In Court

*Providing legal services
for children in
matters of custody,
abuse, neglect, and
abandonment cases*

March 17, 2010

TO: Members of the Select House Committee on
Civil Custody Guardians

FROM: Children's Law Center of Central North Carolina

RE: Proposed Civil Custody Guardian Program

The Children's Law Center of Central North Carolina (CLC) has been informed of the study by the House Select Committee on Civil Custody Guardians regarding the feasibility and desirability of creating a statewide Civil Custody Guardian Program. As a 501(c)(3) non-profit organization, the Children's Law Center has been representing the "best interests" of children for the last five years in Forsyth and surrounding counties. CLC accepts court appointments for any child, regardless of ability to pay, in high conflict custody cases (Chapter 50) and in domestic violence cases (Chapter 50B). CLC has served over 500 children since its inception in 2005, through the use of a pool of trained pro-bono attorneys, paralegals, and law students. All GALs are closely supervised by the CLC staff throughout the process of gathering information, conducting interviews of children, parents, doctors, teachers, and other collateral witnesses, writing a report, and attending court hearings. The reports include the facts gathered during the investigation, wishes of the child if expressed, and recommendations that are in the "best interests" of the child. The judge then issues his or her independent order in the case.

The Children's Law Center would welcome the opportunity to further discuss in greater detail the way GALs function within our organization. Please see the attached chart explaining the differences between the three areas of law in which GALs in our organization operate. Also attached are points for consideration.

Please feel free to contact Penny Spry, Amy Kuhlman, or Iris Sunshine for any questions or thoughts you may have. CLC is anxious to assist the Select Committee in any way possible.

Considerations:

**Submitted by the Children's Law Center of Central North Carolina
March 17, 2010**

1) Title

- The title "Guardian ad Litem" should not be changed. The nomenclature in Chapter 7B (abuse and neglect), Chapter 50B (domestic violence) and Rule 17 of the NC Rules of Civil Procedure is all the same – Guardian ad Litem.
- There are times when a Chapter 50 case and Chapter 50B case overlap in which a GAL is appointed to serve in both cases. Having a different name for the GAL in the Chapter 50 case, such as Civil Custody Guardian, and a Guardian ad Litem in the Chapter 50B case would confuse the judge, the family members, and the children, since both roles are essentially to represent the "best interests" of the child.
- In the majority of states, the term Guardian ad Litem is used.

2) Requirements

- Requirements should be determined by a task force made up of NC child advocacy groups, family law attorneys, judges, and law professors who teach family law.
- These requirements may either be mandated by statute or issued as rules by the NC Supreme Court, as is done in many states.
- Requirements should include: education; experience with children; impartiality and fairness in determining a child's "best interests"; appropriate training; and supervision.
- The Children's Law Center trains and supervises GALs who are lawyers, paralegals, and law students. A GAL should have some legal training to navigate the court system and to have an understanding of court procedure.

3) Training

- Training should be determined by a task force made up of NC child advocacy groups, family law attorneys, judges, and law professors who teach family law.
- Training is very important. The Children's Law Center has conducted numerous trainings over the past five years, which include a comprehensive training manual for volunteer GALs (currently at no cost to the GAL). The Children's Law Center's training includes: 1) role of the GAL (conducting independent investigations, interviewing parties and collateral witnesses,

reviewing school, medical, and DSS records, conducting home visits, etc.); 2) review of state statutes; 3) conducting a "child specific" interview; 4) writing and submitting reports; 5) appearing in court; 6) criminal and civil background checks; 7) psychological testing and child development; 8) dynamics of family groups; and 9) ethics.

- After the initial training, a GAL should be supervised closely for the first several cases. Supervision by a child advocacy center, where hundreds of cases are addressed annually, is recommended. A supervising agency should be available as a resource for the GAL at all times and in all cases.
- The training for a GAL should not be the same as the training for a Parenting Coordinator. Their roles are completely different. The Parenting Coordinator interprets the judge's order for the parents after the case is over and instructs the parties as to what they should do according to the order. The Guardian ad Litem conducts an investigation, conducts interviews, and reports the findings to the court. Therefore, the language in the GAL statute should not mirror that of the Parenting Coordinator statute.

4) GAL Fees

- A sliding scale would allow low income families to have a GAL express the "best interests" of the child.
- Guidelines for the sliding scale should be determined by a task force made up of NC child advocacy groups, family law attorneys, judges, and law professors who teach family law. The scale should be economically appropriate for individual areas around the state.
- Fees should not be at the discretion of the GAL.

March 17, 2010
Children's Law Center of Central North Carolina

NORTH CAROLINA STATUTES INVOLVING GUARDIANS AD LITEM

	(high conflict custody) Chapter 50	(domestic violence) Chapter 50B	DSS (abuse and neglect) Chapter 7B
Authority to appoint GAL:	Civil Procedure Rule 17(b)(3) (general authority)	Chapter 50B-3(a1)(3)(h) (specific authority)	Chapter 7B-601(a) (specific authority)
Nomenclature:	guardian ad litem	guardian ad litem	guardian ad litem
Attorney Advocate for the GAL in court:	varies by judicial district	no	yes
Requirements to be a GAL:	no statutory requirements	no statutory requirements	may or may not be an attorney
Training to be a GAL:	no statutory requirements	no statutory requirements	mandated by AOC
Role or duties of GAL:	set out in <u>Van Every v. McGuire</u> : 1) receive and review documents 2) investigate and determine facts 3) present facts to court 4) appear at all court hearings 5) represent child's "best interests" 6) present evidence and make arguments to the court 7) present to court all reports and information		investigate to determine the facts, needs of the juvenile, and resources available promote "best interests" of the child
Compensation to GAL:	Mecklenburg – sliding scale Forsyth – sliding scale Orange/Chatham – at the discretion of the GAL	none	none for volunteer GAL staff GALs compensated as state employees

March 17, 2010

Children's Law Center of Central North Carolina

State	Type of Case	Mandatory or Discretionary?	Role of Appointee	Who Can Be Appointed	Training/Qualifications
AL R. Civ. Pro. 17(d)	No rule specifically addressing issue of GAL in custody cases – uses general court rule	Discretionary	GAL	Attorney	
AK Alaska Stat. § 25.24.310	"custody, support, or visitation of a child"	Discretionary	GAL Counsel Both	Attorney	
AZ Ariz. Rev. Stat. Ann. § 25-321	"child's support, custody and parenting time"	Discretionary	Counsel	Attorney	
AR Ark. Code Ann. 9-13- 101	custody at issue	Discretionary	"Attorney ad litem" – best interest of the child	Attorney	
CA Cal. Fam. Code § 3150- 51	"custody or visitation proceedings"	Discretionary	Counsel – best interest	Attorney	
CO Colo. Rev. Stat. Ann. 14-10-116	"domestic relations proceeding that involves allocation of parental responsibilities"	Discretionary	Counsel – "best interests"	Attorney	
CT Conn. Gen. Stat. Ann. § 46b-54	"custody, care, education, visitation or support of a minor"	Discretionary	Counsel	Attorney	

Conn. Gen. Stat. Ann. 45a-132	child is in actual controversy" "any proceeding before a court of probate or the Superior Court including the Family Support Magistrate Division"	Discretionary	GAL	Doesn't specify	
DE Del. Code Ann. tit. 13, § 701(c)	"custody, visitation, guardianship, termination of parental rights, adoption or other related proceeding"	Mandatory?	Counsel – child's wishes GAL – best interests	Attorney CASA	
DC D.C. Code § 16-918	"custody is in dispute"	Discretionary	GAL	Attorney	
FL Fla. Stat. Ann. § 61.401	dissolution of marriage or parenting plans	Discretionary	Counsel – advocate or GAL – act as "next friend... in the child's best interest" (Cannot be the same person)	Attorney Attorney or a "citizen certified by the Guardian Ad Litem Program" (See Fla. Stat. Ann. § 61.402)	Security background investigation. (See Fla. Stat. Ann. § 61.402)
GA Superior	Domestic relations case	Discretionary	GAL	Anyone who has been trained as a	See Rule 24.9(2)

Court Rule 24.9 (as amended by 2009 Georgia Court Order 05)					GAL	
HI Haw. Rev. Stat. § 571-46(a)(8)	dissolution of marriage or if custody is in dispute	Discretionary	GAL	Attorney?		
ID	"support, custody, and visitation"	Discretionary	Counsel	Attorney		
IL 750 Ill. Comp. Stat. Ann. 5/601(f)	"custody proceeding or for any modifications of any custody orders entered"	Discretionary	GAL	Doesn't specify (Abuse statute does not require GAL to be an attorney; see 750 Ill. Comp. Stat. Ann. 405/2-17)	3 hours may be provided by chief judge or designated presiding judge; must include "a component on the dynamics of domestic violence and its effect on parents and children."	See 750 Ill. Comp. Stat. Ann. 5/601.5 IC 31-9-2-28
IN Ind. Code Ann. 31-17-2-12(a)(5)	"custody proceedings"	Discretionary	GAL	Attorney or CASA		
IA Iowa Code Ann. § 598.12	dissolution of marriage and domestic relations	Discretionary	Counsel GAL	Attorney		

KS Kan. Stat. Ann. § 38- 2205(a)	When a child is "the subject of proceedings under this code."	Discretionary	GAL (GAL or child can request a second attorney to serve as counsel for the child)	Attorney	
KY Ky. Rev. Stat. Ann. § 403.090(1), (4)	divorce with minor children	Discretionary	GAL	Attorney	
LA La. Rev. Stat. Ann. § 9:345	"any child custody or visitation proceeding"	Discretionary	Counsel	Attorney	
ME Me. Rev. Stat. Ann. tit. 19, § 1507	"contested proceedings"	Discretionary	GAL	Attorney?	See 1507(2)
MD Md. Code Ann., Fam. Law § 1-202	"custody, visitation rights, or the amount of support of a minor child is contested"	Discretionary	Counsel – can have traditional role or GAL "best interest" role	Attorney	
MA Mass. Gen. Laws Ann. ch. 215, § 56A	"questions as to the care, custody or maintenance of minor children and as to any matter involving domestic relations"	Discretionary	GAL	Attorney	
MI Mich. Comp. Laws Ann. § 722.24(2)	"dispute of a minor child's custody"	Discretionary		Attorney	

MN Minn. Stat. Ann. § 518.165(1)	custody or dissolution where custody is in dispute	Discretionary	GAL	Attorney or volunteer	See S.Ct. Rule 902; background check
MS Miss. Code Ann. § 43- 21-121(1)(f); see also notes following § 95-5-24	“where the youth court finds appointment of a guardian ad litem to be in the best interest of the child”	Discretionary	GAL	Attorney or volunteer (If volunteer, must also appoint an attorney for the child.) See § 43-21- 121(4)	“From and after January 1, 1999, in order to be eligible for an appointment as a guardian ad litem, such attorney or lay person must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. The Mississippi Judicial College shall determine the amount of child protection and juvenile justice training which shall be satisfactory to fulfill the requirements of this section.”
MO Mo. Ann. Stat. § 452.423	actions for child custody or for dissolution of	Discretionary	GAL	Attorney or CASA	See § 43-21-121(4)

	marriage or legal separation where custody, visitation, or support of a child is a contested issue				
MT Mont. Code Ann. § 40-4-205	actions where a "child's support, parenting, and parental contact"	Discretionary	GAL	Attorney or volunteer	
NE Neb. Rev. Stat. Ann. § 42-358(1)	domestic relations actions	Discretionary	Counsel	Attorney	
NV Can't find a statute					
NH N.H. Rev. Stat. Ann. § 461-A:16	"all proceedings for divorce, separation, annulment, paternity, or determination of parental rights and responsibilities"	Discretionary	GAL	Doesn't specify – case law suggests GAL does not have to be an attorney (See In re Peirano, 155 N.H. 738 (2007))	
NJ N.J. Stat. Ann. § 9:2-4	"any proceeding involving custody of a minor child"	Discretionary	GAL Counsel	Doesn't specify Attorney	
NM N.M. Stat.	"custody of minor"	Discretionary	GAL	Attorney	

Ann. § 40-4-8	children is contested"					
NY Family Court Act § 241	"minors who are the subject of family court proceedings"	Mandatory?	Counsel "of their own choosing" OR "Law guardian" See § 242	Attorney Attorney		
NC N.C. Gen. Stat. § 1A-1, Rule 17(b)	No statute specifically addressing GALs in custody cases; use the statute in Rule 17 See also "parenting coordinator" statute – N.C. Gen. Stat. § 50-91(a)	Discretionary	GAL	Attorney or volunteer		
ND N.D. Cent. Code § 14-09-06.4 (Amended by 2009 North Dakota Laws S.B. 2042)	"custody or visitation of children is contested"; or where there is "special concern" for the child's welfare	Discretionary	GAL	Attorney		
OH Civ. R. Rule 75	divorce, annulment, separation actions	Discretionary	Counsel GAL	Attorney Attorney or volunteer		
OK Okla. Stat. Ann. tit. 43, § 107.3	Held unconstitutional by Kelley v. Kelley, 175 P.3d 400 (2007)					
OR	Cases listed in	Discretionary	Counsel	Attorney	See Or. Rev. Stat. Ann.	

Or. Rev. Stat. Ann. § 107.425(6)	Or. Rev. Stat. Ann. § 107.425 (4)	(Required if requested by child)	Individual or panel for assisting in investigation	See Or. Rev. Stat. Ann. § 107.425(3)(d) Attorney	§ 107.425(3)(d)
PA Pa.R.Civ.Pro. 1915.11	Actions for Custody, Partial Custody and Visitation of Minor Children	Discretionary	Counsel		
RI R.I. Gen. Laws § 15-5-16.2(c)(1)	support, visitation or custody	Discretionary	Counsel GAL	Attorney Doesn't specify (See § 15-5-16.2(c)(1)(ii))	
SC S.C. Code Ann. § 63-3-810	when "custody or visitation of a minor child is an issue"	Discretionary	GAL	Doesn't specify (Notes imply it can be attorney or volunteer)	Court has discretion; see S.C. Code Ann. § 63-3-810(B)
SD S.D. Codified Laws § 25-4-45.4	Statute may only apply in abuse cases?	Discretionary	Counsel – act in child's "best interest"	Attorney	
TN Tenn. Code Ann. § 36-4-132	"action for dissolution of marriage involving minor children"	Discretionary	GAL	Doesn't specify	
TX Tex. Fam. Code Ann. §	"a suit in which the best interests of a	Discretionary	Amicus attorney – best interests	Attorney	

107.021	child are at issue"		Attorney ad litem – provides legal services to the child GAL – best interests of the child See Tex. Fam. Code Ann. § 107.001 (definitions)	Attorney Attorney or volunteer	
UT Utah Code Ann. § 30-3-11.2 Utah Code Ann. § 78A-2-228 (as amended by Utah 2009 Session Laws Ch. 32)	“any action before any court of this state involving the custody or support of a child” “any district court action in which the custody of or visitation with a minor is at issue”	Discretionary Discretionary	Counsel – represent the child GAL – represent the best interests of the child	Attorney Attorney	
VT Vt. Stat. Ann. tit. 15, § 669	“all cases involving parental rights and responsibilities”	Discretionary	GAL	Doesn't specify	
VA Va. Code. Ann. § 16.1-266(F)	When custody is contested and both parties are represented by counsel, there NO appointment for the children unless “the interests of the child	Discretionary	Counsel GAL	Attorney Attorney	

	are not otherwise adequately represented."					
WA Wash. Rev. Code Ann. § 26.12.175	any Family Court proceedings under Ch. 26.12, including "parenting arrangements" under 26.09.220	Discretionary	GAL	Attorney or volunteer	Counties may have special advocate (CASA) programs	
WV W. Va. Code § 48-9-302(a)-(b)	Custody of children	Discretionary	Counsel GAL	Attorney Attorney		
WI Wis. Stat. Ann. § 767.407	"custody of the child is contested" or if there is "special concern" for the child's welfare	Mandatory	GAL	Attorney		
WY Wyo. Stat. Ann. § 14-3-211(b)	Abuse statute – part (b): "may appoint counsel for any party when necessary in the interest of justice"	Discretionary (in non-abuse situation)	Counsel	Attorney		

(2) John
Parlor

COUNCIL FOR CHILDREN'S RIGHTS - CUSTODY ADVOCACY PROGRAM MISSION STATEMENT AND GUIDELINES

MISSION STATEMENT

To represent and advocate for children in custody and visitation cases so as to decrease the adversarial nature of the proceedings, facilitate agreements, promote effective co-parenting, identify and access needed services, function as aggressive advocates for children in litigated custody and visitation disputes with the goal of creating safe and healthy environments and family relationships for children.

GUIDELINES FOR COURT APPOINTED ADVOCATES FOR CHILDREN IN CUSTODY AND VISITATION CASES

I. INTRODUCTION

A. Overview

The Council for Children's Rights recruits and assigns GAL- attorneys and lay volunteers to serve as GAL-attorneys and Custody Advocates in contested custody and visitation proceedings. A trained lay person, the Custody Advocate, is teamed with the GAL-attorney to represent the child's best interests. The Custody Advocate Team (Team) acts as investigators, facilitators of services, and aggressive advocates for the child. The GAL-attorney focuses on the court proceedings and negotiations with the parties' attorneys. The primary goal of this representation is to resolve the conflicts between the parties outside of court and to promote effective co-parenting. If negotiations are unsuccessful, then the GAL-attorneys will aggressively litigate on behalf of the child in contested custody and visitation proceedings. The GAL- supervising attorney shall assist the volunteer GAL-attorney and volunteer Custody Advocate at every stage. In some cases, the GAL-supervising attorney will handle the cases without utilizing the volunteers. The Team shall consult with a mental health professional whenever necessary on complex custody and visitation issues. If the case is tried, the GAL-attorney or supervising attorney shall present recommendations to the court concerning the child's needs and best interests based on the testimony of witnesses and documentary evidence presented by the GAL-attorneys and the parties. The dual model in custody cases draws on the expertise of an attorney and a lay person, and refocuses the proceedings around the child's interests.

The goals and objectives of this program are as follows:

1. To focus on the needs of the child.
2. To promote and protect the interests of the child.
3. To provide a model that establishes comprehensive facilitation and child advocacy in contested custody and visitation cases.
4. To modify the adversarial approach in contested custody cases in North Carolina.

5. To identify and advocate for the child's needs while coordinating services and information to meet those needs.
6. To enhance the well-being of the children and their families with minimal intervention from outside community professionals.
7. To set up facilitation among the parties while teaching and enhancing effective parenting and communication once court ordered mediation has been unsuccessful.
8. To enable the parties to set aside past hostilities and to move forward in developing an agreement, and cooperatively to nurture the child towards becoming a healthy, well-adjusted individual.
9. To reduce negative and alienating behaviors between the parties.
10. To provide investigatory powers to allow optimal representation of the child's best interests.
11. To provide committed and aggressive advocacy for children in court when negotiations have faltered and the case goes to trial.

