Superior Court of the District of Columbia
Washington, D.C. 20001

Lee F. Satterfield
Chief Judge

(202) 879-1600

January 26, 2012

Mr. Earl J. Silbert, Esquire
President, Executive Committee
Council for Court Excellence
1111 14th Street, NW, #500
Washington, DC 20005-5628

Dear Mr. Silbert:

We wish to express our gratitude for the diligent efforts and Final Report and Proposed Practice Standards for Attorneys representing children in cases involving custody and visitation disputes. The Final Report appropriately addresses the need for uniformity in practice standards to guide attorneys who represent children in these cases.

We apologize for the delay in our response, as the review of the Final Report and Proposed Standards, our independent review of the Practice Standards in effect throughout several states, and in particular the surrounding jurisdictions, as well as in obtaining input and direction from judges who are currently serving and who have served in the Division, took some time. This review unanimously led us to conclude that the *Guardian Ad Litem* designation remain the appropriate nomenclature; that the *Guardian Ad Litem* should be required/authorized to submit written reports, which provide an analysis and recommendation regarding the child's/children's best interest(s) in Pendente Lite and Permanent Custody, and Visitation issues. This conclusion is consistent with the majority of states who have standards, is consistent with the Practice Standards in Maryland and Virginia, is consistent with Family Court Rules governing Neglect and Abuse Cases, and is consistent with local jurisprudence.

The role of the *Guardian Ad Litem* is both unique and vital in a contested custody/visitation case. In order to do the job properly, it is imperative that the *Guardian Ad Litem* rise above the fracas, the acrimony, the dysfunction and the

drama that is often endemic in these proceedings. A *Guardian Ad Litem* is not specifically bound to advocate a client's wishes and objectives, but is rather required to be a focused and zealous advocate for the child's/children's best interests, which by statute and jurisprudence is the desired product and outcome in any child custody/visitation dispute in this jurisdiction.[1] Thus, the *Guardian Ad Litem* with relevant knowledge and experience must work adeptly with the child/children, and must foster a spirit of cooperation with all other parties, to include: significant others (immediate/extended family, mates/partners/ spouses, friends and neighbors), institutions, placements, service providers and other relevant persons and environments, all of whom are repositories of necessary and material information that may significantly impact upon the health, safety and welfare of the child or children at issue. In conducting the necessary investigations, interviews, observations, and assessments (aided if necessary by other relevant professionals), the *Guardian Ad Litem* is uniquely situated to provide a cogent analysis and recommendation regarding the best interest of the child or children at issue, infused by the appropriate statutory imperatives and jurisprudence. Of course, this product should not be considered as evidence, and should be submitted to all parties within a meaningful time prior to a trial or other significant and outcome determinative evidentiary proceedings. To eliminate this product, as the majority suggests, eliminates the value of a *Guardian Ad Litem*, and simply adds another layer to the often and already fractious cast. When parties (and sometimes their lawyers) get caught up in the morass, in the interminable fight to win, to be in charge and/or to vindicate parental rights, their regard for the best interest of the child or children at issue, loses its primacy. This result seldom occurs with the single appointment of a *Guardian Ad Litem*. Not every case, however, requires the appointment of a *Guardian Ad Litem*, and although experience teaches that these appointments are occurring with greater regularity, these appointments should not be viewed as routine, but should only be appointed

[1] Best interest is achieved when the custodial/timesharing/visitation arrangement: 1) facilitates safety (physical and emotional); 2) facilitates age and developmentally appropriate structure; facilitates continuity and consistency of care, and 3) facilitates a meaningful opportunity and access for each parent (where appropriate) to participate in the attainment of each of the previously stated goals.

when certain factors exist, as discussed, infra.[2]

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[2] Although a *Guardian Ad Litem* should not be appointed in every case, such an appointment, however, should be considered where the following factors exist: See generally, Family Law Quarterly, Vol. 37, Nov 2, 2003, Raising the Bar for Lawyers Who Represent Children.
22 States require or permit reports. Page 15. Proposed Standards.

a. There is high conflict between the parties (to include spouse or significant other of a party and/or between any party, to include spouse or significant other of a party) and the child or children at issue;

b. There is conflict between siblings of the same or different households;

c. There are allegations of neglect/abuse/domestic violence and/or substance abuse regarding any party, or other person with significant or direct access to the child or children at issue;

d. There are physical or mental health concerns, for any party or the child or children;

e. There are special needs of a child or children to include: significant medical concerns; learning differences, educational deficits, developmental or cognitive delays;

f. There are other concerns regarding the safety and /or potential removal of the child or children from this jurisdiction;

g. The child is of a certain age and/or judgment, and has articulated a repeated and strong desire to have a voice in the proceedings;

h. Where an increase, decrease, or cessation of parental time or interaction is sought;

i. Where supervisory interaction with parent or sibling is sought;

j. Where a child, by virtue of inheritance or a trust, has substantial assets (income and/or property), or is receiving child support and/or benefits (TANF, SSI or SSDI);

k. Custody is sought by any third party, to include both unrelated and related petitioners;

l. Where the appointment facilitates the Judge's capacity to decide the case properly, with full knowledge of and access to material information that addresses the full panoply of a best interests analysis.

We believe that multiple layers of representation for children is seldom warranted, is neither required by due process, nor required to facilitate a judicial decision, which is in the best interest of the child or children at issue. The *Guardian Ad Litem* can and should articulate the views, expressions and concerns of a child or children who are capable of rendering a considered judgment on the issue(s), even though the *Guardian Ad Litem* would not be bound by the same. Similarly, because a *Guardian Ad Litem* is not bound by a client's directives, even a conflict between siblings would not automatically necessitate either the appointment of a second *Guardian Ad Litem*, or the appointment of an independent attorney since the *Guardian Ad Litem*, while appropriately articulating the conflict to the Court, is not bound by the expressions of conflict, but is rather required to focus upon and to articulate a recommendation that vindicates the best interests of the children at issue. In that regard, children should neither be encouraged nor expected to advocate for or against parental prerogatives and positions, or to make choices between parents and/or their siblings. Nor should a child or children be made to feel that they are in any way deciding the outcome of a case. This predicament is far less likely to occur in cases where a *Guardian Ad Litem* has been appointed. There will be rare circumstances, where traditional attorney appointments are appropriate, however, such circumstances are likely to be quite clear and can be determined in the particular case.

In summary, the Report provides useful direction regarding the implementation of Practice Standards for a Best Interests Attorney in custody/visitation disputes, and will aid our implementation of Practice Standards in these cases. We, however, believe it is essential to the best interests of children to preserve the role of the *Guardian Ad Litem*; to avoid the creation of merged and additional layers of legal representation that are likely to create further adversarial relationships between parties, and that do little to vindicate the best interests of the child or children at issue, which is the primary objective in these cases.

We will be drafting Practice Standards and are likely to use the fine work of the Committee in that regard with modifications we believe are appropriate. We, of course, will feel free to contact Members of the Committee should further assistance be required.

Mr. Earl J. Silbert, Esquire
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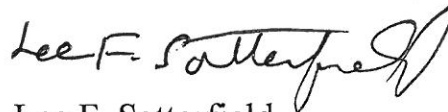
Thank you again for the Final Report and the commitment of the Project Committee to better serve children in custodial and visitation disputes.

Sincerely,



Lee F. Satterfield
Chief Judge

cc: Judge Zoe Bush
Judge Hiram E. Puig-Lugo
Judge Zinora Mitchell-Rankin