B. Definitions:

1. **Child:** Any reference to child shall mean the minor child or children involved in a custody and visitation proceeding.
2. **Council for Children's Rights (CFCR):** The non-profit organization that administers the Custody Program.
3. **Custody Advocate:** A trained layperson serving with the GAL-attorney in the representation of children in the custody and visitation case. The Custody Advocate shall be appointed with the GAL-attorney pursuant to an order of the court. The order shall also appoint the GAL-supervising attorney who is a staff member of CFCR.
4. **Custody Program:** The program administered by the Council for Children's Rights which pairs a GAL-supervising attorney from CLC with a volunteer GAL-attorney and a volunteer Custody Advocate to represent the best interests of a minor child in a contested custody and visitation proceeding.
5. **Custody Program Team (Team):** The team representing the child's best interests. The team shall be comprised of the GAL-supervising attorney, and if appointed, the volunteer GAL-attorney and volunteer Custody Advocate.
6. **GAL-attorney:** A licensed practicing attorney serving as the child's

Guardian *ad Litem* pursuant to Rule 17 (b)(3) of the North Carolina Rules of Civil Procedure. The attorney shall either be a staff attorney at the Council for Children's Rights or one volunteering through the CFCR's Volunteer Lawyer Program.

7. **GAL-supervising attorney:** A staff attorney at CFCR who shall supervise the Team or directly represent the best interests of a minor child in the custody and visitation proceeding.
8. **Parent:** Any reference to "parent" shall mean the parent or other potential custodian who is a party to the custody and visitation proceeding.
9. **Parent's attorney(s):** Any reference to the "attorney" shall mean the attorney representing the parent or potential custodian who is a party to the custody and visitation proceeding. If a party is unrepresented, then the party will be referred to as "proceeding *pro se*."
10. **Staffing:** A meeting of the Team which could include other professionals to share information and to discuss issues and options.

II. THE CUSTODY ADVOCACY PROGRAM

A. Custody Advocacy Program Team (hereinafter Team)

The CFCR GAL-supervising attorney, the volunteer GAL- attorney (hereinafter referred to collectively as "GAL-attorney") and the custody advocates are trained to operate as a team to work with all parties with the goal of reaching a parenting agreement which serves the child's best interests. This program is aimed at focusing the proceedings around the needs of the child. The GAL attorney, after consultation with the Team, make recommendations to both parents, their attorneys and to the Court, based on the Team's impartial investigation and evaluation of the child and the parent's needs.

The Team will work directly with the family members and consult with other service providers. The Team will develop the parenting plan for the family that addresses the needs of the child and the parents while it works with the parents, their attorneys and community service providers. The Team will assist the parents and their attorneys in implementing the parenting plan and following the court orders and recommendations.

1. The Team has the following functions:
 - a. **Investigator:** Obtains all relevant facts through personal interviews and a review of all records, documents and clinical data.

- b. **Reporter/ Litigator:** Ensures that all relevant facts are brought to the attention of parties, their attorneys, service providers, and the judge through written communication, conferences, telephone conversations, presentation of documentary evidence and direct testimony.
- c. **Facilitator, Negotiator:** "Coach"; works with parents to assist them in constructively communicating about decisions involving their child and in reaching a parenting agreement.
- d. **Monitor:** Stays informed and involved with family members and all professionals to ensure that any needed services are provided and to assist in implementing the parenting plan.

2. The Team assists the entire family in coping and making decisions during a difficult time in their lives. It supports the family in moving towards better communication and improved shared parenting abilities.

The following are the specific responsibilities of the Team:

- a. Identification of issues:
 - i. Litigation issues;
 - ii. Family dynamics and issues, i.e., substance abuse, domestic violence, mental health, abuse/neglect;
 - iii. Parenting skills;
 - iv. Resources needed/services: education, medical treatment, evaluations, substance abuse assessment and treatment, mental health treatment;
 - v. Developmental level and needs of the child.
- b. Investigation and assessment:
 - i. Information gathering
 - (a) Meet the child individually;
 - (b) Meet with each parent;
 - (c) Meet with both parents together, when appropriate;
 - (d) Meet and/or telephone collateral resources, i.e. teachers, daycare workers, therapists, etc.
 - ii. Development of a working relationship with child, parents, and attorneys.

- iii. Negotiation with parents as needed for basic caretaking arrangements for child.
- iv. Assessment of issues, problem areas, family strengths and weaknesses
 - (a) Consultation with experts
 - (b) Consultation within the Team
 - (c) Formulation of an initial plan for any needed intervention and initial ideas regarding short-term or long-term parenting plans.
- c. Facilitation of a parenting agreement, if possible (See Section VII).
- d. After consultation with the Team, the GAL attorneys will prepare recommendations and litigation strategy for Court (See Section VIII)

B. Role of GAL-Attorney and Custody Advocate

After the Team has been selected by CFCR and appointed by Court Order, the GAL-supervising attorney will meet with the Team's GAL-attorney and Custody Advocate to discuss identifiable issues in the case and to outline an investigation strategy. Similar meetings with the Team may be scheduled throughout the investigation to discuss findings and new areas for investigation.

The GAL- attorneys shall be the child's voice to the parents, their attorneys and to the Court. S/he will work together with and supervise the Custody Advocate in meeting the parties and investigating the case. The GAL-attorneys will supervise the Custody Advocate in obtaining records, arranging interviews and making collateral contacts. The GAL-attorneys must be fully informed about the results of the actual investigation to understand the disputed issues and the family dynamics.

The GAL-attorney shall be responsible for the ongoing communication and for bringing necessary matters to the parties' attorneys' and/or judge's attention. If the matters cannot be resolved with the parties' attorneys, the GAL-attorney shall file any necessary motions. All motions shall be submitted to the GAL-supervising attorney for review before filing. The GAL-attorney shall always copy the GAL-supervising attorney with all correspondence, pleadings and other relevant material.

After the investigation has been completed, the Team shall meet to discuss the best interests recommendation which shall include a review of evidence gathered from

witnesses; an assessment of all records and other documents obtained on behalf of the child; a determination of the documentary evidence and witnesses that are to be presented in court; and formulation of recommendations that are in the best interests of the child.

The GAL attorneys and Custody Advocate will then meet with the parties and their attorneys to discuss the recommendations and attempt to negotiate a resolution in the best interests of the child. Such a meeting should take place three (3) weeks before trial if adequate time has been given for the Team to conclude its investigation.

If the case goes to trial, the GAL-attorney shall call any witnesses, examine and cross examine witnesses, introduce documentary evidence, and present his/her recommendations to the Court based upon the evidence presented during trial. The GAL-attorney may prepare and offer the Custody Advocate as a fact witness. Before trial the GAL-attorney shall determine whether any party plans to have the child testify and prepare the child for trial.

The GAL-attorney shall represent the child's best interests. The GAL- attorney and Custody Advocate shall explain to a child, when appropriate, the court process and the role of the players involved. The GAL-attorney shall make the Court aware of a child's expressed interest position, even if it differs from the GAL-attorney's best interests judgment.

C. Role of GAL-Supervising Attorney

The GAL-supervising attorney is a Council for Children's Rights staff attorney who either represents the child directly or acts as an ongoing advisor to the volunteer GAL-attorney. The supervising attorney shall write counsel for both parties informing them of the representation. In this initial communication, the GAL-supervising attorney shall request access to the parties without counsel present, and assure counsel that they will be kept informed. The GAL-supervising attorney will meet with the Team at the initial staffing to develop a strategy for the case. The GAL-supervising attorney shall be available to meet with the parties, their attorney and/or the child, when requested. The GAL-supervising attorney shall consult with the volunteer GAL-attorney on a periodic basis as the case progresses. The GAL-supervising attorney together with the GAL-attorney may arrange consultation with an expert to discuss complex custody issues. The GAL-supervising attorney may also participate in interviewing witnesses and gathering other evidence to the extent necessary.

The GAL-supervising attorney shall review all pleadings, motions, and reports prepared by the volunteer GAL- attorney before filing. S/he shall assist the

volunteer GAL- attorney at trial, if necessary, and be available to advise the volunteer GAL-attorney on any evidentiary or trial issues.

The GAL-supervising attorney shall be responsible for recruiting, training and assigning volunteer GAL-attorneys and will serve as liaison with the Mecklenburg County Bar and the courts.

D. Role of the Parties/Parents

The parties will be asked to agree to the following process:

1. To keep the child's best interests above their own;
2. To acknowledge that the children have a right to a loving relationship with each parent;
3. To cooperate with the Custody Advocate, the GAL-attorney and CFCR staff;
4. To make full and complete disclosure after consulting with their attorneys, to the Custody Advocate and the GAL-attorney
5. To allow access by the Custody Advocate and the GAL-attorney to the child, themselves and their home;
6. To allow the Custody Advocate and the GAL-attorney independent access to all therapists, medical records, etc.
7. To develop a cooperative relationship between the parents around the "business" of co-parenting of their child;
8. To be supportive of the child in relationship to the other parent.
9. To prevent any negative, belittling and blaming statements from being made about the other parent to or around their child;
10. To suspend all efforts to gather negative information about the other parent through the questioning of their child;
11. To avoid pitting the Custody Advocate or the GAL-attorney against the other party;
12. To understand the importance of age appropriate discussions with their child about the proceedings;
13. To listen with an open mind to suggestions and constructive feedback on disputed subjects;
14. To be willing to compromise for the well-being of their child.

III. TRAINING

A. The Custody Program Coordinator, in consultation with the GAL-supervising attorney, shall periodically schedule training sessions for new community volunteers to be trained on the basics of the role of Custody Advocate. The current training program includes the following topics:

1. CFCR Custody Program Guidelines
2. Child Custody Law
3. Case process
4. Divorce and its effects on children
5. Expectations from the domestic bench and bar
6. Child development as it relates to custody/visitation issues
7. Interviewing of children and parents
8. Documentation and recording
9. Facilitation and negotiation
10. What happens if we go to court?

B. The GAL-supervising attorney shall periodically schedule Continuing Legal Education seminars for attorneys who are interested in providing pro bono representation to children in custody/visitation cases. The current training includes the following topics:

1. Basics of Custody/Visitation Law
2. CFCR Guidelines and the Local Rules
3. Expectations from the bar and bench
4. Divorce and its effects on children
5. Interviewing children and parents
6. Child development as it relates to custody/visitation issues
7. Facilitation and negotiation
8. Reports and recommendations
9. Role of the GAL-attorney at trial

Periodically, the GAL-supervising attorney may meet individually with interested volunteer attorneys to train them in the role of GAL-attorney and to provide them with appropriate materials.

IV. REFERRAL AND APPOINTMENT PROCESS

A. The following types of cases are presently being referred to us by judges and attorneys:

1. Cases involving long-standing conflicts between parents, weary domestic attorneys, limited financial resources for needed services and unsuccessful mediation.
2. Cases in which a mediated agreement is not reached and the parties have returned to court approximately 6-8 weeks later at which point the judge appoints us. These cases involve one or more of the following:

- a. Allegations of sexual abuse of the child by a parent or third party.
- b. Allegations of physical abuse of the child by a parent or third party.
- c. Allegations of neglect of the child by one or both parents.
- d. Allegations of emotional abuse of the child by one or both parents.
- e. A culture of violence between the spouses.
- f. Allegations of mental illness or a history of mental health problems on the part of one or both parents.
- g. Allegation of drug and alcohol abuse by one or both parents.
- h. A pro se parent.
- i. Extremely adversarial cases that are attorney driven, i.e. two domestic attorneys who generate conflict between themselves.
- j. A custodial parent who is relocating geographically.
- k. Allegations of or fear about child snatching.
- l. An honest difference of opinion between two good parents regarding the best interest of the child.
- m. Third party custody action against a parent, frequently by a grandparent.

3. Cases which the judge determines are inappropriate for mediation because of the existence of any of the above issues.

B. Appointment of CFCR

The Local Rule 7B sets out the appointment process.

V. **GETTING STARTED**

- A. The GAL-attorney and Custody Advocate will be appointed by the court.
- B. The GAL-supervising attorney and the Custody Program Coordinator will contact the parents' attorneys in writing to request pleadings, financial, and pertinent information and the consent to meet with their clients.
- C. The GAL-supervising attorney and Custody Program Coordinator will assign a GAL-attorney and a Custody Advocate. The GAL-supervising attorney will supervise the preparation of the GAL appointment order. The proposed GAL appointment order will be sent with a cover letter to the parties' attorneys. Hearing no objections, the order will be submitted to the court. The signed order will be disseminated to the parents' attorneys.
- D. After receiving the pleadings and case history and after the parties have complied with the financial obligations to the CFCR, the GAL-supervising

attorney and Custody Program Coordinator will set up the initial staffing with the Team.

VI. *INVESTIGATING*

A. The child's representatives shall examine every pleading and available relevant document provided by the parents' attorneys. These may include, but shall not be limited to:

1. DSS records
2. Prior custody or psychological evaluations
3. Child therapy notes
4. School cumulative and attendance records

B. The child's representatives shall interview and observe the child.

C. The child's representatives will meet individually with the parties.

D. The child's representatives may observe the child with each parent.

E. The child's representatives will interview as appropriate the following and will send orders or obtain releases when necessary:

1. Other caretakers
2. School personnel
3. Therapists
4. Other family members
5. Neighbors
6. Doctors or other medical care providers
7. Law enforcement
8. DSS social workers
9. Any other expert witnesses

F. The child's representatives shall visit the home of the child and any proposed homes, whenever necessary.

G. The child's representatives will conduct internal staffings with the Team, as needed.

H. Any communication between the GAL-attorney or Custody Advocate and a court appointed expert must be simultaneously communicated to the parents' attorneys, including any written information or documents which the child's representatives might provide to an expert.

VII. FACILITATING

- A. The GAL-attorney and the Custody Advocate (and the supervisors when necessary) will meet with the parents together to explore areas of agreement and communication between parents. This meeting shall take place only with the consent of both parents' attorneys.
- B. The GAL-attorney and Custody Advocate will explore disputed issues with the parties individually and with their attorneys. The goal is to resolve these issues out of court.
- C. Discussions shall focus on the effects of the parents' behavior and decisions on their child in an effort to motivate parents to resolve areas of conflict.
- D. The parties will arrive at a parenting plan if possible.
- E. If an agreement is reached, the attorney for one of the parents or the GAL-attorney will draft a consent order outlining the parenting plan and circulate it for revisions and signatures.

VIII. REPORTING

- A. If the parties do not agree to a parenting plan in the Facilitative Stage as outlined above, then the Team shall meet to discuss the best interests recommendations. The Team will then meet with the parties and their attorneys to discuss the recommendations and attempt to negotiate a resolution. This meeting should take place within three (3) weeks before trial if adequate time was given for the Team's investigation.
- B. If the case is tried, the role of the GAL-attorney is as follows:
 - 1. When necessary, the GAL-attorney should move for protective orders at the beginning of the trial.
 - 2. The GAL-attorney should be familiar with the relevant reports, records and evidence, ensure that necessary witnesses testify and that relevant material is subpoenaed and introduced into evidence, and cross examine witnesses.
 - 3. The GAL-attorney shall present independent evidence and witnesses, if necessary.
 - 4. The GAL-attorney may deliver a summation, and prepare any necessary trial memorandum.
 - 5. If the Court considers an interview with the child, the GAL-attorney shall file protective motions or request it be done in a manner that most effectively elicits and communicates information from the child while minimizing the trauma and intrusiveness to the child. The GAL-attorney

and Custody Advocate will thoroughly prepare the child if an interview is conducted.

6. Depending on the age of the child, prior to trial, the GAL-attorney may communicate with the child about the proceedings, in terms that the child can understand. After trial, if appropriate, the GAL-attorney should discuss with the child the Court's determination and its consequences.
7. If the GAL-attorney believes that the Court's determination is contrary to the child's best interests and that an appeal should be taken, a Notice of Appeal shall be filed and the GAL-attorney shall assure that the appeal is perfected. If a parent files a Notice of Appeal and perfects the appeal, the GAL-supervising attorney and the GAL-attorney shall jointly decide how to pursue the best interests position of the child.

IX. MONITORING

- A. Upon entry of a temporary custody order, the GAL-attorney and Custody Advocate will monitor the case. Upon entry of a permanent custody order, when the GAL-attorney and the Custody Advocate determine that the case no longer requires monitoring and is not contrary to the child's best interests, then they shall request to be relieved of their duties by consent order or by motion to the court.
- B. During the monitoring period, the GAL-attorney and Custody Advocate will periodically contact the child, if appropriate, and/or the parties and other persons to assess the implementation of the parenting plan or court order. If necessary, they will interview other persons for additional information.
- C. The parties or the child may report concerns to the GAL-attorney or the Custody Advocate about the implementation of the parenting plan. The parties should NOT look to the GAL-attorney as their representative, however. The burden remains on the parties to retain their own lawyers or represent themselves pro se in filing motions on their own behalf with regard to the custody proceedings. The GAL-attorney will only intervene if s/he receives evidence that indicates the best interests of the child are in jeopardy at any time during the monitoring period.
- D. The GAL-attorney and Custody Advocate will attempt to facilitate resolution of any substantial issues that emerge during the monitoring period.

X. COMMUNICATING

- A. The GAL-attorney and the Custody Advocate will not meet with parties without their attorneys unless consent has been obtained. They shall not meet with the parties jointly without obtaining the consent of their attorneys and informing their attorneys of the meeting.

- B. The GAL-attorney and the Custody Advocate shall explain the Custody Program to the child at the initial interview, in terms that the child may understand. They will explain to the child that they may have to tell what the child discloses to them, but that the GAL-attorney and Custody Advocate will *attempt* to keep the source of the information to themselves.
- C. The GAL-attorney and the Custody Advocate must communicate with each other and the other members of the Team regularly about the status of the case and their individual responsibilities.
- D. Any communication with or to the judge shall be only through the GAL-supervising attorney or the GAL-attorney.
- E. Any communication to the parties' attorneys shall be through the GAL-attorney, GAL- supervising attorney or the Custody Program Coordinator, except for scheduling purposes.

The Guardian Ad Litem in High-Conflict Custody Cases: A Custody Advocacy Model

The Council for Children's Rights (CFCR) is a nonprofit agency in Charlotte, North Carolina which represents children in virtually every forum in which they come in contact with the court system: delinquency proceedings, abuse and neglect proceedings, psychiatric hospitalization hearings, special education hearings, school discipline and exclusion hearings, and high-conflict custody and visitation disputes. When the Children's Law Center was originally founded in 1987, they represented children only in juvenile court and mental health proceedings. It expanded into additional arenas as the devastating effects of the unmet legal needs of children in this community became apparent. For example, their attorneys came to expect that some of the most troublesome cases of young people who were psychiatrically hospitalized were cases which involved high conflict between divorcing parents. Likewise, some of the most troubling cases in the abuse and neglect arena were those in which there were allegations of sexual abuse of the child made by one divorcing parent against the other. Strong advocacy for and representation of children in those arenas clearly made a difference in the outcome, and the organization knew that the same could be true in the domestic arena.

No statutory authority exists in North Carolina for appointment of an attorney or Guardian *ad Litem* for a child in a high-conflict custody/visitation case. North Carolina has developed a strong Guardian *ad Litem* model for representation of children in abuse and neglect proceedings, combining a community volunteer with an attorney advocate to provide state paid representation in virtually every case. The best-interest roles of the GAL/attorney advocate team are well developed within a detailed statutory framework, and a state-funded program for recruiting, training and supervising volunteer Guardians *ad Litem* exists in every district.

When district court judges who knew the value of best-interest representation in juvenile court began asking for Guardian *ad Litem* representation in domestic cases, the CFCR used the successful Guardian *ad Litem* program model in shaping its own role. As the appointments increased, the CFCR requested and received foundation funding to fully develop a program for representing children in high-conflict custody and visitation cases. The program depends heavily on volunteer power from the local bar and community. The CFCR employs a full-time attorney, two part-time attorneys, a paralegal and a program assistant.

During the early stages of developing the Custody Program, an ad hoc committee comprised of two domestic judges, several domestic attorneys, several mental health professionals and CFCR staff members met frequently to devise procedures and protocols for this representation. Models from other states were utilized, although the end result is uniquely tailored to our particular community and program. *Rule 7B: Guardian Ad Litem and Custody Advocate Program* is the local rule of practice which was adopted by the entire domestic bench and has governed the program for several years. Including the domestic bar and bench in the development of the program clearly improved its reception by domestic practitioners. Local Rule 7B addresses issues ranging from the appointment

process to the "best-interest" role to use of experts to recommendations and written reports. As a result, local judges and solution-oriented domestic attorneys are among our strongest supporters.

In addition to the local rule, the CFCR developed an "in house" document, *Guidelines for Court Appointed Advocates for Children in Custody and Visitation Cases*. This document fully explains the goals and objectives of the program, the custody advocate team of volunteers and staff members, the functions of the team, the role of the child's representatives, the training program, the appointment process, the types of cases which are appropriate for referral to the program, the investigative process, the settlement or facilitate process, reporting, the role of the child's representatives at trial and the monitoring stage. This document is frequently modified as the program matures and addresses new issues which arise.

The form *Order Appointing Guardians Ad Litem and CFCR Custody Advocates* appoints the child's representatives pursuant to Rule 17(b)(3) of the North Carolina Rules of Civil Procedure and clearly sets out their best-interest role and responsibilities. CFCR representatives are authorized to review and receive any and all records, whether confidential or not, and encounter few problems locally in gaining access to needed information. GAL fees are assessed by the presiding judge based on a sliding fee scale.

The goals and objectives of the CFCR's Custody Advocate program are bold. In addition to promoting and protecting the interests of the child, the program objectives include: identifying and advocating for the child's needs while coordinating services and information to meet those needs; identifying specific needs of the parents and services to meet those needs; setting up facilitation among the parties while teaching and enhancing effective parenting and communication once court ordered mediation has been unsuccessful; enabling the parties to set aside past hostilities and move forward in developing an agreement; reducing negative and alienating behaviors between the parties; and providing investigatory powers to allow optimal representation of the child's best interest. If negotiation fails, the program attorneys provide aggressive advocacy on behalf of the child in litigated custody proceedings. The program states as an overall goal modifying the adversarial approach in contested custody cases in North Carolina, a goal which is being partially realized in Mecklenburg County where the CFCR is located. Increasingly, attorneys are requesting appointment of the CFCR in cases where they know the traditional adversarial approach will only cause further deterioration of an already hostile situation in which children are suffering.

During the course of its investigation, the CFCR interviews as many relevant people as possible and collects and reviews all relevant documents. Included in your materials is the *Attorney Authorization Form* sent to parents' attorneys to determine their willingness to have the CFCR involved without their participation during this process. Parents' attorneys are now more willing to remain on the sidelines and allow the CFCR to meet with their clients without their presence. A parent questionnaire is also sent to each parent to complete prior to the initial interview.

Because these cases are the most difficult ones in the system and involve the most entrenched problems on the part of parents, after an agreement is reached or an order is entered after trial, the CFCR remains involved for a minimum of one year. In the early days of the program, CFCR representatives were very "hands-on" with parents in working with them to implement the court ordered plan.

The CFCR Custody Advocacy program represents children in a way that leaves parents much better able to meet the needs of their children by helping parents focus on their children rather than their own personal agendas. The program is highly visible in the legal community, is thoroughly critiqued by parents and their attorneys, and remains viable because it performs a critical function in these difficult cases.

severely and unreasonably limiting access; substance abuse or mental health issues which pose some risk for the child.

All Pleadings setting forth facts that form the basis of the request shall be verified and include a request for a hearing. They may be accompanied by supporting affidavits. A copy of all Pleadings and supporting affidavits shall be served on the opposing Party and delivered to Family Court. The opposing Party has seven (7) days from the date of service to respond. Such response shall be a verified pleading, affidavit or other notarized statement and shall be served on the opposing Party and delivered to Family Court. Upon the earlier of receipt of the response or seven (7) days, Family Court shall transmit the request and response to the assigned Judge.

The assigned Judge may grant or deny the request for a Temporary Parenting Arrangement based upon the documents submitted or may set a hearing. If a hearing is set, the clerk notifies Family Court which contacts the attorneys and/or litigants. It is anticipated that the hearing will not exceed one (1) hour in length. If a ruling is based on the documents submitted, the clerk notifies Family Court which contacts the attorneys/litigants.

Any order that makes Temporary Parenting Arrangements shall be without prejudice to either Party during Custody Mediation and at any later trial of the custody claim.

The filing of Pleadings for Temporary Parenting Arrangements that are not well-grounded may result in sanctions against the offending Party, which may include, but are not limited to, attorney's fees, or, if the offending Party may otherwise be entitled to attorney's fees, the denial of a fee award. Such sanctions are within the judge's discretion.

7B. Guardian Ad Litem and Custody Advocate Program

7B.1 Definitions

Child: The minor Child or Children who is/are the subject of a custody and visitation proceeding.

Custody Advocate: A trained layperson serving with the GAL-Attorney in the representation of Children in the custody and visitation case. The Custody Advocate shall be appointed by the Court. The Custody Advocate shall either be a staff person at the Council for Children's Rights or a volunteer through the Council for Children's Rights's Custody Advocate Program.

Custody Advocate Program: Administered by the Council for Children's Rights, the program recruits, trains, assigns and pairs GAL-Attorneys and Custody Advocates to represent the best interests of minor Children in contested custody and visitation proceedings. This team acts as investigators and facilitators of services in an attempt to resolve conflicts outside of the Courtroom and to promote effective co-Parenting.

GAL-Attorney: A licensed practicing attorney appointed by the Court to represent the Child's best interest as guardian ad litem pursuant to Rule 17 (b)(3) of the North Carolina Rules of Civil Procedure. The attorney shall either be a staff attorney at the Council for Children's Rights or

one volunteering through the Council for Children's Rights's Volunteer Lawyer Program or any other practicing lawyer with Family Law experience

Parent: The Parent or other caregiver who is a Party to the custody and visitation proceeding.

Parent's Attorney(s): The attorney representing the Parent or caregiver that is a Party to the custody and visitation proceeding. If a Party is unrepresented, then the reference to "Parent's Attorney" shall apply to the Party proceeding *pro se*.

7B.2 Education and Training. Custody Advocates shall receive a minimum of 12 hours of training before a case may be assigned, including the topics of confidentiality, interviewing, developmental stages of Children, stages and effects of divorce, communication, and expectations of judges and Parties' attorneys. The GAL-Attorney shall be required to attend a 3-hour CLE course, although a GAL-Attorney may accept a case prior to completing this course.

7B.3 Appointment Process. The Court shall not routinely appoint a GAL-Attorney but shall reserve the appointment for those cases in which the Court finds that an appointment is necessary in light of the particular circumstances of the case.

If mediation is waived or does not result in a Parenting agreement, a Party may seek representation of the minor Child(ren) in a custody and/or visitation proceeding. The Parent's Attorney shall file a motion requesting the appointment of a GAL-Attorney and Custody Advocate and schedule the motion for hearing. The motion shall contain the name(s), date(s) of birth, and sex(es) of the Child(ren), and the reasons for requesting the appointment. The motion shall be served on the opposing Party and the Council for Children's Rights (CFCR). A suggested motion is Form CCF-40.

A judge on his or her own motion may consider the appointment of a GAL-Attorney and Custody Advocate by completing an order (Form CCF-40A) and scheduling the case for hearing. The order shall be mailed or faxed to the CFCR and the Parties. If a party's attorney moves to have the CFCR appointed, he/she will give notice to the CFCR of the court date.

In cases where the GAL-Attorney and Custody Advocate seek fees prior to being appointed, the CFCR shall file a motion requesting fees and schedule a hearing on the motion. This hearing shall be combined with the hearing on the GAL-Attorney appointment, if one has been scheduled.

Unless otherwise filed and served, each Party shall file an Affidavit of Financial Standing and Deliver it to the opposing Party and the CFCR not later than forty-eight (48) hours before the scheduled hearing.

If the judge determines that a GAL-Attorney and Custody Advocate should be appointed to represent the Child(ren) and the CFCR is able to accept the appointment, the CFCR shall prepare an appointment order (Form CCF-42) unless the judge directs otherwise. The appointment order is contingent upon the parties' payment of a specific retainer or minimum fee.

The CFCR shall not begin their duties until the retainer has been paid. The CFCR sliding fee schedule shall apply unless the Court orders otherwise.

After the appointment order is entered, the CFCR will disseminate to the Parties copies of the Custody Advocate Program guidelines.

The court will (in the permanent custody order) state that the CFCR will be allowed to withdraw, unless the court wants the CFCR to stay on for a specific time to perform specific tasks, in which case the court will specify those tasks.

7B.4 Best Interest/Expressed Interest. The Custody Advocate and GAL-Attorney shall represent the Child's "best interest", and may communicate the Child's "expressed interest" position to the Parties and the Court. A Child's position shall be considered by the GAL-Attorney and Custody Advocate and may be fully discussed with the Child, but shall not be controlling.

7B.5 Potential Conflicts in Cases with Siblings. When a conflict of interest arises, the GAL-Attorney shall move the Court to appoint separate attorneys for siblings.

7B.6 Scope of GAL Attorney's Authority. The GAL-Attorney shall function as does any attorney for a Party and shall be subject to all applicable rules.

7B.7 Child Support. The GAL-Attorney and Custody Advocate will not routinely address the establishment or enforcement of child support, unless requested to do so by the judge or by a Parent's Attorney.

7B.8 Use of Experts by the GAL-Attorney. The GAL-Attorney may file a motion requesting appointment of an expert at the expense of the Parent(s). The GAL-Attorney and Custody Advocate may independently engage an expert, regardless of the Court's decision on the appointment and payment of an expert.

7B.9 GAL-Attorney/Custody Advocate Contact with Parents. The GAL-Attorney or the Custody Advocate shall not contact or meet with a Parent individually without the consent of the Parent's Attorney. The times and dates of any joint meetings with the Parents shall be communicated to the Parents' attorneys prior to the meeting.

7B.10 Communicating with Court-Appointed Experts. Any communication between the GAL-Attorney or Custody Advocate and a Court appointed expert must be simultaneously communicated to the Parents' attorneys, including any written information or documents that the Child's representatives might provide to an expert.

7B.11 Recommendations. The GAL-Attorney and Custody Advocate have a responsibility to begin their roles in a neutral posture. At various points in the case, the GAL-Attorney and Custody Advocate may make recommendations to Parents and their attorneys concerning the Child's best interest, and they may inform the Court of their position and recommendations when requested.

The recommendations shall be communicated to the Parents' attorneys three (3) weeks before trial. The GAL-Attorney shall communicate the GAL-Attorney and Custody Advocate's recommendations first to the Parents' attorneys and then directly to the Parents if requested to do so by the Parents' attorneys. The GAL-Attorney and Custody Advocate's recommendations may be communicated directly to the Child, through the Child's therapist or through one or both of the Parents.

7B.12 Custody Advocate Testimony. The Custody Advocate may testify at trial.

7B.13 The Child As Witness. The GAL-Attorney ordinarily discourages Parents from requiring the minor Child to testify. If testimony is to be elicited at the Court proceedings, then the GAL-Attorney may advocate using an alternative procedure such as an in-chambers interview, closed circuit television, or one-way mirror with an audio connection.

The GAL-Attorney may request an in-chambers interview with only the Child, judge, GAL-Attorney and Custody Advocate being present. The judge may exclude Parents from the interview, although Parents' attorneys have the right to be present. If the Parents' attorneys consent to an in-chambers interview that excludes attorneys as well as Parents, they may submit questions for the Child to the judge.

7C. Parent Coordinator Appointments

7C.1 In accordance with N.C.G.S. §50-90, the general functions of a Parent Coordinator are as follows:

- a. assist parents in implementing Custody/Visitation Court Order on an ongoing basis;
- b. reduce conflict between parents;
- c. teach parents communication skills, child development and children's issues specific to divorce;
- d. facilitate both parents' relationships with the children;
- e. provide attorneys and any unrepresented party with written summaries of developments in the case;
- f. in the implementation of the parenting plan act to resolve any issues not specifically governed by the court order over which the parents reach an impasse, until further orders are entered; and
- g. empower the parents to successfully resolve conflicts over their children on their own.

The Parent Coordinator will not deal directly with financial issues and will refer financial issues to the attorneys.

7C.2 Criteria for Appointment as a Parent Coordinator

- a. To be eligible to be included on the district court's list of parenting coordinators, a person must meet all of the following requirements:
 1. Hold a masters or doctorate degree in psychology, law, social work, counseling, medicine, or a related subject area.

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
10-CVD-

v.

Plaintiff,

Defendant.

**ORDER APPOINTING GUARDIANS AD
LITEM AND CFCR CUSTODY ADVOCATE**

This matter was before the Court for appointment of guardians ad litem and a custody advocate for the following children:

It is in the children's best interests and expedient to the administration of justice that guardians ad litem and a custody advocate be appointed to represent the child/children. The Council for Children's Rights ("CFCR") is a private, non-profit organization which represents and advocates for the best interest of children in legal proceedings and operates the Custody Advocacy Program which assigns attorneys and lay persons to represent and advocates for the best interests of children in custody and visitation cases.

IT IS THEREFORE ORDERED that:

1. Pursuant to Rule 17(b)(3) of the North Carolina Rules of Civil Procedure, John J. Parker, III, staff attorney at CFCR, and _____, a volunteer attorney, are hereby appointed as the children's guardians ad litem. _____, a volunteer, shall serve as the children's custody advocate.
2. The guardians ad litem and custody advocate shall represent and advocate for the children's best interest in custody and visitation matters in this proceeding and, at the Court's discretion, with respect to child support issues. Their responsibilities shall include, without limitation, the following:
 - a. To receive, review or copy documents concerning the children, whether or not the document is otherwise confidential;
 - b. To investigate and determine the facts, the children's needs and the resources available to meet those needs and to present that information at hearings;
 - c. To appear at all hearings in which custody or visitation is an issue and represent the and advocate for the children's best interests by examining and cross-examining witnesses, otherwise presenting evidence and making arguments to the Court;

- d. To collect and present to the Court, to aid in custody and visitation determinations, all available reports, evaluations, and other information regarding the children.

3. The guardians ad litem and custody advocate are further authorized to receive and review all information, records and reports concerning the children and the parties to this action, including, medical and educational, wherever located, whether confidential or not, that may, in their opinion, be relevant to the children's best interests in this action.

4. The parties and all entities (including without limitation the parties' employers, physicians, and any other professionals providing care to the parties and/or the children including CMC Randolph-Behavioral Health Center), are ordered to cooperate with the guardians ad litem and the custody advocate in the fulfillment of these responsibilities, including providing access to information, records or reports, whether confidential or not, concerning the children or the parties to this action, that may, in the opinion of the guardians ad litem and custody advocate, be relevant to the children's best interests and the custody/visitation issues this action. This shall include all documents, information, records, or reports obtained from any other source, i.e. "re-releases" of such material.

5. The guardians ad litem and the custody advocate shall not disclose any information about the child/children or the children's family except to the extent necessary to fulfill the duties and responsibilities imposed by this Order.

6. The Plaintiff shall pay a flat GAL fee of \$_____ and the Defendant shall pay a flat GAL fee \$_____ both within 10 (ten) days of the filing of this Order. If either of the parties is unable to pay the GAL fee within the ten days, he or she shall contact John Parker of CFCR (704.943.9469) within that period to arrange payment terms. These GAL fees are based upon the annual gross incomes of the parties as reported to CFCR and set according to the GAL Flat Fee Scale attached hereto. The funds are to be sent to

Council for Children's Rights
ATTENTION: John Parker
601 East Fifth St., Suite 510
Charlotte, NC 28202

7. The provisions of this Order (including ¶6 regarding GAL fees) are enforceable by the Court's contempt powers.

8. This appointment shall continue until the entry of a permanent custody and visitation order or until terminated by further order.

This the ____ day of _____ 2010.

District Court Judge

COUNCIL FOR CHILDREN'S RIGHTS
GAL FLAT FEE SCALE

<u>Annual Gross Income</u>	<u>Fee</u>
0 to \$20,000	\$100
\$20,001 to \$25,000	\$200
\$25,001 to \$30,000	\$300
\$30,001 to \$35,000	\$400
\$35,001 to \$40,000	\$500
\$40,001 to \$45,000	\$600
\$45,001 to \$50,000	\$700
\$50,001 to \$55,000	\$800
\$55,001 to \$60,000	\$1,000
\$60,001 to \$65,000	\$1,250
\$65,001 to \$70,000	\$1,500
\$70,001 to \$75,000	\$1,750
\$75,001 to \$80,000	\$2,000
\$80,001 to \$85,000	\$2,250
\$85,001 to \$90,000	\$2,500
\$90,001 to \$95,000	\$2,750
\$95,001 to \$100,000	\$3,000

The fee for persons with annual gross incomes in excess of \$100,000 will be three percent (3%).

#3
Helen
Brantley

3/14/2010

A Model for Civil Custody Guardians

Helen T. Brantley, Ph.D.
March 17, 2010

Guidelines for Brief Focused Assessment (2009)

- Developed by the Association of Family and Conciliation Courts (AFCC)
- Used across country in family courts
- Lacked definition and standard methodology
- Make recommendations for "parenting time and responsibility"
- Provides a national model

Guidelines

- Differences in practices may exist resulting from statutory or programmatic requirements
- Guidelines are similar to Custody Evaluation Guidelines that focus on the "best interest of the child"
- Provide training and competency guidelines and ethical concerns of practice
- Similarity to Civil Custody Guardians in proposed legislation

Definition of Brief Focused Assessments (AFCC)

- Purpose to provide Judge with information obtained through reliable procedures
- Used to help court obtain objective data
- Address narrowly defined questions identified by Judge
- Address different kinds of issues
- Reduce need for teachers or therapist to testify

Definition of Brief Focused Assessments

- Used when time or other constraints restrict use of full Child Custody Evaluation and address broader questions regarding "parenting time and responsibility"
- Used to help parents reach resolution

Recommended Procedures

- At least one individual interview with each parent named by the court
- Observation of each parent with the children
- Individual interviews with children when developmentally appropriate
- Collateral contacts
- Record review
- Written report

Advantages of BFA and Civil Custody Guardian Assessments

- Hearing the Child's voice
- Efficient and cost effective
- Less intrusive
- More timely
- Advance parents' resolution of differences by providing clarity

Qualifications of Assessors (AFCC)

- Mental health professionals
- More than two years experience
- Have specialized training for specific issues, e.g., domestic violence, substance abuse, relocation requests
- Training and competency in family disputes, developmental needs of children, safety issues, interviewing techniques of adults and children, fundamental legal rights, and statutes

Report Writing

- Court's referral questions
- List of data gathering techniques
- Summary of relevant data
- Discussion of issues relevant to referral questions
- Recommendation relevant to issues if requested by the court
- Safety concerns or other concerns for consideration by the court

Role Conflict (AFCC)

- No sequential dual roles
- No multiple roles
- Disclosure of any and all relationships with parties, attorneys, or judge
- No provision of advice or therapeutic intervention

Adopt General AFCC Model

- Purpose of "Best Interest of the Child"
- Requirement of experience level
- Requirements of training
- Requirements of procedure
- Requirements of report
- Concerns about dual roles and sequential roles

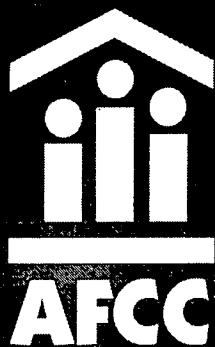
Suggested Additional Considerations for NC Statute

- Attorneys as well as mental health professionals may be used.
- Length of training established to provide standardization of process and product according to the law
- Length of training must be sufficient to provide civil custody guardians with competencies in both legal and mental health considerations.
- CCG's may help negotiate settlement with parties
- Quasi-Judicial immunity may protect civil custody

Type, scope or extent of
investigation may vary
Colorado requires 40 hours

→ give "some" immunity
MST know the limits
of abilitier

#3 Helen Brantly



Association of Family and Conciliation Courts

Guidelines for Brief Focused Assessment

GUIDELINES FOR BRIEF FOCUSED ASSESSMENT
Developed by the Association of Family and Conciliation Courts
Task Force on Brief Focused Assessment

FOREWORD

In 2007, then AFCC President Hon. William Fee convened the AFCC Task Force on Brief Focused Assessment to study the issues of “limited assessment” models used in family courts. An online survey of family court practitioners revealed that these assessments are increasingly practiced in a multitude of family court settings, but lack clear definition as well as standardization of methodology and practice. From the many descriptive terms in use in different courts and communities and with appreciation of the language variations in different jurisdictions, task force members chose the term **Brief Focused Assessment (BFA)** to refer to assessment of narrowly defined, issue-specific questions that arise in family court settings. Although the terms “custody dispute” and “custody evaluation” are often used in discussing assessment in these cases, task force members preferred the term “parenting time and responsibility” disputes to emphasize the contrast between BFAs and Child Custody Evaluations. The guidelines described herein are designed to define a model of focused assessment, promote dialog about when they are appropriate and when the risks outweigh the benefits, and to guide practice in the courts and the community.

The members of the AFCC Task Force on Guidelines for Brief Focused Assessment were:

Phil Bushard, DPA, co-chair; Linda M. Cavallero, Ph.D. co-chair and reporter; and members: Andrea Clark, MSW; Hon. Linda Fidnick; Jonathan Gould, Ph.D.; Susan E. Hanks, Ph.D.; Grace M. Hawkins, LCSW; Lorraine Martin, MSW; Carole McKnight, BA; Nancy W. Olesen, Ph.D.; Jennifer L. Rosato, JD; Arnold Shienvold, Ph.D.; and Robert M. Smith, JD, M.Div.

PREFACE

The pressures of providing courts with reliable information about families within limited timeframes in light of increasing numbers of litigants, busy court dockets and scarce resources to fund assessment have contributed to the development of brief, focused models of assessment for use in family courts.¹ Brief Focused Assessments (BFAs) are an evolving and increasingly practiced model of issue-specific assessment used in a multitude of family court settings. When used appropriately, BFAs are a legitimate, parsimonious, and sufficient (i.e. stand alone) process. The Guidelines for Brief Focused Assessment described herein delineate best practices for BFAs in terms of referrals, methodology, and reporting to the court. They rely heavily on the AFCC Model Standards of Practice for Child Custody Evaluation² (CCEs) promulgated by the Association of Family and Conciliation Courts (AFCC) in 2006 for such aspects of assessment as data gathering and report writing.

Both CCEs and BFAs are used to assist in better informing judicial decision-making and both may be appropriate in different phases of the same case. However, BFAs typically address different types of issues and phases of a family dispute and generally utilize a more descriptive approach versus the analytic mode used in conducting a CCE. There are instances in which a BFA is the most appropriate process, e.g., when issues in dispute are narrowly defined. There are also situations in which either a BFA or a CCE could be useful, but the BFA is ordered due to economic or institutional constraints. However, it is important that a BFA not be substituted as an inexpensive alternative where a comprehensive CCE is necessary to address the concerns of the court and the family. Such practice could result in a two-tiered system in which low income clients routinely receive less comprehensive services than those who can afford to pay for more, building an injustice into the very legal system established to serve all families equally.

¹ The term "family courts" is used as an umbrella term to refer to domestic relations and conciliation courts dealing with family issues.

² AFCC Model Standards of Practice for Child Custody Evaluation, 2006. Hereafter, AFCC Model Standards (2006).

I. Introduction

1. Brief, focused assessment models are in use in a variety of jurisdictions internationally, although there has been no consensus about their definition, breadth, purpose and goals. To date, there are no published practice guidelines for conducting BFAs for use in resolving parenting time and responsibility disputes.
2. BFA models presume that in some cases there are discrete issues, limited in scope, that do not require a comprehensive family evaluation. These narrowly defined issues can be assessed at different stages in the legal process, whenever the judge requests a focused assessment to assist in decision-making.
3. BFAs of specific issues, as defined by family court judges or judicial officers, can be a parsimonious and helpful method of supporting better informed judicial decision-making and timely resolution of issues, which helps reduce delays in the legal process that can exacerbate family tensions.
4. Depending on jurisdiction as well as setting (agency, court services, private practice), there may be differences in practices related to focused assessments resulting from statutory, court or programmatic requirements.

II. Purpose of the Guidelines

The purpose of these practice guidelines is to:

- (1) Define models of brief, focused assessment and differentiate them from comprehensive evaluation models.
- (2) Identify the types of issues and the circumstances under which a BFA can provide useful information to judges resolving parenting time and responsibility disputes.
- (3) Define the best practices for brief, focused assessments in terms of referral procedures, information gathering techniques, and disseminating the information to the court.

III. Scope of the Guidelines

These guidelines are designed to apply to the focused assessment of individual and family issues, as specified by judges presiding over parenting time and responsibility disputes in family courts.

IV. Conceptualization of the Brief Focused Assessment Process

1. The limitations of data collected in most BFAs generally result in a report that is more descriptive than analytic, and a focus on the short term rather than the long term needs of the family. Inferences made from the data and recommendations are limited, based on the scope of the referral questions, the breadth of the data and the nature of the model itself.
2. A BFA is designed to help better inform specific aspects of judicial decision-making.

Because the judicial officer narrowly defines the issues to be assessed, the resulting assessment report is less likely to assume undue influence in the judicial decision-making process regarding the ultimate issues.

V. Definition of Brief Focused Assessments

1. BFAs address specific, narrowly defined referral question(s) identified by a judge or designated judicial officer in a court order.
2. The purpose of BFAs is to provide the judge in a family court dispute with information generated through reliable procedures regarding focused questions that have been identified by the court as important to the resolution of family matters.
3. In BFAs, an appropriately trained clinician, in a court, agency or private setting, conducts interviews with parents and their children, observes parent-child interaction, reviews relevant records and consults relevant collateral contacts. There may be additional activities conducted in connection with the assessment (see section X). The evaluation process is guided by the focused question(s) provided by the court or judicial officer. A list of some types of questions appropriate for BFAs is offered in an appendix at the end of this document.
4. BFAs differ from comprehensive child custody evaluations in their narrower scope, more descriptive reporting of data and, consequently, more limited inference making. Comprehensive evaluations, by contrast, are designed to provide data on more broadly based questions about general family functioning and parenting capacity that are not appropriate to the BFA model.

VI. Advantages of Brief Focused Assessments

1. BFAs can be an efficient and cost effective tool to assist in judicial decision-making.
2. By their nature BFAs involve more circumscribed inquiry into the family issues and are therefore likely to be less intrusive to the family than comprehensive custody evaluations.
3. BFAs can be completed in less time so information can be available to the court more quickly, avoiding some of the delays in the resolution of issues that can exacerbate tensions in families.
4. BFAs may, in some situations, obviate the need for a comprehensive custody evaluation and keep a case on track toward resolution.
5. BFAs have the capacity to provide information quickly, in order to assist a judicial determination of interim family arrangements or to assess acute questions regarding individual or family problems, especially those related to time sensitive child safety issues.
6. BFAs may advance the parents' ability to resolve their differences by elucidating an area of prior disagreement without risking an extensive delay in the litigation process.

VII. Limitations of Brief Focused Assessments

Given the limited nature of the data gathered in BFAs, clinicians must keep in mind the limitations inherent in the model and take care to:

- a) offer interpretations or opinions that are within the available data
- b) stay within the scope of the referral question(s)
- c) make clear the limitations of the model to readers of the report
- d) avoid applying the results to broad, qualitative psycho-social legal issues which are better suited to comprehensive child custody evaluations. If the court order for a BFA indicates that the evaluator is to conduct a "child custody evaluation," the evaluator should seek clarification of the specific areas of concern to the court or request an order to conduct a comprehensive evaluation in keeping with current professional standards.

VIII. Referral Procedures

1. The Court should endeavor to match the evaluation model to the needs of the case.
 - a) **An investigation** may be sufficient to address fact-based questions such as a child's custodial preference or the school's description of a child's academic and social functioning.
 - b) **A brief focused assessment** best addresses questions that are well-defined, narrow in scope and require clinical judgment, e.g., to what degree is a child's custodial preference based on developmentally appropriate reasoning?; is supervised visitation needed to protect a child's safety or well-being while with a parent in light of some aspect of the parent/child relationship?; whether and under what conditions to reunite a long-absent parent and child(ren).
 - c) **A comprehensive child custody evaluation** is most appropriate when a more comprehensive, qualitative study of the family is needed in light of long term issues, such as post divorce custody or relocation. A comprehensive evaluation should also be considered when there is a complex family pattern of child maltreatments or certain types of domestic violence.
2. Prior to commencing a BFA, the assessor must secure a court order that includes a well-defined referral question(s) and specifically names the clinician or their agency to conduct the assessment. It is also recommended that the court order specify to whom the report should be provided upon its completion.

IX. Communication with Litigants, Attorneys & Courts (AFCC Model Standards, 2006)

1. Brief focused assessors should provide litigants with written information outlining the assessor's, or the agency's, policies, procedures and fees, if any. The descriptive document provided by the assessor should specify the intended uses of the information obtained

during the assessment, include a list of those to whom the assessor will make the report available and the manner in which the report will be released, and confirm that the assessor's policies governing the release of items in the case file will be in conformance with applicable laws and court rules, including child protection laws.

2. In the initial meeting with the parties, assessors should review key elements of their policies and procedures, as well as the limits of confidentiality, respond to any questions, and seek assurance that the policies, procedures and limits of confidentiality are fully understood. The obligation to take reasonable steps to avoid harm where it is possible to do so and to minimize harm that is foreseeable but unavoidable extends to all those with whom assessors professionally interact; to all those who are involved in the assessment process in any manner, including children; and, to those from whom assessors seek collateral source information. Assessors should inform children of the limits of confidentiality, using language that is chosen based upon each child's cognitive capacity and receptive language abilities.
3. Brief focused assessors should take steps to ensure that collaterals know and understand the potential uses of the information that they are providing.
4. Brief focused assessors should not have substantive *ex parte* communications about a case with the court or with the attorneys representing the parties.

X. Brief Focused Assessment Procedures

1. Assessors should design the BFA by selecting data gathering methods designed to provide sufficient information to address the referral question(s) of the court.
2. Brief focused assessors should strive to be accurate, objective, fair and independent in their work and are encouraged to utilize peer-reviewed published research in their reports. (AFCC Model Standards, 2006)
3. The specific methods employed will depend on the referral question(s), but many of the following techniques will be utilized in the majority of assessments:
 - a) At least one individual interview with each parent or litigant named by the court. A follow-up interview may be conducted in person or by telephone when indicated.
 - b) Observation of each parent with all children named in the order, unless prohibited by a restraining order or other order of the court. If there has been a long interval of no contact between a parent and child(ren), or particular types of allegations, such as abuse, observation may not be appropriate, depending on the circumstances.
 - c) Individual interviews with each child named when developmentally appropriate.
 - d) Collateral contacts to relevant professionals and others, such as family members who provide childcare.
 - e) Relevant record review.
 - f) Written report that includes the limitations of the procedures.
4. Depending on the specific nature of the focused issue(s) identified by the court order, these

practices may be adapted, or additional data gathering methods may be employed, such as psychological testing or home visits.

5. In BFA reports, assessors should make known to the court when there are incomplete, unreliable, or missing data. Where data are incomplete, unreliable or missing, assessors should identify the incomplete, unreliable, or missing data, should offer an explanation if doing so is possible, and should articulate the implications of the incomplete, unreliable, or missing data upon any opinions communicated in reports or testimony. (AFCC Model Standards, 2006)
6. Although recommendations should be limited to the questions specified in the court order, the assessor may identify and report to the court on other relevant issues that are beyond the scope of the order, especially if they involve areas of child safety or significant parenting concerns. This includes suggesting additional questions for inquiry or more in-depth follow up of a specific issue, or suggesting a comprehensive child custody evaluation if the court requires more information about the family.
7. Assessors should perform their professional activities with recognition of the investigative and/or evaluative nature of the task, acknowledgment of the limitations inherent in their assessment procedures and understanding of the distinction between mental health issues and the specific legal questions before the court.
8. Assessors must abide by all statutes, court rules and agency policies of the jurisdiction in formulating BFA reports to the court.
9. Written reports are recommended as they provide a permanent record of the brief focused assessment. In the event of time sensitive assessments, it may be necessary to provide verbal feedback to the court or judicial officer prior to the completion of the written evaluation.
10. Brief focused assessors should take note of any prior formal assessments conducted on the participants in the assessment. Assessors should give careful consideration to the inclusion of testing data from previous evaluations. In doing so, assessors should consider how current the data are, the qualifications of the previous evaluator, the context of the previous evaluation and the importance of examining the raw data.
11. A team approach to conducting BFAs is appropriate, provided that all of the clinicians are competent to fulfill their assigned roles. In jurisdictions where court-appointed assessments are governed by licensure laws, unlicensed team members should receive close supervision by a designated licensed team member. Any team member who signs the forensic report should be knowledgeable and answerable to the court on all aspects of the final forensic work product. (AFCC Model Standards, 2006.)

XI. Qualifications of Assessors

1. BFAs should be performed by qualified mental health professionals who are independent practitioners, part of a family court system, court services employees or by individual

- practitioners or teams qualified by statute or court rule.
2. Regardless of the manner in which arrangements for their services have been made and regardless of the source of remuneration, assessors should always function as impartial examiners.
 3. Brief focused assessors should possess appropriate education and training. Assessors who have fewer than two years experience should seek ongoing supervision prior to offering to perform or accepting appointments to conduct BFAs.
 4. Special issues such as domestic violence, substance abuse, alienating behaviors, sexual abuse, relocation requests, and sexual orientation require specialized knowledge and training. Assessors should only conduct assessments in areas in which they are competent. (AFCC Model Standards, 2006.)
 5. When assessors lack specialized training in particular areas of concern for the assessment, they should either decline the appointment for the assessment or seek professional consultation in the assessment of that portion of the assessment. If such consultation has been obtained, this should be noted in the assessor's report. (AFCC Model Standards, 2006.)

XII. Scope of Assessors' Obligations

1. Assessors are responsible to all consumers of their services, the courts, the participants in the assessment process and affected others.
2. Assessors must strive to provide reliable and relevant information to the court in a timely fashion, make clear the limitations of the assessment and identify important issues not assessed.

XIII. Education and Competency Issues

1. Legal professionals, including judges and attorneys, who use BFAs and the assessors who conduct them should be educated about the need for definition of scope, the descriptive rather than qualitative nature of the assessment and the appropriate application of the limited data available.
2. Assessors should be knowledgeable about statutes, case law, and court rules and policies in the jurisdiction in which they serve.
3. Brief focused assessors should have an understanding of the fundamental legal rights of those who are part of the assessment process and should conduct themselves in such a manner as to not violate or diminish those rights. (AFCC Model Standards, 2006.)
4. Assessors should have specialized knowledge and training in topics related to family disputes and should seek consultation or further training in specific content areas in the scope of assessments ordered by the courts. Since research and laws pertaining to family law, divorce disputes and children's needs are continually changing and advancing,

assessors should secure ongoing specialized training as well as keep current with relevant developments in research and policy.

5. Assessors should have training in the following areas, as enumerated in the AFCC Model Standards (2006):
 - (1) the psychological and developmental needs of children, especially as those needs relate to decisions about child custody and access
 - (2) family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships
 - (3) the effects of separation, divorce, domestic violence, substance abuse, child alignment, child maltreatment including child sexual abuse, relocation, sexual orientation issues, and inter-parental conflict on the psychological and developmental needs of children, adolescents, and adults
 - (4) the significance of culture and religion in the lives of parties
 - (5) safety issues that may arise during the assessment process and their potential effects on all participants in the assessment
 - (6) when and how to interview or assess adults, infants, and children
 - (7) how to gather information from collateral sources
 - (8) how to collect and assess relevant data and recognize the limits of the reliability and validity of different sources of data
 - (9) how to address issues such as general mental health, medication use, and learning or physical disabilities
 - (10) how to apply comparable interview, assessment, and testing procedures that meet generally accepted forensic standards to all parties
 - (11) when to consult with or involve additional experts or other appropriate persons
 - (12) how to inform litigants, children, other participants, and collateral sources, of the purpose, nature, and method of the assessment and the limits of confidentiality
 - (13) how to assess parenting capacity and co-parenting capacity and to construct effective parenting and co-parenting plans
 - (14) the legal context within which access issues are decided and additional legal and ethical standards to consider when serving as a brief focused assessor
 - (15) how to make the relevant distinctions among the roles of assessor, mediator, therapist, parenting coordinator, and co-parenting counselor
 - (16) how to write reports for the courts to which they will be presented
 - (17) how to prepare for and give testimony at deposition or at trial
 - (18) how to maintain professional neutrality and objectivity when conducting brief focused assessments

XIV. Record Keeping and Release of Information (AFCC Model Standards, 2006)

1. The term “record” refers to the following documents relating to the assessment: notes, recordings, pleadings and other court papers, assessment instruments and testing data.
2. Brief focused assessors should have a system of record-keeping and professional communication that is consistent with laws, rules, and regulations, and safeguards applicable privacy, confidentiality and legal privilege. Unless laws, rules of the court, directives from the court, rules promulgated by regulatory bodies or private agency policy specify otherwise, assessors should presume that their records are created, maintained and

preserved in anticipation of their review by others who are legally entitled to possess them and/or to review them.

3. Records of all aspects of the assessment should include reasonable detail, should be legible and stored in a manner that makes expeditious production possible. They should be made available in a timely manner to those with the legal authority to inspect them or possess copies of them. Excluded from the requirements alluded to in the foregoing discussion of record production are items that may be protected from disclosure by copyright laws.
4. Brief focused assessors or the agencies they work for should maintain active control of assessment records and take reasonable care to prevent the loss or destruction of records.
5. Brief focused assessors or the agencies they work for should establish policies regarding their procedures, including procedures for the release of information and payment of fees, if applicable.

XV. Use of Collateral Source Information (AFCC Model Standards, 2006)

1. Valid collateral source information is critical to a thorough assessment. Sufficiency and reliability of collateral source information is a determination to be made by the assessor.
 - a) Assessors should be mindful of the importance of gathering information from multiple sources in order to thoroughly explore alternative hypotheses concerning issues pertinent to the assessment. Assessors should recognize the importance of securing information from collateral sources who, in the judgment of the assessors, are likely to have access to salient and critical data.
 - b) Decisions concerning the sufficiency of collateral source information should be made by assessors. Accordingly, the data sources may include, but are not limited to oral and/or written reports from collateral sources; school, medical, mental health, employment, social service, and law enforcement records; computer files; financial information; and video and audio data that have been legally obtained.
 - c) When collateral and documentary data are not available, the assessor should document that limitation in the BFA report.
2. Assessors should acknowledge the limits of their ability to discern the truthfulness of oral reports from the primary participants. When assessing the reports of participants in the assessment, assessors should seek information from other sources that may serve either to confirm or disconfirm participant reports on any salient issue, unless doing so is not feasible. Where seeking such confirming or disconfirming information is not feasible, assessors should exercise caution in the formulation of opinions based upon unconfirmed reports and should clearly acknowledge, within the body of their written reports, statements that are not adequately corroborated and why it may or may not be appropriate to give weight to such data.
3. Brief focused assessors should be aware of their local practices regarding hearsay in reports

and in testimony.

4. Collateral information constitutes hearsay when included in a forensic work product, therefore, assessors should be aware of exceptions to hearsay rules and other rules governing the admissibility of expert opinion that may apply to forensic assessments in the legal jurisdictions in which their assessments have been performed. Assessors should also be mindful of the fact that the interpretation of hearsay rules and exceptions may vary considerably from judge to judge and as a function of the unique elements of the case.
5. Assessors should be prepared to explain how different sources and different types of information were considered and weighted in the formulation of their opinions. In utilizing collateral sources, assessors should seek information that will facilitate the confirmation or disconfirmation of hypotheses under consideration.
6. Assessors should disclose all collateral sources contacted as part of the assessment.
7. Assessors should list all collateral informants who were contacted and all data sources that were utilized, whether or not the information obtained was utilized by the assessors in formulating their opinions. Where unsuccessful attempts have been made to contact collaterals, those collaterals should be identified and an appropriate notation made.
8. The participants in the assessment should provide explicit authorization for the brief focused assessor to contact collateral sources unless that authority is provided in the order appointing the assessor or is statutorily provided. The brief focused assessor should inform collateral sources that there is no confidentiality in the information that is being discussed between the collateral sources and the assessor.

XVI. Presentation and Interpretation of Data (AFCC Model Standards, 2006)

1. Assessors should only offer opinions to the court in those areas where they are competent to do so, based on adequate knowledge, skill, experience and education.
2. Opinions expressed by brief focused assessors should be based upon information and data obtained through the application of reliable principles and methods. Assessors should differentiate among information gathered, observations made, data collected, inferences made and opinions formulated.
3. An assessor should provide written or oral evidence about the personality characteristics of a particular individual only when the assessor has conducted a direct examination of that individual and has obtained sufficient information or data to form an adequate foundation for the information provided and/or opinions offered.
4. In reports and in testimony, assessors should articulate any limitations to the assessment with respect to methodology, procedure, data collection and data interpretation. When the available data do not enable assessors to comment responsibly on the relative advantages and disadvantages of possible outcomes under consideration, they should decline to offer an opinion.

XVII. Report Writing

Reports to the court should include:

- The court's referral question and date of report
- Dates of all important milestones, e.g., guardianship or marriage, separation and divorce
- Names and dates of birth of those assessed
- A list of all data gathering techniques, including date of interview or administration and amount of time utilized
- Documentation that the limits of confidentiality were explained to the litigants and collaterals in keeping with statutory requirements
- Summary of relevant data collected
- A listing of missing data, including reason why data was not available
- Discussion of issues related to the referral question, including acknowledgment of the limitations to the data and possible alternative hypotheses
- Recommendations relevant to the issues raised in referral questions, if requested by the court
- Other concerns or issues, especially those that are relevant to the safety of the children, for the consideration of the court

XVIII. Role Conflict and Dual Role Issues (AFCC Model Standards, 2006)

1. Brief focused assessors should strive for objectivity and take reasonable steps to avoid multiple relationships with any and all participants of an assessment.
2. The responsible performance of a BFA requires that assessors be able to maintain reasonable skepticism, distance and objectivity. For this reason, assessors should take reasonable steps to avoid multiple relationships. Assessors should recognize that their objectivity may be impaired when they currently have, have had or anticipate having a relationship with those being assessed, with attorneys for the parties or the children, or with the judges. Assessors should recognize that relationships cannot be time delimited; specifically, prior relationships or the anticipation of future relationships may have the same deleterious effects upon assessor objectivity as current relationships would have.
3. Brief focused assessors should disclose any and all professional and social relationships with any subject of the assessment, attorney or judge involved in the proceeding.
4. It is recognized that in some geographic areas assessors may not be able to avoid professional or social relationships with individuals whom they may subsequently be asked to assess, with attorneys for those individuals or with judges hearing the disputes. When avoiding multiple relationships is not feasible, assessors should be alert to the ways their objectivity may be impaired and prior to accepting an appointment, they should provide a reasonably detailed written disclosure of current, prior, or anticipated relationships with

others involved in the litigation. Such disclosure should be made in a timely manner.

5. Multiple relationships may be unavoidable in some jurisdictions. When an assessor is asked or ordered to function in multiple roles and where doing so can be avoided, the brief focused assessor has the affirmative duty to inform the appointing agent(s) of the disadvantages of multiple roles and to decline one of the assigned roles.
6. Brief focused assessors should not offer advice or therapeutic interventions to anyone involved in the brief focused assessment process. Practitioners who are hired to review the work of a brief focused assessor should restrict their role to that of a reviewer and should avoid relationships with the participants in the assessment. Practitioners should consider the importance of role delineation in undertaking reviews of the work of assessors, should avoid multiple roles and should not meet with litigants, family members, or allies of litigants (other than counsel). Reviewers should not have had any prior relationship with any member of the family that is the subject of the assessment being reviewed.

APPENDIX

TYPES OF QUESTIONS APPROPRIATE FOR BFAs

In the process of weighing the issues, data and relevant law presented in a family case, judges sometimes need additional information in order to assist in their decision making. At times, other judicial officers or attorneys working to present a case to the court may identify areas of dispute between the parents in which additional information would promote better informed judicial decision making. Such individuals, on their own or in consultation with clinicians trained in the BFA model, may identify focused questions that can be assessed in the BFA model. Such issues include:

1. In a case where one parent asserts that a child wishes to live with the non-custodial parent, a BFA of the circumstances of that request could be useful. The assessment might include: What is the context of and basis for the child's wish to change residence; is the child able to articulate his/her reasoning in a developmentally appropriate way; what is the parents' report of the history of this request as well as the parenting and attachment history, are there concerns about parental influences on the child's thinking/wish; does the child have any special needs and what would be the impact on the child of such a change were it to be granted?
2. In a case where one parent has been absent from a child's life for a substantial amount of time: Under what conditions might it benefit the child to establish a relationship with the parent and what might be the risks to the child and current caretakers?
3. In a case where there are allegations of instability in a parent: In what ways might a parent's alleged substance abuse or mental health condition impair their ability to provide a safe and nurturing environment for the child during their parenting time? Or, does the parent suffer from a mental illness or substance abuse, and, if yes, how might this impact their ability to provide a consistent and safe environment during their parenting time?
4. In a case where a child is very young or has special needs: Given a parental agreement or court ruling on legal and physical custody, what sort of parenting schedule would be developmentally appropriate?
5. In a case with a young child and unsubstantiated allegations of abuse: How can access be allowed in a safe, developmentally appropriate and careful manner, especially if there has been a lapse in contact?
6. In the context of a larger matter, e.g. custody or relocation, a well defined issue may be identified for a BFA, for example: What would be a developmentally appropriate access plan, if a post divorce relocation is allowed?
7. In the case of a child who appears aligned with one parent to the exclusion of the other, an assessment of the dynamics of the parent-child relationship with suggestions on how to improve the relationship, if appropriate to do so, could be useful to the Court.

A Model for Civil Custody Guardians

Helen T. Brantley, Ph.D.
March 17, 2010

Guidelines for Brief Focused Assessment (2009)

- Developed by the Association of Family and Conciliation Courts (AFCC)
- Used across country in family courts
- Lacked definition and standard methodology
- Make recommendations for "parenting time and responsibility"
- Provides a national model

Guidelines

- Differences in practices may exist resulting from statutory or programmatic requirements
- Guidelines are similar to Custody Evaluation Guidelines that focus on the "best interest of the child"
- Provide training and competency guidelines and ethical concerns of practice
- Similarity to Civil Custody Guardians in proposed legislation

Definition of Brief Focused Assessments (AFCC)

- Purpose to provide Judge with information obtained through reliable procedures
- Used to help court obtain objective data
- Address narrowly defined questions identified by Judge
- Address different kinds of issues
- Reduce need for teachers or therapist to testify

Definition of Brief Focused Assessments

- Used when time or other constraints restrict use of full Child Custody Evaluation and address broader questions regarding "parenting time and responsibility"
- Used to help parents reach resolution

Recommended Procedures

- At least one individual interview with each parent named by the court
- Observation of each parent with the children
- Individual interviews with children when developmentally appropriate
- Collateral contacts
- Record review
- Written report

Advantages of BFA and Civil Custody Guardian Assessments

- Hearing the Child's voice
- Efficient and cost effective
- Less intrusive
- More timely
- Advance parents' resolution of differences by providing clarity

Qualifications of Assessors (AFCC)

- Mental health professionals
- More than two years experience
- Have specialized training for specific issues, e.g., domestic violence, substance abuse, relocation requests
- Training and competency in family disputes, developmental needs of children, safety issues, interviewing techniques of adults and children, fundamental legal rights, and statutes

Report Writing

- Court's referral questions
- List of data gathering techniques
- Summary of relevant data
- Discussion of issues relevant to referral questions
- Recommendation relevant to issues if requested by the court
- Safety concerns or other concerns for consideration by the court

Role Conflict (AFCC)

- No sequential dual roles
- No multiple roles
- Disclosure of any and all relationships with parties, attorneys, or judge
- No provision of advice or therapeutic intervention

Adopt General AFCC Model

- Purpose of "Best Interest of the Child"
- Requirement of experience level
- Requirements of training
- Requirements of procedure
- Requirements of report
- Concerns about dual roles and sequential roles

Suggested Additional Considerations for NC Statute

- Attorneys as well as mental health professionals may be used.
- Length of training established to provide standardization of process and product according to the law
- Length of training must be sufficient to provide civil custody guardians with competencies in both legal and mental health considerations.
- CCG's may help negotiate settlement with parties
- Quasi-Judicial immunity may protect civil custody

Type, scope or extent of
investigation may vary
Colorado requires 40 hours

March 2010

Questions sent to all chief judges and to all members of the Board of Governors of the Association of District Court Judges

21 total responses (some judges did not answer all questions)

- 1) Do you think there is need for a specific statute authorizing the court to appoint a GAL (but with a different name to avoid the confusion with juvenile GALs) in civil child custody cases?

Yes - 5. Generally think it is a good idea to have statutory authority, and to give them a new name. One suggestion - "Court Appointed Child Advocate". One judge feels the title should keep the term 'guardian ad litem'.

No - 13. Twelve said no because they feel present law is sufficient. One said no because of the belief that GALs should not be appointed at all in custody cases. Several responded that a specific statute would cause more attorneys to request GALs in cases where they are not needed. A couple of judges also pointed out that a detailed statute will create more opportunity for conflict that will require court time to resolve.

Maybe - 2

Comments:

Some attorneys favor appointment of an attorney for the child rather than a GAL. These attorneys feel the child needs to be represented in same way parents are represented. (this judge attached model statutes and forms from Iowa and Vermont).

High conflict cases need custody evaluations done by experts and parenting coordinators, rather than a GAL.

A GAL is particularly helpful in cases where parties are not represented by attorneys. The GAL can gather information court needs to make best interest determination.

"In Forsyth County, the district court judges use the services of the Children's Law Center of Central North Carolina (CLC) for Guardians ad Litem (GAL) in both Chapter 50 cases and Chapter 50B cases where custody is an issue. CLC has been of immeasurable assistance to the judges in presenting the "best interests" of the children to the court and offering recommendations. The judges then make an independent decision concerning custody matters in their orders.

Forsyth County District Court judges feel that standards for the appointment, training and supervision of GALs are greatly lacking in our statutes and rules. The Children's Law Center of Central North Carolina is strongly in agreement."

We have the authority now to appoint pursuant to Rule 17. I am concerned that any clarifying statute will be used as a tool by parties seeking to delay the resolution of their case by making routine requests for GALs in all cases. And, the more specific the statute, the more reason for a party to seek appellate review of cases for technical reasons.

"Our local practice rules have basically codified and given structure to the COA opinions in order to make the alternative, typically elected not ordered by the court, known, understandable, adaptable, and predictable for the benefit of all concerned. In the absence of legislation or local rules, it seems that the COA opinions identify a resource with so little accompanying definition or process that it is not truly accessible as an aid to parties, counsel, or the court. My sense is that there is near universal agreement within our district that our more developed GAL practice serves the convenience of counsel and the parties, expedites resolution of custody issues, saves parents money, and frees up court time in the civil district court division."

"...[our] local bench-bar committee in the late 90's drafted local rules for guardian-ad-litem and parenting coordinators. We reviewed practices and statutes in other states and received comment from representatives of our local community of mental health counselors. The impetus for the work was bar and bench frustration with difficult to manage parents who had problems elevating their focus from their high conflict divorce and related anxieties to a deliberate and careful attention to the child or children's best interest. Although I cannot remember the case at this moment, the COA, in an opinion written by Judge Greene, had recently affirmed an order from Mecklenburg district court appointing a guardian ad litem for a child in a high conflict divorce as within the residual authority of the trial court. We considered that to be precedent that allowed us to proceed with local rules on the issue. Over the years the program has proven to be a great aid to families, lawyers, judges, and children, operating largely on a voluntary basis, typically upon initiation of counsel. It has resulted in a substantial reduction in parties' litigation time and expense, freed up civil district court dockets, and expedited resolution of conflict for the benefit of children of families in divorce."

A statute will not ensure uniformity across the state on this issue. "Things are different 'on the ground' in every place in NC. Perhaps, while we expect fairness from all courts/judges, we shouldn't expect all courts to work the same."

- 2) If yes, what should the standard for appointment be (e.g. when necessary to serve best interest, when case is high-conflict, when the court determines it is appropriate, something else)?

7 responded that appointment should be allowed as the judge deems appropriate.

5 responded that appointment should be allowed when necessary to meet or ascertain the best interests of the child.

1 felt appointment should be allowed only when court determines child's interests are not being investigated adequately.

Comments

If a standard other than 'when judge deems it necessary to meet the best interest of the child' will "back us into a corner where we would be required to appoint a Gal when we do not see a need."

Several stressed that the authority should not be limited to cases deemed to be 'high-conflict'.

- 3) Should the statute specify the responsibilities of the GAL or should the statute allow the court to make that determination on a case-by-case basis?

Only one judge responded that the statute should include detail about the authority and responsibilities of a GAL, to be consistent in every case.

4 responded that the responsibilities should be left up to the judge, with no detail in the statute.

8 responded that the statute should include a list of possible responsibilities, including a 'catch-all' provision, allowing the judge to determine an appropriate role for the GAL in each individual case.

Comments

Remember the confusion over the role of the GAL in juvenile cases. We need some clarification of role in the statute.

The Supreme Court should be allowed to promulgate rules designating the responsibilities of the GAL.

- 4) Should the GAL be permitted to make recommendations regarding custody?

Yes - 8

No - 4

Comments

Allowing GAL to make recommendations would make the GAL an advocate rather than an independent fact-witness.

Would be impossible for GAL to report findings without indicating his/her opinion about best interest.

Recommendations should be made only by experts.

If the GAL can make recommendations, "the lobbying/pressure from the parties will start at the time of appointment. I believe the buck stops with us on custody decision making, and we shouldn't farm it out to others."

Ability to make recommendations would increase number of settlements out of court.

5) Should the GAL participate in court proceedings?

Yes - 6

Only as a fact witness - 6

No - 1

Comments

There are due process concerns if parties are not allowed to cross examine the GAL during a trial.

GAL should be allowed to participate in same way juvenile GALs participate.

6) What should GALs be allowed to do in custody cases?

2 responded that the GAL should be a fact investigator only.

2 responded that the GAL should be able to do whatever the judge deems appropriate.

Specific suggestions:

Advocate for the child

Act as 'eyes and ears of the court'

Interview parties, witnesses and the children

Visit homes, schools and day care, then prepare report for court

Communicate with teachers, doctors, etc.

Investigate and bring independent information about the child to the court

Make recommendations in a written report

7) Who should be permitted to act as a GAL?

12 responded that either attorneys or mental health professionals should be allowed to serve.

2 responded that only mental health professionals should be authorized, meaning professionals trained in making child custody evaluations and recommendations.

1 suggested that the criteria be the same as for Parenting Coordinators.

Comments

Attorneys should be required to receive training similar to that required for juvenile GALs.

"An experienced family law attorney would know where to look for information, what information is important, and how to filter lobbying by the parties."

One extensive comment about qualifications and training:

"Requirements:

- 1) licensed lawyer, law school graduate, 2nd / 3rd year law student under the supervision of a licensed attorney, or any other licensed legal professional
 - 2) mental health professional or social worker who has a child-focused practice
 - 3) any qualified person supervised by an established child advocacy center
 - 4) any qualified person who has 5 years of working experience with a recognized licensed organization that primarily addresses children's issues
 - 5) a custody evaluator
 - 6) any other individual who has met the training qualifications and who has an independent perspective acceptable to the court
- Appointed by court
 - Meets training requirements

Training: (not an exclusive list)

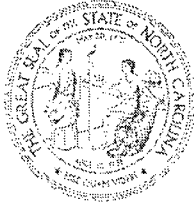
- Comprehensive initial training of 6 hours with 4 additional hours of pre-service training including observation or participation in a custody hearing under a mentor or child advocacy center. The initial training should include:

- 1) overview of the role of the GAL
 - 2) GAL certification and application process
 - 3) standards of practice and court rules
 - 4) dynamics of families and family groups, and child
development
 - 5) ethics/professionalism in GAL practice
 - 6) liabilities and immunities of GALs
 - 7) techniques and strategies for interviewing and
investigating
 - 8) resources available to the parties from the state or from
private agencies
- o 2 hour continuing education in law update"

"Please remember this distinction: The Parenting Coordinator and the Guardian ad Litem have two entirely different roles. The Parenting Coordinator interprets the judge's order after the case is over, whereas the GAL merely investigates and interviews and makes recommendations to the court which may or may not be ordered. The long bill which is currently being considered, contains the same language as the "Parenting Coordinator" statute."



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS



Deana Fleming #4
*Many parties
are indigent*

Guardian ad Litem
Jane Volland
Administrator

PO Box 2448, Raleigh, NC 27602
T 919 890-1250 F 919 890-1903

The North Carolina Guardian ad Litem (GAL) Program
Deana K. Fleming, J.D.
Associate Counsel

I. Statutory Foundation

a. Federal Law: The Child Abuse Prevention and Treatment Act of 1974 (CAPTA)(P.L. 93-247)(U.S. Code Title 42, Chapter 67)

1. Act required that states receiving federal funds for the prevention of child abuse and neglect to provide guardians ad litem to protect the child's legal interests.
2. The Act did not define the role or responsibilities of the GAL; therefore, states vary in their approach.

b. State Law: G.S. § 7B-601

1. North Carolina has the "team approach" to best interest representation which consists of a GAL volunteer trained by the GAL Program and an Attorney Advocate to represent and advocate for the child's legal interest.
 - i. "In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights throughout the proceeding."
2. Appointment: "When in a petition a juvenile is alleged to be abused or neglected, the court **shall** appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court *may* appoint a guardian ad litem to represent the juvenile." [emphasis added]
3. Duties include the following:
 - i. Make an investigation to determine the facts of the case; needs of the juvenile; and available resources to meet those needs.

*Vol 13
fact finder*
*There's always
legal representation*

Juvenile
is a party
2 case

- ii. Facilitate settlement of disputed issues
- iii. Offer evidence and examine witnesses
- iv. Explore dispositional options
- v. Protect and promote the juvenile's best interest
- vi. Conduct follow-up investigations to insure orders of the court properly followed.
- vii. Report to the court when the juvenile's needs are not met.

4. Party status: juvenile is a party to the juvenile case represented by the Attorney Advocate and GAL Volunteer.

c. The GAL Program: G.S. § 7B-1200 et seq. (to 1204)

1. Established the Guardian ad Litem Services Division within the Administrative Office of the Courts.
2. Provides for civil liability of GAL volunteers.

II. Recruitment & Training of GAL Volunteers

+ State sends
who get 25 GAL

a. Methods of Recruitment

1. Word of Mouth
2. 1-800 # managed by State Office (1-800-982-4041)
3. Bumper Stickers
4. Brochures
5. Public Service Announcements
6. Advertising (newspaper, radio, TV, magazines)
7. Website: www.ncgal.org
8. Local District websites and social networking (Facebook)
9. Volunteer Match
10. Presentations at Community Centers, Colleges, Universities

b. Training Curriculum

1. North Carolina Guardian ad Litem Volunteer Manual (2007 ed)
2. Curriculum based on National CASA (Court Appointed Special Advocates) Association
3. Volunteer Manual consists of 10 chapters
4. Three (3) hours of training spent on each chapter which is usually done in six (6) evenings + two (2) hours of juvenile court observation for a total of thirty (30) hours.
5. There is Volunteer Manual Independent Study Edition (ISE)
6. Training is facilitated by GAL staff in each district
7. GAL Training Administrator provides staff training in facilitation and adult learning principles; also in-service trainings for GAL

Appendix: Relevant North Carolina General Statutes

7B-601. Appointment and duties of guardian ad litem.

(a) When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile. The juvenile is a party in all actions under this Subchapter. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The appointment shall be made pursuant to the program established by Article 12 of this Chapter unless representation is otherwise provided pursuant to G.S. 7B-1202 or G.S. 7B-1203. The appointment shall terminate when the permanent plan has been achieved for the juvenile and approved by the court. The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights throughout the proceeding. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; to conduct follow-up investigations to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

(b) The court may authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

(c) The guardian ad litem has the authority to obtain any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. No privilege other than the attorney-client privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law. (1979, c. 815, s. 1; 1981, c. 528; 1983, c. 761, s. 159; 1987 (Reg. Sess., 1988), c. 1090, s. 5; 1993, c. 537, s. 1; 1995, c. 324, s. 21.13; 1998-202, s. 6; 1999-432, s. 1; 1999-456, s. 60.)

§ 7B-1200. Office of Guardian ad Litem Services established.

There is established within the Administrative Office of the Courts an Office of Guardian ad Litem Services to provide services in accordance with G.S. 7B-601 to abused, neglected, or dependent juveniles involved in judicial proceedings and to assure that all participants in these proceedings are adequately trained to carry out their responsibilities. Each local program shall consist of volunteer guardians ad litem, at least one program attorney, a program coordinator who is a paid State employee, and any clerical staff as the Administrative Office of the Courts in consultation with the local program deems necessary. The Administrative Office of the Courts shall adopt rules and regulations necessary and appropriate for the administration of the program.

§ 7B-1204. Civil liability of volunteers.

Any volunteer participating in a judicial proceeding pursuant to the program authorized by this Article shall not be civilly liable for acts or omissions committed in connection with the proceeding if the volunteer acted in good faith and was not guilty of gross negligence. (1983, c. 761, s. 160; 1998-202, s. 6.)



North Carolina Guardian ad Litem Fact Sheet

Mission

The mission of the N.C. Guardian ad Litem program is to provide trained, independent advocates to represent and promote the best interests of abused, neglected and dependent children in the state court system and to work expediently toward a plan that ensures that these children are in a safe, permanent home.

History

- In 1983, the General Assembly established the Office of Guardian ad Litem (GAL) Services in the Administrative Office of the Courts.
- Upon reaching the 25th anniversary the program also celebrated more than 12 million hours of service that have been contributed by volunteer Guardians ad Litem across the state.

About

- North Carolina Guardian ad Litem advocacy helps to move children out of the court system in a timely manner and into a safe and permanent home. GAL is mandated by statute to protect and promote the best interest of juveniles in abuse and neglect court proceedings.
- Independent investigations are conducted by GAL to determine the facts, needs of the child and the resources appropriate to meet those needs. Guardians ad litem also determine the wishes or expressed preferences of the child, and report those to the court.
- The GAL program advocates for children in each county of the state. Offices include trained staff, attorneys and community volunteer guardians ad litem.
- More than 180 paid and pro bono attorneys are a part of the program's team representation model, partnering GAL volunteers with attorneys when representing children in court proceedings.

Giving Children a Voice

- The need for volunteers has increased because of the continued rise of child abuse and neglect hearings – 35,942 in FY 08-09.
- In the same year, the program, required by both federal and state laws, provided legal representation to 15,866 abused and neglected children.
- Last year, GAL volunteers gave the state 922,560 hours of service in training and casework (valued at more than \$18.6 million).
- The year also saw 4,805 volunteers participate in the GAL program and this reflects a nearly 40% growth rate in just 8 years.

Volunteer Duties

- A Guardian ad Litem is a trained community volunteer who is appointed by a district court judge to investigate and determine the needs of abused and neglected children when a petition is filed in the court system by the Department of Social Services.
- The GAL program and its volunteers provide advocacy to ensure these children have a safe permanent home and the appropriate services necessary for a healthy successful life.

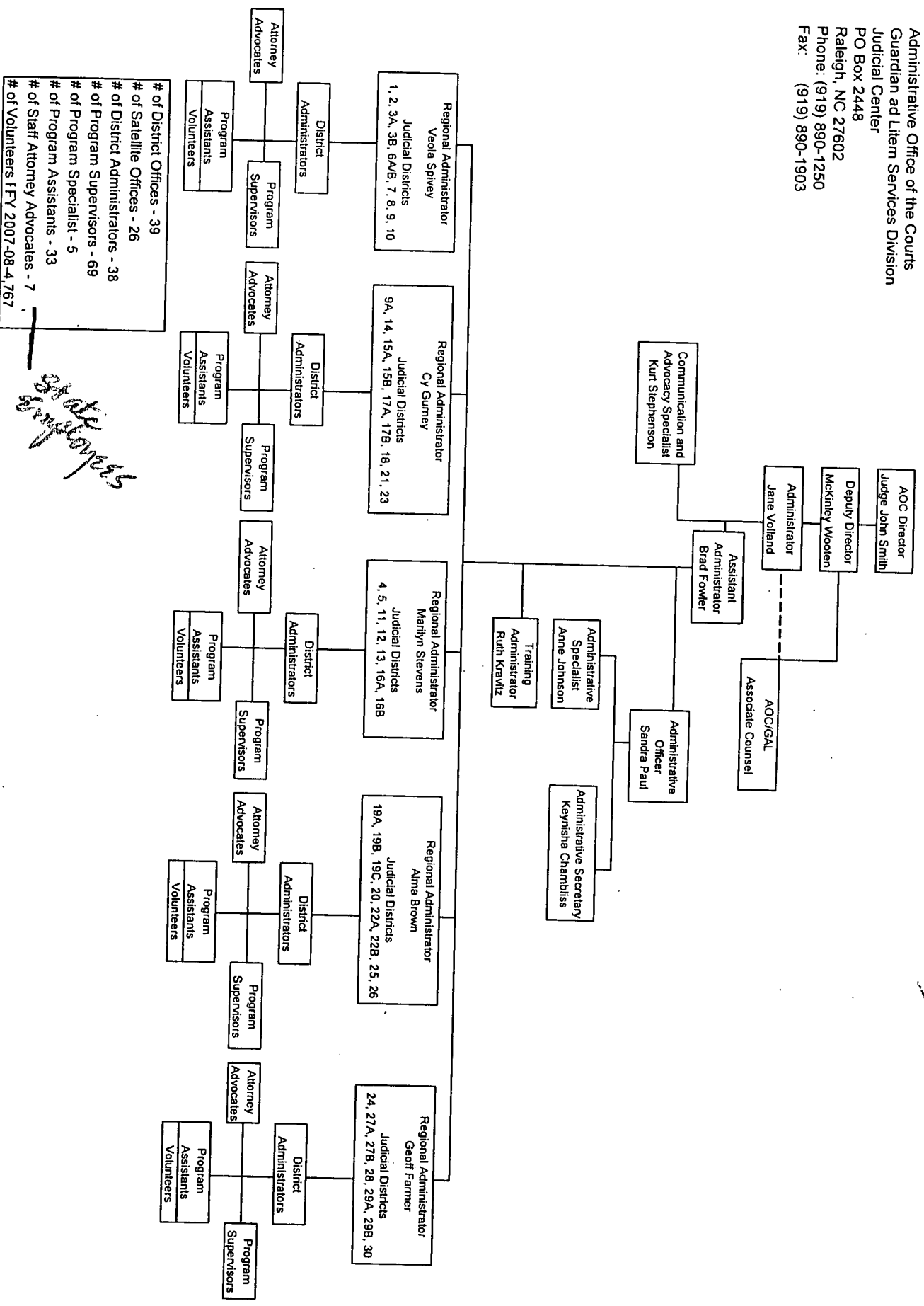
How to Help

- Anyone can apply to become a volunteer for the GAL program. For more information on the program in your area, visit www.ncgal.org or call 1-800-982-4041.

Guardian ad Litem Organizational Chart February 2009

D. S. Quass

Administrative Office of the Courts
Guardian ad Litem Services Division
Judicial Center
PO Box 2448
Raleigh, NC 27602
Phone: (919) 890-1250
Fax: (919) 890-1903



A Child's Advocate
In Court



Administrative Office of the Courts
North Carolina Guardian ad Litem Program

www.nccourts.org

Volunteer Application
(Print Clearly)

For Office Use Only
(Date Completed)

Interviewed _____

NC Criminal Record Check _____

National Criminal Record Check _____

Sex Offender Registry Check _____

Sworn In _____

Resigned _____

☐ Male ☐ Female

Name _____
(First) (Middle) (Last) (Maiden)

Social Security No. _____ Date Of Birth _____ County Of Residence _____
(last four digits)

Home Address _____ Home Phone _____
(Street) (City) (State) (Zip)

Home Email Address _____ Cell Phone _____

Current Employer _____ Work Phone _____

Job Title _____ Work Email Address _____

How may we contact you? Check all that apply.

☐ Work email ☐ Home email ☐ Home phone ☐ Work phone ☐ Cell phone

Emergency Contact Person _____ Phone 1 _____

Education (highest year of school completed) _____ Phone 2 _____

☐ Less Than High School ☐ College Not Graduate ☐ College Graduate
☐ High School Graduate ☐ Tech/Voc/Assoc. Degree ☐ Post Graduate Degree

Highest Degree Received _____ Major/Minor Course Work _____

Optional: In order to determine if our volunteer pool reflects the diversity of the community, please indicate your ethnic group(s):

☐ African American ☐ Caucasian/Non-Latino ☐ Native American ☐ Other _____
☐ Asian/Pacific Islander ☐ Latino ☐ Multi-Racial

Although no special experience is required, do you have training, knowledge, or skills in any of the following areas?

☐ Computer Skills ☐ Public Speaking ☐ Other _____
☐ Foreign Language Proficiency (list) ☐ Training _____

List the organizations for which you have volunteered:

How did you learn of our program? _____

What are your reasons for wanting to participate in the Guardian ad Litem Program?

Do you drive and/or have regular access to transportation to fulfill your role as a Guardian ad Litem? ☐ Yes ☐ No

Have you ever been arrested, charged or convicted of a misdemeanor or felony other than a minor traffic violation? ☐ Yes ☐ No
If yes, please describe (including charge, date of conviction, county, state) on a separate page.

Have you ever been involved in any civil court proceeding? ☐ Yes ☐ No
If yes, please describe on a separate page.

Have you or any family member ever had any involvement with Department of Social Services? (i.e., employed by, reported for abuse/neglect, served as foster parent, been a foster child?) ☐ Yes ☐ No

If yes, please describe on a separate page.

Can you think of any reason why a judge might be reluctant for you to serve as a volunteer Guardian ad Litem? ☐ Yes ☐ No

If yes, please describe on a separate page.

Have you lived in North Carolina for the past five years? _____ How long have you lived in this county/community? _____

Please list as references three people who know you well, at least one for whom you have worked in either a paid or unpaid capacity. Please do not list relatives. Please make an X over the appropriate title. If completing electronically place the cursor over the appropriate title and click.

(Mr. / Mrs. / Ms.) _____
(Name) _____ (Phone) _____ (Relationship) _____
(Address) _____ (City) _____ (State) _____ (Zip Code) _____
(Email Address) _____ Prefer contact by email? ☐ Yes ☐ No

(Mr. / Mrs. / Ms.) _____
(Name) _____ (Phone) _____ (Relationship) _____
(Address) _____ (City) _____ (State) _____ (Zip Code) _____
(Email Address) _____ Prefer contact by email? ☐ Yes ☐ No

(Mr. / Mrs. / Ms.) _____
(Name) _____ (Phone) _____ (Relationship) _____
(Address) _____ (City) _____ (State) _____ (Zip Code) _____
(Email Address) _____ Prefer contact by email? ☐ Yes ☐ No

As a Guardian ad Litem you may need to attend court hearings for the children you represent. Will you be able to arrange your schedule to attend these hearings? ☐ Yes ☐ No

What times would you be available to serve as a Guardian ad Litem? _____

Would you be willing to advocate for a child who does not reside in the county where you live? ☐ Yes ☐ No

Are you willing to represent a child for the duration of his/her case? ☐ Yes ☐ No

Acknowledgment and Permission to Conduct Record Check

I declare that all of the preceding information is true and correct to the best of my knowledge. I understand that any false or misleading information given by me can disqualify me from consideration, or will result in dismissal from the program. I hereby give permission for the Guardian ad Litem Program to conduct routine checks of my criminal records and any other checks deemed appropriate to determine my suitability for this confidential work. Any volunteer accepted into the program has an on-going duty to report to the supervisor of any future criminal charges after being accepted into the program.

(Applicant's Signature)

(Date)

Please mail or deliver this application to:

If you are completing this form online please proof carefully and print additional copies before closing the form. Data entered using Adobe Reader cannot be saved electronically.

*Being
Based
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of staff*

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DRAFT
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009
FOR REVIEW ONLY

Lisa Wikes
Tim Hovis

H

D

BILL DRAFT 2009-LUF-1 [v.5] (11/14)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

3/2/2009 3:48:47 PM

Short Title: Establish Civil Custody Guardian Program.

(Public)

Sponsors: Representative Insko.

Referred to:

A BILL TO BE ENTITLED
AN ACT ESTABLISHING THE CIVIL CUSTODY GUARDIAN PROGRAM.
The General Assembly of North Carolina enacts:
SECTION 1. Chapter 50 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Civil Custody Guardians.

"§ 50-110. Definitions.

The following definitions apply in this Article:

- (1) Civil custody guardian. – An impartial person appointed by the court to make recommendations to the court regarding the best interests of a minor child in a contested custody proceeding and who meets the qualifications under G.S. 50-112.
- (2) Minor child. – A person who is less than 18 years of age and is not married or legally emancipated.

"§ 50-111. Appointment of civil custody guardian; length of service.

(a) In a contested custody proceeding under Article 1 of this Chapter in which a minor child is involved, the court may appoint a civil custody guardian. The court may appoint the civil custody guardian at the **appointment conference**, or sooner upon agreement of the parties, if the parties to the proceeding waived mediation or the mediation failed to result in a parenting agreement and the court finds that it is in the best interest of the child to appoint a civil custody guardian.

Every effort shall be made to enter the order upon the consent of the parties.

(b) In determining whether to appoint a civil custody guardian, the court may consider the following:

- (1) The wishes of the parties.
- (2) The age of the child.



* 2 0 0 9 - L U F - 1 - V - 5 *

- (3) The nature of the proceeding, including the contentiousness of the hearing.
- (4) The financial resources of the parties.
- (5) The extent to which a civil custody guardian may assist in providing information concerning the best interest of the child.
- (6) Whether the family has experienced a history of domestic violence.
- (7) Abuse of the child by one of the parties.
- (8) Any other factors the court deems relevant.

If the court determines that a civil custody guardian should be appointed, the court shall enter an order of appointment.

(c) The order appointing a civil custody guardian shall specify the issues the civil custody guardian is directed to assist the parties in resolving and deciding. The order may also incorporate any agreement made by the parties regarding the role of the civil custody guardian. Notwithstanding the appointment of a civil custody guardian, the court shall retain exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

(d) The parties shall select a civil custody guardian from a list maintained by the district court. If the parties cannot agree on a civil custody guardian, the court shall select a civil custody guardian from the list. The court shall complete and give to the civil custody guardian a referral form listing contact information for the parties and their attorneys, the court's findings in support of the appointment, and any agreement by the parties.

(e) The civil custody guardian is released from the civil custody guardian's duties upon completing responsibilities under G.S. 50-113, submitting a report to the court, and submitting the report to the parties' attorneys or any pro se party.

"§ 50-112. Qualifications of civil custody guardian.

(a) To be eligible to be included on the district court's list of civil custody guardian, a person shall meet all of the following qualifications:

- (1) Hold a masters or doctoral degree in psychology, law, social work, counseling, medicine, or a related subject area.
- (2) Have at least five years of related professional post-degree experience.
- (3) Hold a current license in the civil custody guardian's area of practice, if applicable.
- (4) Participate in 24 hours of training in topics related to the role and responsibilities of the civil custody guardian; methods of performing the investigation; ethical obligations of the civil custody guardian; recognition and assessment of the child's best interests; developmental stages of children; family dynamics and dysfunction; recognition of cultural and economic diversity in families; awareness of biases; the stages and effects of divorce; mediation techniques; domestic violence and substance abuse; and awareness of available services for child welfare, family preservation, medical, mental, health, educational and

special needs, including placement, evaluation, and diagnostic treatment services.

(b) In order to remain eligible as a civil custody guardian, the person shall also attend civil custody guardian seminars that provide continuing education, group discussion, and peer consultation and support.

(c) A person who has been a party in custody litigation within the last three years from the date the appointment is sought may not be appointed as a civil custody guardian.

"§ 50-113. Responsibilities of civil custody guardian.

(a) The civil custody guardian shall represent the best interests of the child and assist the court and the parties in reaching a decision regarding child custody, visitation, or other child-related issues. The responsibilities of the civil custody guardian shall be specified in the court order appointing the civil custody guardian and may include any of the following:

(1) Investigating issues related to child custody or visitation.

(2) Interviewing the child, if the child is age appropriate, parties and collaterals, teachers, health care providers, and others as deemed necessary.

(3) Reviewing school, medical or health, local department of social services records or any other relevant records.

(4) Visiting the home of the child or the prospective home.

(5) Assisting in mediating between the parties what is in the best interest of the minor child.

(6) Making recommendations to the court.

(7) Requesting a review of the case.

(8) Scheduling a joint or separate, final summary conference with the parties' attorneys or other party, if the party is acting pro se.

(9) Any other responsibilities the court deems appropriate, including the ability to request the appointment of an expert, which expert's fees shall be paid by the parties.

(b) The civil custody guardian shall not provide counseling, including acting as an attorney, therapist, parenting coordinator, or visitation supervisor, to the parties or the minor child. The civil custody guardian shall refer financial issues to the parties' attorneys.

"§ 50-114. Fees.

(a) The civil custody guardian shall be entitled to reasonable compensation from the parties for services rendered. The fee shall be shared equally by the parties unless otherwise directed by the court. The civil custody guardian may request a hearing in the event of a fee dispute.

(b) The court may make the appointment of a civil custody guardian contingent upon the parties' payment of a specific fee to the civil custody guardian. The civil custody guardian shall not begin any duties until the fee has been paid.

"§ 50-115. Meetings and communications.

(a) Meetings between the civil custody guardian and the parties may be informal and ex parte. Communications between the parties and the civil custody guardian are not confidential. The civil custody guardian may contact or meet with a parent individually without the consent of the parent's attorney and may communicate with one attorney without the express consent of the other attorney. During various points in the case, the civil custody guardian may make recommendations to the parties and their attorneys concerning the child's best interest. The civil custody guardian and the court shall not engage in any ex parte communications.

(b) If upon the civil custody guardian's request an expert is appointed, any communication between the civil custody guardian and the court-appointed expert shall be simultaneously communicated to the parties' attorneys, including any written information or documents that the civil custody guardian may provide to the expert.

"§ 50-116. Reports.

(a) The civil custody guardian shall submit a written report to the attorneys for the parties no later than two weeks before trial. Unless ordered by the court, the civil custody guardian shall not release the report to the minor child or persons other than the parties or their attorneys. The report shall include issues the civil custody guardian investigated and any findings and recommendations concerning the child's best interest. The civil custody guardian shall disclose all sources of information reported.

(b) Notwithstanding any confidential information provided to the civil custody guardian during the course of the appointment, the parties shall retain the right to petition the court to determine whether the confidential information and records reviewed by the civil custody guardian should be released to the court or to the parties.

"§ 50-117. Appearance at trial; civil custody guardian testimony.

The civil custody guardian may testify at trial. However, absent consent from the civil custody guardian to appear and testify at trial, the party seeking to subpoena the civil custody guardian shall obtain court approval before the subpoena is issued. The court may require prepayment of the civil custody guardian as a condition of the civil custody guardian's appearance at trial pursuant to the subpoena.

"§ 50-118. Modification or termination of civil custody guardian appointment.

(a) For good cause shown, the court may terminate or modify the civil custody guardian appointment upon motion of either party at the request of the civil custody guardian, upon the agreement of the parties and the civil custody guardian, or by the court on its own motion. Good cause includes any of the following:

- (1) Lack of reasonable progress over a significant period of time despite the best efforts of the parties and the civil custody guardian.
- (2) A determination that the parties no longer need the assistance of a civil custody guardian.
- (3) Impairment on the part of a party that significantly interferes with the party's participation in the process.
- (4) The civil custody guardian is unable or unwilling to continue to serve.

(b) If the parties agreed to the appointment of the civil custody guardian under G.S. 50-111(a), the court may terminate or modify the appointment according to that agreement or according to a subsequent agreement by the parties.

1 **"§ 50-119. Civil custody guardian immunity.**

2 A civil custody guardian shall not be liable for damages for acts or omissions of
3 ordinary negligence arising out of that person's duties and responsibilities as a civil
4 custody guardian. This section does not apply to actions arising out of the operation of a
5 motor vehicle."

6 **SECTION 2.** This act is effective when it becomes law, and applies to
7 contested custody proceedings initiated on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

BILL DRAFT 2009-LUz-154 [v.2] (03/22)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

3/30/2010 12:14:33 PM

Short Title: Authorize Appointment/Civil Custody Guardians.

(Public)

Sponsors: Representatives Jackson and Martin (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE APPOINTMENT OF [CIVIL CUSTODY GUARDIANS].

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.1 is amended by adding the following new subsection to read:

"...

(i) Any chief district court judge in a judicial district may order the appointment of a ["civil custody guardian"; "guardian ad litem"; "court appointed child advocate"; "child custody investigator"] to serve the best interest of the child in actions for custody and visitation. The chief district court judge shall adopt local rules for that district, which at a minimum, establish the following:

(1) The qualifications of the [civil custody guardian].

(2) The responsibilities of the [civil custody guardian].

(3) The training required of a [civil custody guardian].

(4) The ethical standards required of a [civil custody guardian].

(5) Any other factors the chief district court judge deems relevant to the appointment of a [civil custody guardian]."

SECTION 2. This act is effective when it becomes law and applies to custody and visitation proceedings initiated on or after that date.

DRAFT
FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

D

BILL DRAFT 2009-LUz-154 [v.3] (03/22)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

4/7/2010 10:09:26 AM

Short Title: Authorize Appointment/Civil Custody Guardians.

(Public)

Sponsors: Representatives Jackson and Martin (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE APPOINTMENT OF [CIVIL CUSTODY GUARDIANS] AS
RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON CIVIL CUSTODY
GUARDIANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.1 is amended by adding the following new subsection to
read:

"...

(j) Any chief district court judge in a judicial district may order the appointment of a
["civil custody guardian"; "guardian ad litem"; "court appointed child advocate"; "child custody
investigator"] to serve the best interest of the child in actions for custody and visitation. The
chief district court judge shall adopt local rules for that district, which at a minimum, establish
the following:

(1) The qualifications of the [civil custody guardian].

(2) The responsibilities of the [civil custody guardian].

(3) The training required of a [civil custody guardian].

(4) The ethical standards required of a [civil custody guardian].

(5) Any other factors the chief district court judge deems relevant to the
appointment of a [civil custody guardian]."

SECTION 2. This act is effective when it becomes law and applies to custody and
visitation proceedings initiated on or after that date.



* 2009 - LUZ - 154 - V - 3 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

BILL DRAFT 2009-LUz-154C [v.1] (03/22)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/14/2010 5:03:40 PM

Short Title: Authorize Appointment/GAL/Atty/Custody. (Public)

Sponsors: Representatives Jackson and Martin (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE APPOINTMENT OF A GUARDIAN AD LITEM OR AN ATTORNEY FOR THE MINOR CHILD IN ACTIONS FOR CUSTODY OR VISITATION, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.1 is amended by adding the following new subsections to read:

"...

(i) The chief district court judge in any judicial district may adopt local rules allowing the appointment of a guardian litem in child custody cases. If the chief district court judge does not adopt local rules, the district court judges in that district may not appoint guardians ad litem in child custody cases. (Cheryl Howell-SOG, John Parker-Mecklenburg) If authorized by the chief district court judge, a judge presiding over an action for custody or visitation may appoint a guardian ad litem for the minor child pursuant to local rules adopted by the chief district court judge for the district in which the action is pending. Local rules adopted pursuant to this subsection shall, at a minimum, establish the following:

(1) Qualifications.

(2) Responsibilities and extent of involvement. Duties and responsibilities. (John Parker-Mecklenburg)

(3) Training.

(4) Ethical standards.

(5) Compensation.

(6) Any other factors the chief district court judge deems relevant to an appointment under this subsection.

The court may require an appointment under this subsection without the consent of the parties only if the court determines the parties have the ability to pay for the services or that pro bono services are available.

A guardian ad litem acting pursuant to this subsection shall not be liable for damages for acts or omissions of ordinary negligence arising out of that person's duties and responsibilities as a guardian ad litem. This section does not apply to actions arising out of the operation of a motor vehicle.



* 2009 - LUZ - 154C - V - 1 *

1 (k) The chief district court judge in any judicial district may adopt local rules
2 authorizing the appointment of an attorney for the minor child in child custody cases. If
3 the chief district court judge does not adopt local rules, the district court judges in that
4 district may not appoint an attorney for the minor child in child custody cases. (Cheryl
5 Howell-SOG, John Parker-Mecklenburg) If authorized by the chief district court judge, a
6 judge presiding over an action for custody or visitation may appoint an attorney for the minor
7 child pursuant to local rules adopted by the chief district court judge for the district in which
8 the action is pending. Local rules adopted pursuant to this subsection shall, at a minimum,
9 address criteria established under subdivisions (1) through (6) of subsection (j) of this section.
10 An attorney may be appointed only if the child is competent to direct the terms of the
11 representation. Counsel shall be an attorney licensed to practice in the State of North
12 Carolina and shall serve as the child's attorney. Pursuant to the attorney-client
13 relationship, and as determined by local rules, the attorney for the child may call
14 witnesses, file pleadings, conduct discovery, and present evidence and argument to the
15 court. Also, strike lines 5-9 above. (Jay Bryan-Orange County) The court may require an
16 appointment under this subsection without the consent of the parties only if the court
17 determines the parties have the ability to pay for the services or that pro bono services are
18 available.

19 An attorney acting pursuant to this subsection shall not be liable for damages for acts or
20 omissions of ordinary negligence arising out of that person's duties and responsibilities as an
21 attorney. This section does not apply to actions arising out of the operation of a motor vehicle."

22 **SECTION 2.** This act is effective when it becomes law and applies to custody and
23 visitation proceedings initiated on or after that date.

March 2010

Questions sent to all chief judges and to all members of the Board of Governors of the Association of District Court Judges

21 total responses (some judges did not answer all questions)

- 1) Do you think there is need for a specific statute authorizing the court to appoint a GAL (but with a different name to avoid the confusion with juvenile GALs) in civil child custody cases?

Yes - 5. Generally think it is a good idea to have statutory authority, and to give them a new name. One suggestion - "Court Appointed Child Advocate". One judge feels the title should keep the term 'guardian ad litem'.

No - 13. Twelve said no because they feel present law is sufficient. One said no because of the belief that GALs should not be appointed at all in custody cases. Several responded that a specific statute would cause more attorneys to request GALs in cases where they are not needed. A couple of judges also pointed out that a detailed statute will create more opportunity for conflict that will require court time to resolve.

Maybe - 2

Comments:

Some attorneys favor appointment of an attorney for the child rather than a GAL. These attorneys feel the child needs to be represented in same way parents are represented. (this judge attached model statutes and forms from Iowa and Vermont).

High conflict cases need custody evaluations done by experts and parenting coordinators, rather than a GAL.

A GAL is particularly helpful in cases where parties are not represented by attorneys. The GAL can gather information court needs to make best interest determination.

"In Forsyth County, the district court judges use the services of the Children's Law Center of Central North Carolina (CLC) for Guardians ad Litem (GAL) in both Chapter 50 cases and Chapter 50B cases where custody is an issue. CLC has been of immeasurable assistance to the judges in presenting the "best interests" of the children to the court and offering recommendations. The judges then make an independent decision concerning custody matters in their orders.

Forsyth County District Court judges feel that standards for the appointment, training and supervision of GALs are greatly lacking in our statutes and rules. The Children's Law Center of Central North Carolina is strongly in agreement."

We have the authority now to appoint pursuant to Rule 17. I am concerned that any clarifying statute will be used as a tool by parties seeking to delay the resolution of their case by making routine requests for GALs in all cases. And, the more specific the statute, the more reason for a party to seek appellate review of cases for technical reasons.

"Our local practice rules have basically codified and given structure to the COA opinions in order to make the alternative, typically elected not ordered by the court, known, understandable, adaptable, and predictable for the benefit of all concerned. In the absence of legislation or local rules, it seems that the COA opinions identify a resource with so little accompanying definition or process that it is not truly accessible as an aid to parties, counsel, or the court. My sense is that there is near universal agreement within our district that our more developed GAL practice serves the convenience of counsel and the parties, expedites resolution of custody issues, saves parents money, and frees up court time in the civil district court division."

"...[our] local bench-bar committee in the late 90's drafted local rules for guardian-ad-litem and parenting coordinators. We reviewed practices and statutes in other states and received comment from representatives of our local community of mental health counselors. The impetus for the work was bar and bench frustration with difficult to manage parents who had problems elevating their focus from their high conflict divorce and related anxieties to a deliberate and careful attention to the child or children's best interest. Although I cannot remember the case at this moment, the COA, in an opinion written by Judge Greene, had recently affirmed an order from Mecklenburg district court appointing a guardian ad litem for a child in a high conflict divorce as within the residual authority of the trial court. We considered that to be precedent that allowed us to proceed with local rules on the issue. Over the years the program has proven to be a great aid to families, lawyers, judges, and children, operating largely on a voluntary basis, typically upon initiation of counsel. It has resulted in a substantial reduction in parties' litigation time and expense, freed up civil district court dockets, and expedited resolution of conflict for the benefit of children of families in divorce."

A statute will not ensure uniformity across the state on this issue. "Things are different 'on the ground' in every place in NC. Perhaps, while we expect fairness from all courts/judges, we shouldn't expect all courts to work the same."

- 2) If yes, what should the standard for appointment be (e.g. when necessary to serve best interest, when case is high-conflict, when the court determines it is appropriate, something else)?

7 responded that appointment should be allowed as the judge deems appropriate.

5 responded that appointment should be allowed when necessary to meet or ascertain the best interests of the child.

1 felt appointment should be allowed only when court determines child's interests are not being investigated adequately.

Comments

If a standard other than 'when judge deems it necessary to meet the best interest of the child' will "back us into a corner where we would be required to appoint a Gal when we do not see a need."

Several stressed that the authority should not be limited to cases deemed to be 'high-conflict'.

- 3) Should the statute specify the responsibilities of the GAL or should the statute allow the court to make that determination on a case-by-case basis?

Only one judge responded that the statute should include detail about the authority and responsibilities of a GAL, to be consistent in every case.

4 responded that the responsibilities should be left up to the judge, with no detail in the statute.

8 responded that the statute should include a list of possible responsibilities, including a 'catch-all' provision, allowing the judge to determine an appropriate role for the GAL in each individual case.

Comments

Remember the confusion over the role of the GAL in juvenile cases. We need some clarification of role in the statute.

The Supreme Court should be allowed to promulgate rules designating the responsibilities of the GAL.

- 4) Should the GAL be permitted to make recommendations regarding custody?

Yes - 8

No - 4

Comments

Allowing GAL to make recommendations would make the GAL an advocate rather than an independent fact-witness.

Would be impossible for GAL to report findings without indicating his/her opinion about best interest.

Recommendations should be made only by experts.

If the GAL can make recommendations, "the lobbying/pressure from the parties will start at the time of appointment. I believe the buck stops with us on custody decision making, and we shouldn't farm it out to others."

Ability to make recommendations would increase number of settlements out of court.

5) Should the GAL participate in court proceedings?

Yes - 6

Only as a fact witness - 6

No - 1

Comments

There are due process concerns if parties are not allowed to cross examine the GAL during a trial.

GAL should be allowed to participate in same way juvenile GALs participate.

6) What should GALs be allowed to do in custody cases?

2 responded that the GAL should be a fact investigator only.

2 responded that the GAL should be able to do whatever the judge deems appropriate.

Specific suggestions:

Advocate for the child

Act as 'eyes and ears of the court'

Interview parties, witnesses and the children

Visit homes, schools and day care, then prepare report for court

Communicate with teachers, doctors, etc.

Investigate and bring independent information about the child to the court

Make recommendations in a written report

7) Who should be permitted to act as a GAL?

12 responded that either attorneys or mental health professionals should be allowed to serve.

2 responded that only mental health professionals should be authorized, meaning professionals trained in making child custody evaluations and recommendations.

1 suggested that the criteria be the same as for Parenting Coordinators.

Comments

Attorneys should be required to receive training similar to that required for juvenile GALs.

"An experienced family law attorney would know where to look for information, what information is important, and how to filter lobbying by the parties."

One extensive comment about qualifications and training:

"Requirements:

- 1) licensed lawyer, law school graduate, 2nd / 3rd year law student under the supervision of a licensed attorney, or any other licensed legal professional
 - 2) mental health professional or social worker who has a child-focused practice
 - 3) any qualified person supervised by an established child advocacy center
 - 4) any qualified person who has 5 years of working experience with a recognized licensed organization that primarily addresses children's issues
 - 5) a custody evaluator
 - 6) any other individual who has met the training qualifications and who has an independent perspective acceptable to the court
- Appointed by court
 - Meets training requirements

Training: (not an exclusive list)

- Comprehensive initial training of 6 hours with 4 additional hours of pre-service training including observation or participation in a custody hearing under a mentor or child advocacy center. The initial training should include:

- 1) overview of the role of the GAL
 - 2) GAL certification and application process
 - 3) standards of practice and court rules
 - 4) dynamics of families and family groups, and child
development
 - 5) ethics/professionalism in GAL practice
 - 6) liabilities and immunities of GALs
 - 7) techniques and strategies for interviewing and
investigating
 - 8) resources available to the parties from the state or from
private agencies
- o 2 hour continuing education in law update"

"Please remember this distinction: The Parenting Coordinator and the Guardian ad Litem have two entirely different roles. The Parenting Coordinator interprets the judge's order after the case is over, whereas the GAL merely investigates and interviews and makes recommendations to the court which may or may not be ordered. The long bill which is currently being considered, contains the same language as the "Parenting Coordinator" statute."



MINUTES

HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

Representative Grier Martin, Co-Chair

Representative Darren Jackson, Co-Chair

**Thursday, April 8, 2010
10:00 am
Room 421 LOB**

The House Select Committee on Civil Custody Guardians met on Thursday, April 8, 2010 in Room 421 of the Legislative Office Building at 10: 00 AM. The following members were present: Co-Chairs Darren Jackson and Grier Martin, Representatives Verla Insko, Jane Whilden, Jean Farmer-Butterfield, Sarah Stevens and Pat Hurley. Staff members present were Mr. Bryce Ball, Mr. Brad Krehely, Mr. Tim Hovis, and Ms. Lisa Wilks. The Visitor Registration sheet is attached and made a part of these minutes.

Chair Grier Martin called the meeting to order. He introduced staff, the committee assistants Angela McMillan, Sylvia Hammons and his intern, Holly Danford, to the committee. The Sergeant at Arms present were Mr. Young Bae, Mr. David Shearon and Ms. Martha Parrish.

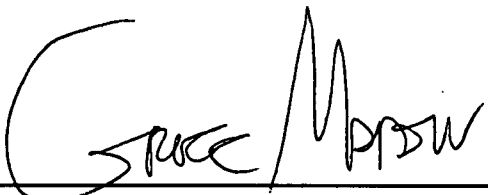
Chair Martin then proceeded by introducing staff member, Lisa Wilks to present draft legislation 2009-LUZ-154 (v.3), "Authorize Appointment/Civil Custody Guardians". He then opened the discussion for the committee on the subject of which title was to be given to civil custody guardian. There also was much discussion on the role of the committee and many recommendations were given as to the role of the committee. The discussion included the charge to the chief district court judge, appropriate criteria for guardian ad litem and whose responsibility it would be to reimburse courts if parents were unable to pay court costs. After lengthy discussions involving members and visitors, recommendations were made to have staff find new language for another draft bill to reflect an additional section (k) to have an appointed attorney for the child.

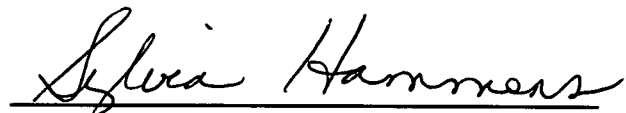
House Select Committee on Civil Custody Guardians
Page 2

Chair Martin suggested that another meeting be held to finalize any remaining issues. The committee decided that another meeting would be needed to discuss final draft legislation from the committee reflecting the changes above.

There being no further business, the Chair adjourned the meeting at 12:00 pm.

Respectfully Submitted,



Representative Grier Martin
Co-Chair

Sylvia Hammons
Committee Assistant

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jay Bryan	Center for Cooperative Parenting, Inc.
Tammy Smith	NC AOC
Kim Gouch	NCBA
Kimberly Fagan	^{NCBA} Attorney / Family Law Council
Sally Scheerer	Attorney - Wake Co. / The Child's Advocate
Elizabeth Taylor	Kochanek Law Group
PENELOPE Spry	Children's Law Center of Central NC

HOUSE PAGES

NAME OF COMMITTEE

*Civil Custody
Bureau*

DATE

4-8-10

1. Name: _____

County: _____

Sponsor: _____

2. Name: _____

County: _____

Sponsor: _____

3. Name: _____

County: _____

Sponsor: _____

4. Name: _____

County: _____

Sponsor: _____

5. Name: _____

County: _____

Sponsor: _____

SGT-AT-ARM

1. Name: _____

Young Bae

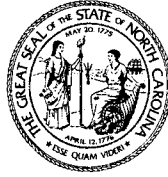
2. Name: _____

David Shearon

3. Name: _____

Martha Parra

4. Name: _____



AGENDA
HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

Representative Grier Martin, Co-Chair

Representative Darren Jackson, Co-Chair

Thursday, April 8, 2010
10:00 am-12:00 pm
Room 421, Legislative Office Building
Raleigh, NC

- 1. Welcome and Introduction**
- 2. Overview of Draft Legislation**
Committee Staff
- 3. Committee Discussion**
- 4. Adjourn**

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

BILL DRAFT 2009-LUZ-154 [v.2] (03/22)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

3/30/2010 12:14:33 PM

Short Title: Authorize Appointment/Civil Custody Guardians.

(Public)

Sponsors: Representatives Jackson and Martin (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING THE APPOINTMENT OF [CIVIL CUSTODY GUARDIANS].
3 The General Assembly of North Carolina enacts:
4 SECTION 1. G.S. 50-13.1 is amended by adding the following new subsection to
5 read:
6 "...
7 (j) Any chief district court judge in a judicial district may order the appointment of a
8 ["civil custody guardian"; "guardian ad litem"; "court appointed child advocate"; "child custody
9 investigator"] to serve the best interest of the child in actions for custody and visitation. The
10 chief district court judge shall adopt local rules for that district, which at a minimum, establish
11 the following:
12 (1) The qualifications of the [civil custody guardian]. — *remin* —
13 (2) The responsibilities of the [civil custody guardian]. —
14 (3) The training required of a [civil custody guardian].
15 (4) The ethical standards required of a [civil custody guardian].
16 (5) Any other factors the chief district court judge deems relevant to the
17 appointment of a [civil custody guardian]."
18 SECTION 2. This act is effective when it becomes law and applies to custody and
19 visitation proceedings initiated on or after that date.

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11/17/00

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE CIVIL CUSTODY GUARDIAN PROGRAM.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Chapter 50 of the General Statutes is amended by adding a
5 new Article to read:

6 "Article 6.

7 "Civil Custody Guardians.

8 "§ 50-110. Appointment of Civil Custody Guardian.

9 (a) In actions for custody and visitation, the court may in discretion, upon
10 motion of either party or upon its own motion, appoint an individual to serve the court
11 as a civil custody guardian. The court shall set forth specific duties of the civil custody
12 guardian in a written order of appointment.

13 (b) A civil custody guardian appointed by the court may be an attorney, a mental
14 health professional or any other individual with appropriate training and qualifications.
15 The civil custody guardian shall investigate, report, and make recommendations as
16 specifically directed by the court in the appointment order. Unless other directed by the
17 court, the civil custody guardian shall make independent and informed
18 recommendations to the court in the form of a written report.

19 (c) In addition to the preparation of a written report, the duties of the civil
20 custody guardian may include, but need not be limited to, interviewing the children
21 and parties, interviewing other persons possessing relevant information, obtaining
22 relevant documentary evidence, and conferring with counsel for the parties.

23 "§ 50-111. Uniform Advisory Guidelines.

24 (a) The Conference of Chief District Judges shall prescribe uniform statewide
25 advisory guidelines for the appointment of civil custody guardians and develop further
26 criteria for determining when a civil custody guardian may be appointed. Such
27 advisory guidelines may address or provide for any of the following:

- 28 1. Qualifications of the civil custody guardian;
29 2. Responsibilities of the civil custody guardian;

- 1 X 3. Compensation of the civil custody guardian;
2 X 4. Appearance at trial and testimony of the civil custody guardian;
3 X 5. Modification or termination of civil custody guardian appointment;
4 6. Establishment of local rules for the appointment of civil custody
5 guardians.
6 7. Any other factor involving the appointment of the civil custody guardian.

7 (b) Periodically, but at least once every four years, the Conference of Chief
8 District Judges shall review the guidelines. The Conference shall give the
9 Administrative Office of the Courts and the general public an opportunity to provide the
10 Conference with information relevant to the development and review of the guidelines.

11 **"§ 50-112. Civil custody guardian immunity.**

12 A civil custody guardian shall not be liable for damages for acts or omissions of
13 ordinary negligence arising out of that person's duties and responsibilities as a civil
14 custody guardian. This section does not apply to actions arising out of the operation of a
15 motor vehicle."

16 **SECTION 2.** This act is effective when it becomes law, and applies to
17 custody and visitation proceedings initiated on or after that date.

§ 50-100. Parenting coordinator immunity.

A parenting coordinator shall not be liable for damages for acts or omissions of ordinary negligence arising out of that person's duties and responsibilities as a parenting coordinator. This section does not apply to actions arising out of the operation of a motor vehicle. (2005-228, s. 1.)



MINUTES

HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS

Representative Grier Martin, Co-Chair

Representative Darren Jackson, Co-Chair

**Wednesday, April 28, 2010
10:00 a.m.
Room 1124, Legislative Building**

The House Select Committee on Civil Custody Guardians met on Wednesday, April 28, 2010 in Room 1124 of the Legislative Building at 10: 00 a.m. The following members were present: Co-Chairs Darren Jackson and Grier Martin, Representatives Verla Insko, Jean Farmer-Butterfield, Sarah Stevens and Pat Hurley. Representative Jane Whilden was excused. Staff members present were Mr. Bryce Ball, Mr. Brad Krehely, Mr. Tim Hovis, and Ms. Lisa Wilks. The visitor's roster is attached as attachment #1.

Chair Darren Jackson called the meeting to order and introduced staff members. The chair asked that the members of the committee introduce themselves to those attending the meeting. Members of the Alpha Kappa Alpha Sorority were recognized and welcomed to the committee meeting. The committee assistants Angela McMillan, Sylvia Hammons and Chair Martin's intern, Holly Danford, were introduced to the committee. The Sergeant at Arms present were Mr. Young Bae, Mr. David Shearon and Ms. Martha Parrish.

Chair Jackson then proceeded by introducing staff member, Tim Hovis to present draft legislation 2009-LUZ-154C (v.1), "Authorize Appointment/Civil Custody Guardians". There was much discussion over language in the draft and amendments to the draft offered inclusive of changing the effective date to October 1, 2010, changing the title by removing the language "an attorney". After changes were made to the draft, Representative Insko moved that the committee approve bill with current language as discussed in committee. The motion carried and it was passed.

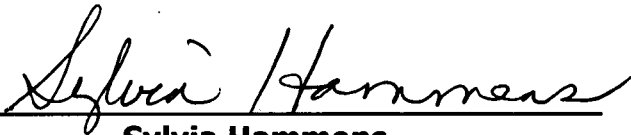
House Select Committee on Civil Custody Guardians
Page 2

With no further discussions, the meeting was adjourned at 11:38 a.m.

Respectfully Submitted,



Representative Darren Jackson
Co-Chair



Sylvia Hammons
Committee Assistant

VISITOR REGISTRATION SHEET

House Committee on Civil Custody Guardians

April 28, 2010

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Priscilla Green	Alpha Kappa Alpha Sorority, Inc.
Beverly J. Hays	Alpha Kappa Alpha Sorority, High Point, NC
Constance A. Davis	Alpha Kappa Alpha Sorority
Joseph S. DeShield	Alpha Kappa Alpha Sorority
Angie Carter	Alpha Kappa Alpha Sorority, Inc.
Sally Scherer	Attorney - The Child's Advocate
Annette M. Wilson	Alpha Kappa Alpha Sorority, Inc.
Melinda Jowers	Alpha Kappa Alpha Sorority, Inc.
Monica Johnson	Alpha Kappa Alpha Sorority, Inc.
Katrina K. Williams	Alpha Kappa Alpha Sorority, Inc.
Chandra Clemons	Alpha Kappa Alpha Sorority, Inc.

VISITOR REGISTRATION SHEET

House Committee on Civil Custody Guardians

April 28, 2010

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

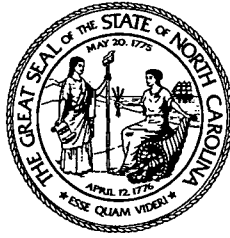
NAME

FIRM OR AGENCY AND ADDRESS

Faye S. Primus	Alpha Kappa Alpha Sorority, Inc
Eula M. Scott	"
Yvonne Reddick	" " " " "
Cherice Artis	Alpha Kappa Alpha Sorority, Inc.
Iris Green	AKA, Inc. Garner, NC
Kim Crouch	NCBA
Gertrude L. Bivens	Alpha Kappa Alpha Sorority, Inc
Felice Streeter	Alpha Kappa Alpha Sorority, Inc
Elizabeth Taylor	Kochanek Law Group
Shonelle Charles	Alpha Kappa Alpha Sorority, Inc.
Kris Parks	D RNC

April 28, 2010

Date**FIRM OR AGENCY AND ADDRESS**



House Select Committee on Civil Custody Guardians

Rep. Grier Martin, Co-Chair

Rep. Darren Jackson, Co-Chair

**Wednesday, April 28, 2010
10:00 am – 12:00 pm
Room 1124**

AGENDA

- **Welcome and Introductions**
- **Overview of Draft Legislation
(Committee Staff)**
- **Committee Discussion**
- **Adjournment**

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

BILL DRAFT 2009-LUz-154C [v.1] (03/22)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/14/2010 5:03:40 PM

Short Title: Authorize Appointment/GAL/Atty/Custody. (Public)

Sponsors: Representatives Jackson and Martin (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE APPOINTMENT OF A GUARDIAN AD LITEM OR AN ATTORNEY FOR THE MINOR CHILD IN ACTIONS FOR CUSTODY OR VISITATION, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON CIVIL CUSTODY GUARDIANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.1 is amended by adding the following new subsections to read:

" ...

(j) The chief district court judge in any judicial district may adopt local rules allowing the appointment of a guardian litem in child custody cases. If the chief district court judge does not adopt local rules, the district court judges in that district may not appoint guardians ad litem in child custody cases. (Cheryl Howell-SOG, John Parker-Mecklenburg) If authorized by the chief district court judge, a judge presiding over an action for custody or visitation may appoint a guardian ad litem for the minor child pursuant to local rules adopted by the chief district court judge for the district in which the action is pending. Local rules adopted pursuant to this subsection shall, at a minimum, establish the following:

(1) Qualifications.

(2) Responsibilities and extent of involvement. Duties and responsibilities. (John Parker-Mecklenburg)

(3) Training.

(4) Ethical standards.

(5) Compensation.

(6) Any other factors the chief district court judge deems relevant to an appointment under this subsection.

The court may require an appointment under this subsection without the consent of the parties only if the court determines the parties have the ability to pay for the services or that pro bono services are available.

A guardian ad litem acting pursuant to this subsection shall not be liable for damages for acts or omissions of ordinary negligence arising out of that person's duties and responsibilities as a guardian ad litem. This section does not apply to actions arising out of the operation of a motor vehicle.



* 2 0 0 9 - L U Z - 1 5 4 C - V - 1 *

1 (k) The chief district court judge in any judicial district may adopt local rules
2 authorizing the appointment of an attorney for the minor child in child custody cases. If
3 the chief district court judge does not adopt local rules, the district court judges in that
4 district may not appoint an attorney for the minor child in child custody cases. (Cheryl
5 Howell-SOG, John Parker-Mecklenburg) If authorized by the chief district court judge, a
6 judge presiding over an action for custody or visitation may appoint an attorney for the minor
7 child pursuant to local rules adopted by the chief district court judge for the district in which
8 the action is pending. Local rules adopted pursuant to this subsection shall, at a minimum,
9 address criteria established under subdivisions (1) through (6) of subsection (j) of this section.
10 An attorney may be appointed only if the child is competent to direct the terms of the
11 representation. Counsel shall be an attorney licensed to practice in the State of North
12 Carolina and shall serve as the child's attorney. Pursuant to the attorney-client
13 relationship, and as determined by local rules, the attorney for the child may call
14 witnesses, file pleadings, conduct discovery, and present evidence and argument to the
15 court. Also, strike lines 5-9 above. (Jay Bryan-Orange County) The court may require an
16 appointment under this subsection without the consent of the parties only if the court
17 determines the parties have the ability to pay for the services or that pro bono services are
18 available.

19 An attorney acting pursuant to this subsection shall not be liable for damages for acts or
20 omissions of ordinary negligence arising out of that person's duties and responsibilities as an
21 attorney. This section does not apply to actions arising out of the operation of a motor vehicle."

22 **SECTION 2.** This act is effective when it becomes law and applies to custody and
23 visitation proceedings initiated on or after that date.

Draft Findings and Recommendations
House Select Committee on Civil Custody Guardians

Finding 1- The Committee finds that the current law regarding guardians ad litem in custody and visitation cases is set forth in *Van Every v. McGuire*, 125 N.C. App. 578, 481 S.E.2d 377 (1997). There, the Court of Appeals determined that Rule 17(b)(3) of the North Carolina Rules of Civil Procedure authorizes the court to appoint a "guardian ad litem for an infant or incompetent person. . .when it is deemed by the [trial]court in which the action is pending expedient to have the infant, or insane or incompetent person so represented." Many other states have similar authority that is set forth statutorily, but North Carolina's authority arises only from the common law. The Committee heard testimony indicating that the lack of statutory authority could be problematic, especially in custody cases, since Rule 17 applies to parties only and children are not parties in custody cases.

Recommendation 1- The North Carolina General Assembly should codify this authority in the North Carolina General Statutes.

Finding 2- The Committee finds that guardians ad litem are being appointed in a limited number of custody and visitation cases, such as high conflict cases and cases where there is significant disagreement regarding the evidence. Currently, there are multiple approaches to appointing guardians ad litem in custody and visitation cases. For example, the Committee heard presentations about how this process works in Orange, Forsythe, and Mecklenburg Counties. Although these approaches vary, all of them appear to be operating successfully. WAKE

Recommendation 2- The Committee recommends that the statute addressing this subject should not hinder or unnecessarily restrict the good work that is currently being carried out across the State.

Finding 3- The Committee finds that chief district court judges should have an important role in this process because they are uniquely qualified to understand what works best in their districts. The Committee recognizes the importance of judicial discretion regarding whether or not to appoint guardians ad litem and attorneys in custody and visitation cases. The Committee further finds that the adoption of local rules is essential for those districts choosing to allow the appointment of guardians ad litem and attorneys in custody and visitation cases.

Recommendation 3- The Committee recommends that the appointment of guardians ad litem and attorneys in custody and visitation cases should be optional. However, if a chief district court judge authorizes their use, then the chief district court judge should be required to adopt local rules. At a minimum, these local rules should set forth criteria related to qualifications, responsibilities, training, ethical standards, compensation, and any other factors deemed relevant by the chief district court judge.

Finding 4- The Committee finds that pursuant to Resolution 2009-33 (Senate Joint Resolution 1109), the General Assembly is scheduled to reconvene for the short session on May 12, 2010. The adjournment resolution limits the subjects that may be considered in the short session. However, bills and resolutions implementing the recommendations of study commissions, including this committee, are eligible for consideration in the short session.

Recommendation 4- The Committee recommends the adoption of
**CITE THE BILL DRAFT HERE AND INDICATE WHERE IT WILL BE IN THE
APPENDIX**

**April 27, 2010
Brad Krehely**